

Pretorius, SP  
University of South Africa

## Freedom of religion and religious coercion The challenge posed by the prohibition of coercion as a condition of religious freedom

### ABSTRACT

#### The challenge posed by the prohibition of coercion as a condition of religious freedom

Religious freedom opened up a world for religious diversity. The drafters of the right to freedom of religion were well aware of the atrocities committed in the name of religion and therefore include an important fundamental of religious freedom. Belonging to and participating in the practises of religion must be a voluntary act. Unfortunately, as a result of the susceptibility of people and the nature of religion some new religious groups feel entitled to ignore the condition believing that their belief system supersedes any earthly convention. Addressing this issue pose a challenge to governments. Restricted by the right to religious freedom no political or legal measure can be introduced to regulate or prescribe the internal functioning of religion. The solution is needed on another level. The South African charter for religious rights and freedoms not only provides an ideal platform to engage in a fruitful interaction with other religions but also to guard and assist in the adherence to the fundamentals of religious freedom.

### 1. INTRODUCTION

As a result of the susceptibility of people in a religious context, cruelties have been perpetrated over the centuries, in the name of religion. People have endured persecution for their beliefs by those who hold different beliefs and others have been forced to join certain religions. The intention of the right to freedom of religion is to ensure peaceful existence amongst all world citizens. Well aware of the cruelties perpetrated in the name of religion the drafters of the International Human Rights instruments and in particular, the right to freedom of religion, have included the condition that participation in religion must be a free and voluntary act. The fact that governments are constitutionally bound to ensure that the conditions of religious freedom are applied brought about its own challenges. Some religions view the provisions of the constitution subjective to their own belief system. As a result some new religious movements use techniques and apply certain dynamics befitting their belief system to proselyte and maintain individuals. It is believed that these techniques and dynamics are coercive and in conflict with the conditions of religious freedom. Constitutionalised religion thus in this sense pose a challenge to the state but also to the believer. The application of this condition of religious freedom is particularly complicated by the nature and dynamics of religion. This article will point out the challenges posed by this provision and also propose measures that could ensure a dialogue in order to establish a better understanding of the diversity of religion and minimise the harm caused by the coercion that takes place in some new religious movements.

## 2. RELIGIOUS FREEDOM

In a state ruled by law (such as South Africa since 1994), the Bill of Rights forms part of the constitutional law. The Bill of Rights is constitutionally protected against arbitrary change by government. All rights are universally acknowledged and more are taken up in the South African Bill of Rights. The idea that human beings are valuable and, in their original natural state, possess unlimited, but unprotected rights in need of the protection of government justifies the litigation and the limitations of government action (Venter 1999:15-16).

### 2.1 Some important elements of religious freedom

The South African Constitution's provisions on religious freedom are founded on a number of International Human Rights instruments. These include the Universal Declaration on Human Rights (UDHR, 1948, art.18), the European Convention on Human Rights (ECHR, 1950, art 9), and the International Covenant on Political and Civil Rights (ICCPR, art 18) which, in essence, proclaims that: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

An important condition to religious freedom is pertained in article 18, section 2 of the ICCPR, namely; that: "No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice". The provisions of the ECHR bind all state members and they are furthermore bound by the decisions of the European Court of Human Rights (ECtHR) (Amicarreli, 2009:6). The South African Constitution (chapter 2, section 15), in line with international standards affords everyone the right to choose a religion, as well as the freedom to practise that religion through the participation in the rituals and abiding by the tenets of that particular religion (section 31(1)(a)). Section 15 section (2),[c] further stipulates that participation in religion must be free and voluntary and in no manner should anyone be forced to participate in or attend any religious practice.

The South African Charter of Religious Rights and Freedoms article 2, endorsed on 21 October 2010 by different religions and religious organizations, elaborates on the provision of the Constitution by stating that "no person *may be forced* to believe, what to believe or what not to believe, *or to act against their convictions*".

The right to freedom of religion has two dimensions that can be distinguished namely; *forum internum* and the *forum externum*. The *forum internum* - internal aspect, refers to the freedom to believe, which embraces the freedom to choose one's religion – religious or non-religious. The internal dimension of religious freedom is *absolute*. No limitations are linked to this dimension of religious freedom (Martinez-Torron, 2003:3). This was also confirmed by the present special rapporteur on religious freedom or belief of the United Nations, Mr Reiner Bielefeldt, when he stated "This component *forum internum* of freedom of religion or belief enjoys particularly strong protection under international human rights law as an absolute guarantee which under no circumstances may be infringed upon" (United Nations General Assembly Human Rights Council, 2010).

The other dimension, *forum externum*, - external aspect, refers to the expression or the manifestation of personal religious thoughts. The external dimension, by its nature, is *relative* and can therefore be limited by the public authorities according to article 9(2) ECHR (Martinez-Torrón, 2003:3). The limitation is understood to mean that public authorities can act in cases identified where individuals are impelled by direct action to believe or not to believe in something, or subtly influenced in a matter such as religion or belief, which is considered to be "the exclusive competence of individuals". Such actions are viewed identical to the invasion of the individual's internal autonomy (Martinez-Torrón, 2003:4). The limitations are clearly defined by article 9(2) (ECHR) as those that apply to the "freedom to manifest one's religion or belief"; which are deemed necessary and prescribed by law and in a democratic society in the interests of public safety for the protection of public order, health or morals or for the protection of the rights and freedoms of others" (Amicarelli, 2009:5).

The *forum externum* dimension contrary to the *forum internum* dimension is not absolute and the practices and rituals of religion, whether physical or emotional, need to be exercised in such a way that they are not inconsistent with the specific provisions of religious freedom or with the other basic human rights contained in the Bill of Rights. Coercion may occur in the *forum internum* dimension – that is when coercion is used to proselyte potential members and also in the *forum externum dimension* – that is when coercion is used to maintain and control members.

## **2.2 The aspect of force or coercion in religious freedom**

Globalisation dictated a new approach that would address the inequality and combat between competing religions. This new approach is embodied in the right to freedom of religion that aims at organising a peaceful coexistence amongst all world citizens (Engel 2011:2). The right to freedom of religion has a fundamental condition as pointed out above namely; that belonging to and participating in religion must be an act of free will.

A free and voluntary act is primarily understood in the sense that no physical force is applied in order to ensure that a particular activity is performed. The word *force* defined by dictionaries denotes power to influence, affect, or control, to compel, constrain, or oblige (oneself or someone) to do something, to bring about or effect by force (Dictionary.com n.d).

Force in the most general sense usually implies the exertion of physical power or the operation of circumstances that permit no options. "The pressure or necessity can be applied through physical means that can bring about bodily harm (e.g. when tear gas is used to force fugitives out of their hiding place" [American Heritage Dictionary n.d.]). It means to overpower a person using measurable influence to incline a person to motion; make a person act or do something prematurely or unwillingly (Pocket Oxford Dictionary 1970:319).

Contrary to the above popular definition, physical force is not the only means to coerce someone into performing an activity. A person can also be forced through intellectual or emotional pressure. This kind of coercion is particularly successful in a conducive environment such as religious groups where people tend to be more vulnerable for coercion because of the authoritative nature of religion and since acting along with the rest of the group is subconsciously accepted as the norm. This does not mean that people in these groups cannot act for themselves, but that such a decision requires more willpower as a result of the pressure to conform in the group.

In this sense coercion means the applying of emotional or spiritual force in order to ensure that a particular activity is performed. The action is sanctioned by the threat that disobedience will result in some form of punishment, in the case of religion, eternal punishment. Natural forces a person cannot resist are often used with emotional force to *compel* persons to oblige. These natural forces involve the survival of any human being, such as hunger, sleep deprivation or other adverse circumstances (Singer & Lalich 1995:132). The difference between the two dimensions of coercion is that physical force precedes and stimulates action, whereas with intellectual or emotional force the threat of an anticipated consequence for disobedience or non-conformity motivates action.

### 2.3 Coercion in religion, specifically new religious movements

The nature and dynamics of religion make individuals more susceptible to coercion. Although coercion or a subtle influence process is present in all spheres of life, the focus of this article is on certain religious groups known as new religious movements, new religions, alternative religions, sects or cults. Scholars when referring in general to religious groups that are not part of the mainstream religion more generally use the term “New Religious Movements”<sup>1</sup> (NRMs). Opponents of NRMs, also generally referred to as the anti-sect/cult movement, refer to these groups as “cults” or “sects”.

In some NRMs the process of proselytising new members normally commences with an appealing emotional experience (or experiences) known as “love bombing” that gives the perception of real interest in the wellbeing of the person. The affectionate attention relaxes and makes the person more susceptible to the new ideas of the group (Singer & Lalich 1995:114). This opportunity is utilised by the religious group to point out the defects in the potential member’s value system, worldview, view of God, educational, religious and political structures, in order to create doubt in the person’s own mind. Progressively through doubt about the person’s current world, an emotional and spiritual need for change is established. But what is more important is the establishment of a subconscious emotional pressure to change the inadequate circumstances. The solution is presented in the lifestyle and doctrine of the NRM (Pretorius 2007:206). Emotional pressure is applied mainly through making potential followers believe that their world is inadequate in ensuring salvation. They are left with two choices: either to join the group that claims to have the solution or reject the fact that their world is inadequate. If the followers accept it, the degree of commitment to the particular group is normally demonstrated by confessing to the insufficiencies of the person’s own world followed by a radical break with this insufficient world and lifestyle. Such radical action, although it can be justified as the result of conviction, is obtained through emotional force. To facilitate the solution and therefore the new members’ adaptation to the world or the NRM, their own worldview, frame of reference, belief system and identification structures are replaced by the particular group’s culture, doctrines, prescriptions and belief system (Pretorius 2007:208). A redefining of the “self” occurs (Venter 2002). Adaption to the NRM further requires obedience to the commands of the group, which is equalled to pleasing God and systematically enforces behavioural change. This change is best achieved in a more

<sup>1</sup> This term was adopted by scholars to replace the word “cult” that was subsequently used indiscriminately by lay critics to disparage faiths whose doctrines were believed to be unusual and heretical (Introvinge 2001:1). In everyday life religions or religious groups regarded by the majority culture as spurious or unorthodox are referred to as “new religious movements” or “minority religions”. The term New Religious Movements is thus used by sociologists to describe non-mainstream religions. Others use the term to describe benign alternative religious groups and reserve “cult” for groups – whether religious, psychotherapeutic or commercial – they believe to be extremely manipulative and exploitive.

isolated environment, which alienates and separates members from the outside world. Membership to the particular group signifies not only true salvation, but also to be specially “chosen”. This belief motivates followers to be obedient to all the commands of the group at whatever cost; even if they at times may question some of the commands, the fear of missing the ultimate goal of salvation motivates them to obey. In this sense the belief portrayed by the NRM about salvation and the requirements for that salvation serve as a motivation for followers to obey and follow instructions. The intellectual or emotional pressure at work is fear of losing salvation. Salvation, according to the NRM, can only be obtained through membership of the particular group followed by meticulous obedience to all the commands of the group. To ensure that new members follow these commands a system of continuous reprimanding, even punishment, if rules are broken, is established. Punishment includes – being ignored, shunned or overlooked or by aggressive legalism, being questioned, openly censured or asked to leave the group (Johnson & Van Vonderen, 1991:67-68).

Members, as a result of the culture they are subjected to, realise that the best way to overcome their own inability, to stay on track and to please God is to surrender totally to the instructions and guidance of the leader. The dynamics of the group succeeds in establishing intellectual and emotional pressure to conform without analysing. Systematically, the ambitions, critical thinking faculties and personal viewpoints of members become a lower priority. Instead the emotion of fear functions strongly in directing the followers in these groups. The main fear is imbedded in the belief that leaving the group will result in divine judgement, eventually losing salvation (Zukeran 2006:4). Followers have thus become physically, emotionally and spiritually dependent on the instructions and directions of the group since that will ensure salvation. Another form of fear is instilled by the measures taken by some NRMs to punish or correct straying cult members. The harshest form of punishment entails being ignored or rejected by the other members until the victim confesses. It can also include doing the dirty work in the group and can even include placing curses on members and informing them that they or their family will become sick and die if they leave the group or disobey orders. Internal spying among cult members is another way of obtaining information about straying members (Singer & Lalich 1995:77).

In one new religious group in South Africa known as Emmanuel Fellowship a male member of the group was excommunicated when he asked to be excused from one Friday night youth meeting because he was very tired. The leader reacted furiously, accusing him of being lazy and not committed and stating that he would never be allowed in any meeting again. This particular member went back to the leader after a while, begging him for forgiveness and a second chance in an attempt to break the excommunication and to be accepted by the group again (Van Niekerk 2004).

It is clear from the above that emotional pressure can be used to get followers to proselytise members, but also to ensure conformity to the commands of NRMs. Without preceding physical punishment or force, followers are emotionally moved to adhere to the commands of the group, founded in the belief that total obedience is essential for obtaining the ultimate eternal goal. It can be argued that members of these groups, although they might have been forced through emotional pressure, still acted on their own conviction. Emotion is an integral part of religion, but emotional pressure used to create a dependency or control over members that in turn can lead to the violations of the follower's rights, raises a concern. These rights include the right to freedom of association, freedom of movement and freedom of expression, to mention a few. In another group in Limpopo followers are not allowed to come and go

as they see fit. Although the gate at the farm is not guarded, guards are set up in the minds of the followers through the unspoken rules. Proper permission is needed to leave the farm. Followers of this particular group always go to town in a group to ensure better control over their doings. One member compared the underlying emotional and psychological control and pre-planned lifestyle to a prison (Brooke-Smith 2008:6).

## **2.4 Different approaches to the study of coercion in new religious movement**

The alarm was sounded on unethical influencing techniques in so called new religious movements in the late 1970s that later resulted in the birth of the “counter-cult and cult-awareness groups”. The incidents that have triggered reaction and maintained the interest in this field were the mass suicide in Jonestown (Guyana), by Jim Jones and his followers in 1979, where more than 900 people died. Jones was the leader of the Peoples Temple. Other sensational events followed that stressed the seriousness of the dynamics of some religious groups and the need for measures. There was the massacre of the Branch Davidians of David Koresh in Waco Texas in 1993 who has been accused of alleged child abuse and statutory rape; the Aum Shinrikyo's use of sarin gas in the Tokyo subway in 1995; the Solar temple suicides in Quebec, France and Switzerland; the Heaven's Gate suicides in Los Angeles 1997 and the mass suicide-murders in 2000 of 788 members of the Movement for the Restoration of the Ten Commandments of God in Uganda.

As a result of these horrors, the anti-cult movement was birthed. The anti-cult movement is founded on the belief that cults make use of excessive psychological techniques in order to proselyte and to maintain the loyalty of their followers. These excessive psychological techniques are also known as: mind control, behaviour modification, unethical influence, behaviour control and brainwashing. Not all scholars working in this field agreed on the impact that new religious movements (cults) have on its members and society and as a result different approaches to the study of new religions have developed over time. Barker (2001) identifies five types of cult-watching groups<sup>2</sup>. Two main approaches or viewpoints can be distinguished from these different cult watching groups. The first group of scholars (see Singer & Lalich 1995, Hassan 1988, Zimbardo 2002, Zamblocki 1997, and McManus & Cooper 1984) believes that some new religious movements, also referred to as “cults”, make use of excessive psychological techniques to proselyte and retain existing members (Possamai & Lee 2004:337). It is further argued that the subliminal coercion used by some of these groups leads those affected to believe that they are acting out of free will and to deny that they are in any way coerced. In simple terms, subliminal coercion means getting people to do what you want them to do without them realising it, so that they believe that they are acting of their own free will. Hassan (1998) adds another aspect namely; that cult indoctrination superimposes a new cult identity that suppresses and controls the individual's authentic identity. Another aspect of cult leaders is that they rule by exploiting guilt and fear. This was confirmed by the hearings at the Vermont Senate Committee for the Investigation of Alleged, Deceptive, Fraudulent and Criminal Practices of Various Organisations in the US in 1976. Psychologists and psychiatrists testified regarding the mental impairment of cult members and pointed out that cult members' indoctrination is characterised by a subtly enforced belief that the past is bad and need to be rejected and replaced with the offerings of the group that ensures true life. The cult member's reality consisted of a struggle between good – the offering of the cult, and evil – the outside world (Lucksted & Martell 1982:6).

---

<sup>2</sup> These different cult watching groups include anti-cult, counter-cult, human-rights, research orientated and cult defender groups (Barker 2001).

A second viewpoint held by another school pleads for a more comprehensive approach to the study of NRM's (see Introvinge 2001, Richardson 1985, Baker 1995.). The following statement signals the essence of this approach:

The tragedies recorded of some of these cults "... would not have occurred had the movements [anti/counter-cult movements] not existed and carried out the actions that they did, but the actions did not take place in a vacuum. All of them, and even the Heaven's Gate suicides, were part of a "cult scene" that includes other members of the wider society - and among the key players in "the cult scene" are the cult-watching groups (CWGs). These are organizations and networks of people who, for personal or professional reasons, contribute to the complex of relationships between new religious movements (NRMs) and the rest of society" (Barker 2001:1).

They further believe that the concept of brainwashing used by cults, which scholars cite as a reason to introduce regulative measures, is based on "moral panic", a concept developed by Jenkins (1998). Moral panics are defined as "socially constructed social problems characterised by a reaction, in the media and political forums, out of proportion to the actual threat". They are often circulated in the media, and may "ultimately inspire political involvement". In this light sects [and Cults] are viewed as a common enemy, a 'dangerous outsider' against which mainstream religion must muster in order to protect their standards and beliefs. Mainstream religion's reaction to cults may result in active persecution, ostracism and negative stereotyping (Jenkins 1996:158). This school of thought generally believes that a balanced approach is needed in the study of NRM's that will indicate that the danger portrayed by some scholars are over exaggerated and that only a few cults are posing a threat (Richardson and Introvinge 2001:144).

Whatever viewpoint is taken, no one denies the fact that some religious groups may use excessive psychological techniques that not only can lead to abuse, but also the infringement on the human rights of their members. Nor can it be denied that some members can be enticed into criminal actions, such as illegal weapon trade, holy wars, and that some groups may be guilty of child abuse or statutory rape.

Another important aspect however that must be considered when dealing with religion is that religion dictates its own viewpoint on different aspects of life, reality and the existence of man, now and in the life hereafter. What is viewed as coercion from a political, social or psychological point of view may be viewed by a religious person as a necessary sacrifice in order to obtain eternity. For the exact believer the methods utilised by religion to ensure compliance are not necessarily viewed as undue force or coercion, but as measures needed to ensure salvation. These measures are needed to mobilise the true believer for duty, and this is regarded as far more important than rights.

## **2.5 Dynamics of religion**

Different approaches can be taken in the study of religion, such as (1) a historical approach, (2) the phenomenological approach, and (3) the social scientific approach. For this article the phenomenological approach is used, which is directed at discovering the nature or essence of religion – the fundamental characteristics that lie behind the historical manifestations (Cronk n.d 3). It is believed that these dynamics function even more strongly in more radical religions such as cults.

One of the characteristics of religion is the belief in the existence of forces that cannot be seen with the natural eyes. More so these forces cannot even be made visible through science. These forces according to religious people play an important role in their lives today but also after their physical existence on this earth seeing that it commands goods and evils. Earthly goods, the value of money and whatever political force can impose is of lesser value than these forces (Engel 2011:2).

The transcendental nature of religion and the correctness of religious belief defy proof. It defies description and understanding by human abilities. The transcendental nature of religion carries the most weight for the believer seeing that it is the means of connecting the believer with eternity and render meaning to the here-and-now. The commands of their religion therefore have infinite value and surpass earthly goods. A believer is thus not entitled nor willing to compromise whatever non-religious reasons the state presents for limiting any aspect of his or her religious expression (Engel 2011:10).

Religious people are willing to even endure much for the sake of their religions possibly because they feel better if they live a religious life, but more so to ensure that they are living in line with the commands of their religion (Leiter 2008:7). Religions further offer what might be called "side benefits", such as "social solidarity, psychological comfort, and a better way of coping with the unknown and death itself" (Raday 2009:2776).

In the light of the above, it is clear that religious freedom is not an ordinary good. Three reasons for this are given by Engel (2011:6): firstly; for a believer; leading a religious life has extreme value. Believers are aware that not everything is known about their religion or belief and in these cases faith provides a substitute that navigates uncertainty where certainty would be of the utmost importance. Secondly; the leap of faith taken by a believer ensures continued commitment to their choice. Finally; to ensure that followers do not deviate from the commands of their religion they are in many cases threatened with worldly sanctions, such as illness, and misfortune, to be expelled from a religious office, excommunicated or even to be lost for eternity. This kind of faith unfortunately also increases people's vulnerability – for two reasons. The first reason is the belief that eternity is at stake and therefore potentially, mistakes are fatal (Leiter 2008:15). Secondly; the leap of faith is not in need of proof.

Phillips (2007:115) observes that religions are not fundamentally functioning on the concept of rights. Religions are focussed on duties, duties of the individual to God and duties of man to man. It is also true that certain rights are deferred from such duties, but duty is, nevertheless, prior to rights.

A difference can be distinguished between a human rights culture and a religious culture. A human rights culture believes that law is required to protect people from each other. Most religious cultures believe that everybody enjoys equal and absolute worth, not equal rights (Phillips 2007:117).

In the light of the above regarding the dynamics and fundamental beliefs of religion it is extremely unlikely that any government will be able to convince the believer that the risk of compromising on a command of his or her religion is a minor matter. On the other hand it provides a better understanding for the vulnerability of believers that can fall prey and be exploited by some NRMs through the use of excessive psychological techniques. The realisation of this occurrence in Europe has led to different measures and investigations being undertaken.

## 2.6 Legal and other measures taken to address the alleged coercion in some new religious movements in Europe

The anti-cult movement has also helped to draw up measures taken in Europe and the USA directed to addressing the alleged dangers posed by some alternative religious groups. Some European parliamentary and other official reports generated in the wake of the Solar Temple incidents have adopted an interpretive model, which indicates the threat posed by sects and cults. These reports include the French reports (Assemblée Nationale 1996 and 1999); the Belgian report (Chambre des Représentants de Belgique 1997); large parts of the Canton of Geneva report (*Audit sur les dérives sectaires* 1997) and of the same report's on brainwashing (Commission pénale sur les dérives sectaires 1999); the deliberations of the French Prime Minister's "Observatory of Sects" (Observatoire Interministériel sur les Sectes 1998); and of its successor, the Mission to Fight Against Sects (MILS 2000).

Concerns about cults were addressed in two main types of regulatory campaigns in Europe. The first type was involved in specific laws that were implemented to ban and dissolve NRMs. One example is the French law known as the "About-Picard Law". This law is designed to repress cults and prosecute their leaders. The second type of legal action taken against NRMs consisted of establishing governmental bureaucracies with an expansive mandate devoted to identifying and combating the influence of sects and cults.<sup>3</sup>

Not many cases have been decided by the European Court of Human Rights (ECtHR) under the limitations clause of Article 9(2) of the European Convention on Human Rights (ECHR). Since the human rights regime in Europe came to power in 1953. There has been an increase in the Court's jurisprudence in the last few years and since 1993 the Court has decided more than 10 cases under Article 9(2). The cases decided included addressing "the areas of state regulation of religious leadership, state recognition of religious groups, proselytism and state restriction of ostensible religious symbols" (Kamal 2005:669).

Despite all the legal and other measures taken to curb the harmful effects of cults, the ECtHR has not adopted general measures either to address violations or to protect NRMs within Western Europe on the basis of these drastic domestic measures. In the two cases under its review, the ECtHR did not lay down a substantive holding on monitoring NRMs. In the one case, the admissibility of complaints by Jehovah's Witnesses against the French law banning dangerous sects was rejected, with a finding that the law had not been directly invoked against them (ECtHR 2001). The petition by a Jehovah's Witness against surveillance by Greek authorities ended in an out-of-court settlement (ECtHR 1999) (Laviatan 2011:73).

The few cases reviewed by the ECHR and the ECtHR where allegations of breaches of Article 9's freedom of religion clause were made against so-called NRMs or "cults" the court decided on other articles in conjunction with Article 9. In the first case, "the Court found that there had been a violation of Article 9, and assumed any apparent supremacy of articles in conjunction (namely Article 10, freedom of expression and Article 14, freedom from discrimination), in

<sup>3</sup> Examples of these establishments in Europe are the French Interministerial Mission of Vigilance and Combat Against Sectarian Aberrations (MIVILUDES); Belgian agencies that have collected information and monitoring the harmful activities of NRMs (USDS 2009a); Germany's Office for the Protection of the Constitution (OPC) (USDS 2009b); and the Austrian Society against Sect and Cult Dangers (GSK) (USDS 2009c). The activities of these bureaucracies involve NRM surveillance, advising authorities and the general public of the potential risks of NRMs, coordinating the appropriate responses to NRM activities, and helping victims of cult abuse.

the Kokkinakis v. Greece case. The ECHR declared the case admissible, stating that there had been a violation of Article 9<sup>o</sup> (Romocsea 2010:92). Whatever activities members perform are generally believed to be voluntary, while in fact they may be the result of subliminal coercion. To prove this abstract reality is problematic.

The success of these types of court cases is demonstrated by the classical case of *Schuppín v. Unification Church*<sup>4</sup>; in this case, parents of a member of the Unification Church alleged that their daughter was forced to work in “compulsory service.” The parents alleged that constant threats and fear were used by the leadership to coerce their daughter into selling merchandise for the cult. The suit failed based on the fact that the parents could only allege mental constraint, without proving that physical force was used on the part of the cult to compel the member to stay within the cult (Lucksted & Martell 1982:6).

### 3. CHALLENGE POSED BY THE PROHIBITION OF COERCION

Instilling controlling measures to ensure that coercion does not occur in religion as prescribed in the various conventions, poses a challenge to governments. Governments are not only limited by the right to freedom of religion to interfere in internal religious matters but are also faced with the imbedded dynamics grounded in transcendental forces based in eternity. In this sense the constitutional protection of religion is a threat for religions and a challenge for the state.

#### 3.1 The challenge of constitutionalised religion for the state

The constitutionalising of religion can be compared to the marriage of unequal partners. It is an attempt to regulate what many people believe is a spiritual, conceptual reality grounded in eternity with political and legal concrete measures. Religions based on realities outside the physical world are to be regulated by laws, measures and proof founded in the physical world. This situation poses a challenge to the state for the following reasons:

- How can the state prove that religious commands are inconsistent with legal requirements, given that religion defies scientific proof (Leiter 2008:15, 25)? The numerous definitions of religion and the struggle to define NRM or cults further complicate the regulation of religion.
- Religion and its practices must be assessed against an abstract definition of religiosity. No concrete criteria can be used in determining if a religion is a religion or if a religion’s expressions are indeed religious.
- The state lacks jurisdiction for the modification of religious doctrines. Nor can it alter or prescribe the dynamics and nature of religion (Engel 2011).
- A legal approach views religion as a historical contingent phenomenon (Hart 1961), for true believers religion originates from a transcendental dimension.
- The state’s authority is to guard over civil life whilst religion guards over spiritual life that is unlimited and encompasses not only earthly, but also eternal life.
- Any action from the state to prevent believers from a specific course of action will provoke religious resistance (Engel 2011).

<sup>4</sup> *Schuppín v. Unification Church*, U.S district Court of Vermont, 435 F. Supp. 603, 606, Civil No 76-67 (D. Vt., 1977).

- The right to freedom of religion grants a protected sphere to individuals and organizations. Unfortunately, the sentiment is not returned by being tolerant themselves with competing religions or with the state itself. Potentially, religious freedom challenges the authority of the law especially when it comes to “strong religions” such as fundamentalist movements, and cults (Rosenfeld 2009, Richardson 2004).
- The right to religious freedom can even be utilised negatively to serve as a conversation stopper when the practices and expression of religion are debated (Rorty 1994). The right to religious freedom and the application thereof has also caused divisiveness in politics (Breyer 2006). It can even be used by some religions to involve the legislator in fighting their actual competitors in the free marketplace of religions, which itself is guaranteed by the freedom of religion (Holcombe & Holcombe 1986).

Religious freedom is also a threat to democracy. The internal doctrines of religions are often not individualistic and therefore the ultimate goal of religion is not the individual’s autonomy, but his/her fate in eternity (Engel 2011:11).

### **3.2 The threat of constitutionalised religion for religions**

Once the freedom of religion is constitutionally protected, believers are legally obliged to accept a plurality of eternities all functioning in the religious arena and government is prevented from openly siding with one religion. Examples of the impact of a constitutionalised religion are the prohibition of prayer as in US schools and the hanging of the crucifix in German classrooms (Engel 2011:8). Constitutionalised religion can be viewed as a threat to the free expression of religion in general but even more so by new religious movements that show a higher level of commitment to the belief system for the following reasons:

- Religious goods are transcendental and confirmation is taken from a higher power.
- The correctness of religion is not based on what can be scientifically proven, given that an essential principle of religion is the belief in the unseen.
- Salvation – in whatever form is the crux of religion. For true believers, worldly goods and laws have no priority if they violate religious commands.
- Constitutionalised guarantees of freedom of religion imply a secular system that takes priority over religion. Any measures to limit the expression of religion will therefore result in a stronger attachment to, and belief in, their own specific religious system.
- For a religious individual adherence to legal measures can imply disobedience to moral duties and will result in transcendental sanctions.
- Liberties afforded by the constitution are viewed differently by the believer and means the removal of all obstacles in order to live out his/her religion.
- The meaning of “human dignity” prescribed by the constitution is in the first instance not viewed as the fair and worthy treatment of each individual but rather respect for the true believer’s relationship with the transcendent.

Religion emphasises duty rather than rights. A secular human rights culture aims to guarantee earthly life and liberty but at the same time threatens the free participation in religious duties (Phillips 2007:115-117).

True believers generally view constitutionalised religion as a subtle attempt to regulate religion and in so doing diminishes religious freedom.

### 3.3 Solution

It stands to reason that a legal approach to maintaining religious freedom is only applicable in the prosecution of criminal activities performed by religions; this approach is unable to protect individuals against undue coercion that may incur harmful practices that infringe on other basic human rights as previously pointed out.

The Council of Europe (COE) has expressed concern regarding influences that may arise from sectarian phenomena in its Recommendations No. 1178 (1992) on sects (cults) and religious movements and No. 1412 (1999) on illegal activities and sects (cults). The council has found that minors are especially at risk from sectarian and cultic phenomena that can cause human rights violations, particularly in the spheres of health, education and respect for personal freedoms. A child exposed to sectarian influence is likely to be restricted in its fundamental rights and in future access to become a free and enlightened citizen. Children and minors are particularly vulnerable to both physical and psychological ill-treatment. Minors drawn in by cults are often withdrawn from their protective family environment, and their parents are thrown into disarray. The Assembly therefore resolved to study the question of sectarian and cultic influence on minors (COE 2011).

Important pointers can be taken from Europe, which has dealt with the issue of sect and cults intensively. The following guidelines were proposed to European countries by the Council of Europe in dealing with alternative religions (COE 1992):

1. The solution of the problem of NRMs (cults) that are accused of alleged coercion does not lie in legislation but in research and dialogue with these groups in order to obtain an understanding of their functioning and dynamics.

It is clear from the above discussion on the dynamics of religion and in particular NRMs that a dim view is taken of a secular and political system prescribing the conditions of freedom of religion. Not only does it portray a secular system less important than the religious commands, but it is also viewed as a system to limit or restrict freedom of religion. An absolute freedom is envisaged and in any society this view spells danger. Freedom must also not be limited by governmental interference and therefore a solution must first be obtained through sound information about these groups. This must occur in consultation with these groups. A religious platform rather than a political or legal platform should be used.

2. Information gained through research and dialogue must be made available to the public in order to create a greater awareness about NRMs and the differences they portray compared to other religions.
3. Greater vigilance through school education is necessary, especially for young people. The diversity in religion must be pointed out also the possible exploitation by some religions under the banner of religious freedom.
4. An Information or consultation service – preferably by independent non-governmental organizations where alleged violations of religious freedom can be reported and investigated must be in place. The role of this centre is not only to investigate alleged harmful practices in the case of some religious groups, but also the careful investigation

of these allegations by professionals in consultation with the particular group and other affected role-players with the aim of obtaining solutions.

5. Another possibility to address conflicts within religions that is better than government regulations is voluntary codes of conduct. Self-regulation in general is more flexible and effective than government regulation. The advantage of self-regulation is that it can bring “to bear the accumulated judgment and experience of all stakeholders on an issue that is difficult to be defined by the government” (Richards, Svendsen and Bless 2010:71).

In South Africa new religious movements must be formally included in the religious scenery. The South African Council for Religious Rights and Freedoms provides an ideal platform not only to include NRMs in South Africa, but also to facilitate critical debate and to guard over the integrity of religious practice.

## 4. CONCLUSION

Since 1994, with the passing into law of the new Constitution, South Africa started on a “new track” as far as religion is concerned. The Constitution treated all religions equally, and South Africans now have freedom to follow any religion. However, it is also important to note that some may abuse this freedom for their own selfish goals and, in the process, inflict harm on the members of religious groups. It is therefore necessary that the followers of all religions commit themselves to ensuring that harm is not caused by their actions or beliefs.

Constitutionalised religion holds its own challenges for government, as discussed above. The main challenge is that governments can neither prescribe doctrine nor alter beliefs and cannot judge whether the practices of a religion are indeed religious. Fortunately, South Africa is in the position to learn valuable lessons from other countries which, over the last few decades, have looked for solutions in cases where certain religions were believed or known to have caused harm.

South Africa is not exempted from the perception that a number of harmful religious groups are functional within its borders. This is clearly demonstrated by the number of reports in newspapers, magazines and on television<sup>5</sup> over the last decade or more. This media coverage indicates to a specific perception about some religious groups but more so to a need for proper education and information on this topic in the interest of the public.

Instead of “reinventing the wheel”, South Africa must take note of the trials and errors of other countries and learn from them. The South African Charter of Religious Rights and Freedoms provides an ideal platform to assist in a process of dialogue. The establishment of a non-governmental organization that can cooperate with the Charter of Religious Rights and Freedoms will not only provide an opportunity to educate and inform the public about the diversity of religion, but will also help to create an understanding of the dynamics of religion.

<sup>5</sup> *Profeet van Hertzogville* – “Profeet” kryt kerk uit, maar swyg oor oom Paul se opstaan. Beeld, 13 Augustus 2004; Die “Profeet” word in eie dorp gevrees. Rapport: 5 Maart, 2004. *Mission Church of Christ* – Goddank ons kinders lewe. Huisgenoot: 20 Oktober 1994. *Emmanuel Fellowship*, South African Broadcasting Corporation. “Special Assignment: SABC3, 11 May, 2004. Erasmus, JJJ. 2004. Die Houy groep: kerk of kulte? Potchefstroom: Skripsie MTh; *Ark Sekte* – Ark sektekinders ‘wil op eindtyd voorberei’ Beeld, 3 Mei 2000; Ark-sektelede draai in hof, Die Burger, 27 Junie, p 5, 2000; *Grace Gospel Church*, M-Net, Carte Blanche. Broadcast on 7 February, 2010;

It will also open a channel by which to address alleged abuse and misunderstanding.

## BIBLIOGRAPHY

- Amicarrelli, A. 2009. Issues of Religious Freedom throughout the world – fifteen years and more: Religious Freedom before the European Court of Human Rights. A paper presented at the 2009 Centre for Studies on New Religions (CESNUR) conference, Salt Lake City, Utah, June 11-13.
- American Heritage<sup>®</sup> Dictionary of the English Language. N.d. Available at : <http://education.yahoo.com/reference/dictionary/?s=force> Accessed 31 May 2011
- Barker, E. 2001. Watching for Violence A Comparative Analysis of the Roles of Five Types of Cult-Watching Groups. A paper presented at The 2001 Conference in London. Available at <http://www.cesnur.org/2001/london2001/barker.htm> Accessed 29 August 2011.
- Barker, E. 1995. "The Scientific Study of Religion? You Must Be Joking!". *Journal for the Scientific Study of Religion* Vol. 34 (3): 287–310.
- Breyer, S. G. (2006). *Active Liberty. Interpreting our Democratic Constitution*, Random House, Inc.
- Brook-Smith, M. 2008b. Further examples of abusive culture at Alon Fellowship, Tzaneen. Unpublished.
- COE. 2011. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE Doc. 12595  
18 April 2011 The protection of minors against sectarian influence Available at <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12595.pdf> Accessed on 25 August 2011.
- COE. 1992. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE  
20 January 1992 Doc. 6546 Available at :<http://assembly.coe.int/Documents/WorkingDocs/Doc92/EDOC6546.pdf> Accessed on 25 August 2011.
- Cronk, G. n.d. Notes on the nature of religion. Available at <http://www.bergen.edu/phr/121/relnotes6.pdf> accessed on 6 June 2011.
- Dictionary.com. n.d. Available at: <http://dictionary.reference.com/browse/force>. Accessed 31 May 2011.
- Engel, C. 2011. Law as Precondition for Religious Freedom. Bonn: Preprints of the Max Planck Institute for Research on Collective Goods. Max Planck Society.
- European Convention on Human Rights (ECHR). Available at: [http://hrcr.org/docs/Eur\\_Convention/euroconv3.html](http://hrcr.org/docs/Eur_Convention/euroconv3.html) (accessed on 11 August 2010).
- Fowler, F.G. & Fowler H.W, 1970. *Pocket Oxford Dictionary*, fifth ed; Oxford: Clarendon Press 1970.
- Government Gazette, 1996. Constitution of the Republic of South Africa. Vol 378, No 17678, 18 December.
- Hart, H.L.A. 1961. *The concept of Law*. Oxford: Clarendon Press.
- Hassan, S. 1988. *Combatting mind control*. Rochester: Park Street Press.
- Holcombe, R.G. and Holcombe, L.P. (1986). "The Market for Regulation." *Journal of Institutional and Theoretical Economics* 142: 684-696.
- International Covenant on Civil and Political Rights. Viewed 2 December 2010, from <http://www2.ohchr.org/english/law/ccpr.htm>
- Introvigne, M. 2001. The Future of Religion and the Future of New Religions. Available at [http://www.cesnur.org/2001/mi\\_june03.htm](http://www.cesnur.org/2001/mi_june03.htm). Retrieved 8 August 2011.
- Jenkins, P. 1998. *Moral panic: changing concepts of the child molester in modern America*. New Haven, CT: Yale University Press.
- Johnson, D & Vanvonderen, J 1991. *The subtle power of spiritual abuse*. Minneapolis: Bethany House.
- Kamal, J. 2008. Justified interference with religious freedom: the European Court of Human Rights and the need for mediating doctrine under Article 9(2). *Columbia Journal of Transnational Law* 46(3):667-708.
- Liviatan, O. 2011. Faith in the law – the role of legal arrangements in religion-based conflicts involving minorities. *Boston College International & Comparative Law Review* 35:53:53-89.
- Leiter, B. 2008. "Why Tolerate Religion?" *Constitutional Commentary* 25: 1-27.
- Lucksted, OD & Martell, DF. 1982. *Cults: a conflict between religious liberty and involuntary servitude*. US FBI Law Enforcement Bulletin April, May and June pp.1-15. Department of Justice: Federal Bureau of Investigation.
- Martinez-Torron, J. 2003. The permissible scope of legal limitations on the freedom of religion or belief:

- the European Convention on Human Rights. *Global Jurist Advances* 3(2).
- McManus, U & Cooper, J.C. 1984. *Dealing with destructive cults*. Grand Rapids: Zondervan.
- Mission Interministérielle de vigilante et de lutte contre les dérives sectaires (MIVILUDES). Available at: <http://www.miviludes.gouv.fr> (accessed on 12 April 2011).
- Phillips, M, 2007. Human rights and its destruction of right and wrong. In N. Ghanea, A, Stevens and R, Walden. ed., *Does God believe in human rights? Essays on religion and human rights*. Boston: Martinus Nijhof Publishers.
- Possamai, A & Lee, M 2004. New religious movements and the fear of crime. *Journal of Contemporary Religion, Vol. 19, No. 3*
- Pretorius. S.P. 2007. Establishing mutual ground that enables counselling of religious cult victims, *Journal for Christian Scholarship*, 43 (3&4), p. 201-215.
- Raday, F. 2009. Secular Constitutionalism Vindicated. *Cardozo Law Review* 30: 2769-2798.
- Richardson, J. T. 1985. "The active vs. passive convert: paradigm conflict in conversion/recruitment research". *Journal for the Scientific Study of Religion*, Vol. 24 (2): 163–179
- Richardson, J.T. 2004. *Regulating religion. Case studies from around the Globe*. Kluwer: Plenum Publishers.
- Richardson, J.T & Introvinge, M. 2001 . "Brainwashing" theories in European parliamentary and administrative reports on "cults" and "sects". *Journal for Scientific Study of Religion* 40(2):143-168.
- Romocea, CG. 2010. Remedies for human rights violations in International Law: the case of religious freedom in International and European regional Human Rights Courts. *Jurnalul de studii Anul V* (3-4):85-97.
- Rorty, R. 1994. Religion as conversation stopper. *Common knowledge* 3(1):1-6
- Rosenfeld, M. 2009. Can Constitutionalism, Secularism and Religion be reconciled in an era of globalisation and religious revival? *Cardozo Law Review* 30: 2333=2368.
- Singer, M.T & Lalich, J. 1995. *Cults in our midst*. San Francisco: Jossey-Bass Publishers.
- The Universal Declaration of Human Rights, 1948. Viewed 2 February 2011, from <http://www.un.org/en/documents/udhr/index.shtml>
- United Nations General Assembly Human Rights Council. Statement of the special rapporteur on freedom of religion or belief, Heiner Beilefeldt, 2010. 21 October. Available at: [http://www2.ohchr.org/english/issues/religion/docs/GA65statement\\_2010.pdf](http://www2.ohchr.org/english/issues/religion/docs/GA65statement_2010.pdf) (accessed on 3 March 2011).
- US Department of State (USDS). 2009a. Report on international religious freedom: Belgium, October 26. Available at: <http://www.state.gov/g/drl/irf/2009/127301.htm> (accessed on 12 April 2011).
- US Department of State (USDS). 2009b. Report on international religious freedom: Germany, supra note 84. Available at: <http://www.state.gov/g/drl/rls/irf/2009/127312.htm> (accessed on 20 May 2011).
- US Department of State (USDS). 2009c. Report on international religious freedom: Austria, supra note 62. Available at: <http://www.state.gov/g/drl/rls/irf/2009/127298.htm> (accessed on 20 May 2011).
- Van Niekerk, JP. 2004. Personal account of ex-member, Emmaneel Fellowship. 11 Mei
- Venter, F. 1999. Menseregte en die gesag van die owerheid. *Potchefstroom: Die Kerkblad*, 21 April, p. 15 - 16.
- Venter, M.A. 2002. Instandhouding en regulering van die selfkonsep tydens psigiese beheer "mind control", 38(1&2), p.135-151.
- Zablocki, B. 1997. The Blacklisting of a Concept. The Strange History of the Brainwashing Conjecture in the Sociology of Religion". *Nova Religio: The Journal for alternative and emergent religions*, 1 (1): 96–121
- Zimbardo, P. G. 2002. Mind control: Psychological reality or mindless rhetoric? *Monitor on Psychology*, November, 33, 5. pp. 309-311.

## TREFWOORDE

Kulte  
 Dwang  
 Nuwe godsdienstige bewegings  
 Godsdiens vryheid  
 Bewusmaking

**KEY WORDS**

Cult

Coercion

New religious movements

Religious freedom

Awareness

Stephan Pretorius

Logistics and Admin Support Manager

DSAR

Block A, ground floor, Es'kia Mphahlele Building

Sunnyside

012 4415343