

**NEW RELIGIOUS MOVEMENTS
IN WESTERN EUROPE**

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1. Introduction

Religions are born at any time and in any place: but in the second half of the last century this phenomenon acquired dimensions that were unknown in the history of the West. Many religious movements were born and prospered, either as a development of well-known religious traditions or as the result of a syncretic approach to different religions. In many cases their doctrines and practices differed widely from those of the mainstream religions: moreover, the “closed” structure of some of these groups, the unconventional behaviour of their members, and some tragic events in which they were involved gave rise to considerable social alarm.

In the wake of this alarm, two questions started being asked: Are these movements real religions? and: Are they dangerous to individuals and society? These questions are far from simple, and answering them requires reconsidering some crucial notions that are at the foundation of the relationship between law and religion in Western Europe.

2. Problems of definition.

In Western Europe public opinion became aware of the presence of new religious movements in the 1970s. Their growth immediately posed two problems.

The first was what to call them. In many European languages “sect” (“*secte*” in French, “*setta*” in Italian, “*secta*” in Spanish, “*Sekte*” in German) indicates a group of dissenters who separated from a larger religious group¹ (and this is not the case for many of the religious movements we are speaking of): moreover, in popular usage, this term has an implicit negative connotation, suggesting a narrow-minded and fanatical group of people.² “Cult” (“*culte*” in French, “*culto*” in Italian and in Spanish, “*Kulte*” in German) has primarily the meaning of “rites”, and, when it is used to indicate a religious group, has an old-

¹ See Voyé, 86; Messner, Prélôt, Woherling, 158. For an historical overview of the notion of sect (and of its implicitly negative overtones) see Leyte (1999), 9–19.

² See Motilla (1990), 39–40; Navas Renedo, 25; Messner, Prélôt, Woherling, 158–60; Ferrari (1989), 3; Willaime (2000), 67–70; Overgaard, 105.

fashioned flavour.³ The term “new religious movements” (“*nouveaux mouvements religieux*” in French, “*nuovi movimenti religiosi*” in Italian, “*nuevos movimientos religiosos*” in Spanish, “*neue religiöse Bewegungen*” in German) has the advantage of being ideologically neutral, but, according to some scholars, is incorrect, as some of these movements are far from being “new” in their countries of origin, and others do not want to be described as “religious” at all.⁴

Some sociologists and lawyers have proposed other and equally debatable definitions (“socially controversial religious movements”, “unconventional religious movements”, “movements of religious renewal”, etc.),⁵ but no consensus has been reached among scholars. European organisations’ documents and reports refer to “sects” and, more infrequently, to “new religious movements”, “cults”, and “new religions”;⁶ national reports and official publications make use of the term “sects”, sometimes followed by an adjective (“*sectas destructivas*” in one of the Spanish reports), which attempts to explain that only some sects are considered to be dangerous.⁷ This final remark deserves more attention, as it can allow a better

³ See Messner, Prélot, Woherling, 3–11. Both in Italy and in Spain (Motilla [1999], 66–72) the term “*culto*” is no longer used to indicate a religious group.

⁴ But most of them are new in Europe: for this reason the term “new religious movements” will be adopted in this text.

⁵ See Messner, Prélot, Woherling, 156–60.

⁶ European Council, Recommendation 1178 (1992), “Sects and New Religious Movements”; European Parliament, “Resolution on Sects”, February 29, 1996; Conseil d’Europe, Recommendation 1412 (1999) Concernant les activités illégales des sectes. Richard Cottrell, *The Activity of Certain New Religions within the European Community*, Strasbourg, European Parliament, 1984; John Hunt, *Report on Sects and New Religious Movements*, Strasbourg, Council of Europe Parliamentary Assembly, 1991; Maria Berger, *Draft Report on Cults in the European Union*, Strasbourg, European Parliament, 1997; Adrian Nastase, *Illegal Activities of Sects*, Strasbourg, Council of Europe Parliamentary Assembly, 1998.

⁷ *Spain*: Dictamen, propuestas de resolución y conclusiones aprobadas, que la Comisión de estudio y repercusiones de las sectas en España eleva al pleno del Congreso de los Diputados en fecha 2 de marzo de 1989, in Motilla (1990), 230–43; Medidas adoptadas en relación con las sectas destructivas instaladas en España, a fin de impedir o limitar al máximo su extensión y actividades que están proliferando, como demuestran los acontecimientos ocurridos en Santa Cruz de Tenerife a solicitud del grupo socialista, Boletín Oficial de las Cortes, Comisión de Justicia e Interior, Congreso de los Diputados, n. 567, 10 de noviembre de 1998, pp. 16577–16782. *France*: Les sectes en France: expression d’une liberté morale ou facteur de manipulation? Rapport au Premier Ministre, Paris, Documentation française, 1983; Les Sectes en France. Rapport fait au nom de la Commission d’enquête sur les sectes, M. Alain Gest, président, et M. Jacques Guyard, rapporteur, enregistré à la Présidence de l’Assemblée nationale de 22 décembre 1995, rapport n. 2468; Les sectes et l’argent, Rapp. AN, n. 1687, 18 juin 1998. *Belgium*: Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu’elles représentent pour la société et pour les personnes, particulièrement les mineurs d’âge. Rapport fait au nom de la commission d’enquête par MM. Duquesne et Willelm, Documents parlementaires, 1996–97, n. 313/7 and 313/8. *Germany*: Endbericht der Enquête-Kommission “Sogenannte Sekten und Psychogruppen”, Deutscher Bundestag, 13. Wahlperiode, Drucksache 13/10950 (1998). *Austria*:

understanding of the problem raised by these religious groups. Some of their members have proved to be socially dangerous, committing serious crimes. That does not mean that any new or non-conventional religious movement is bound to harbour criminals: extending to a whole category of religious movements the stigma that some of their members have deserved is the mistake made by some influential European governments and opinion makers.⁸ This mistake appeared in all its magnitude when recent events demonstrated that equally dangerous behaviours can prosper within old and “conventional” religions once their precepts are interpreted in a radical and extremist way. Focusing more on facts and behaviours is the lesson that should be learnt after September 11, 2001. Some religious groups can pose a danger to peace, security, and democracy. To prevent them from harming people, it is not necessary to build dubious legal categories like “sects”, “cults”, or “new religious movements”: it is enough to apply the instruments any legal system possesses to prevent crimes from being committed.

The second problem posed by the diffusion of these religious groups is the legal definition of religion. Their unconventional doctrines and practices have raised questions as to whether they really are religions. As religions enjoy a privileged status in many European legal systems, the question is far from being academic: defining a group as a religion means giving it access to public mass media, favourable tax treatment, the possibility of receiving financial support from the state, etc. Until the 1970s defining religion was not a real problem in most European countries: religion was largely associated with the idea of belief in and worship of God. From that time onwards the borders between religion, philosophy,

Sekten – Wissen schützt. Eine Information des Bundesministeriums für Umwelt, Jugend und Familie, Vienna 1996. *Italy*: Ministero dell’Interno, Dipartimento della Pubblica Sicurezza, Direzione Centrale della Polizia di Prevenzione, Sette religiose e nuovi movimenti magici in Italia, 1998. The term “new religious movements” is preferred in the Dutch report prepared by T.A.M. Witteveen, Overheid en nieuwe religieuze bewegingen. Tweede Kamer der Staten Generaal. Vergaderjaar 1983-1984, 16635 n. 4. Onderzoek betreffende sekten, ‘s-Gravenhage, Staatsuitgeverij, 1984, and in the Swedish report prepared by Margó Ingvardsson, Sonja Wallbom, and Lars Grip, I God Tro: Samhället Och Nyandligheten, Stockholm, Statens offentliga utredningar, Socialdepartementet, 1998. A few reports have been published in Switzerland. These reports are examined in Richardson and Introvigne; Richardson, 87–96.

⁸ This remark had already been made by Adrian Nastase in the report quoted at n. 6: “the word ‘sect’ has taken on an extremely pejorative connotation. In the eyes of the public, it stigmatises movements whose activities are dangerous either for their members or for society [...]. Today, this world contains dozens, perhaps even hundreds, of larger or smaller groups, with various beliefs and observances, which are not necessarily dangerous or prejudicial to freedom. It is true that among these groups are some which have committed criminal acts. Nevertheless, the existence of a few dangerous movements is not enough to condemn all the rest” (par. C, 3–4).

and psychology have become increasingly blurred: is Scientology a religion, a psychotherapy, or a philosophy of life? The laws of European states do not provide an answer, as they lack a positive definition of religion.⁹ Court decisions give some indications, but, as is to be expected, they emphasise different profiles of the issue, and do not reflect a coherent pattern. English case law tends to stress that religion requires a belief in a supreme being;¹⁰ German courts focus more on a different feature, namely that religion (as well as ideological creeds) has to do with a particular conception both of the world and the source and aim of human existence;¹¹ while some decisions in other countries have emphasised the necessity of rituals, ceremonies, and acts of worship.¹²

This difference of opinion does not mean there is no idea of what a religion is. The absence of a precise legal definition does not exclude the existence of a “paradigm” of religion¹³ that, in a loose way, offers some guidelines to courts and administrative bodies dealing with new religious movements. Groups and organisations commonly recognised as religions provide a pattern, and new religious movements that are close to it are accepted as religions more easily than those that deviate markedly from the established model. Although it lacks precision, this approach could be viable, provided the need to constantly adjust the legal pattern to social change is not overlooked.

However, one point should be emphasised: in the last forty years, defining religion has attracted much attention on the part of legal scholars, courts, parliamentary committees, and the mass media, but nobody has been able to provide a convincing distinction between religion and what is popularly called a

⁹ See for France, Messner, Prélôt, Woherling, 184–86; Basdevant Gaudemet, 161; for the Netherlands, van Bijsterveld, 219–22. No definition of religion is provided by the Italian legal system. An attempt has been made in Austria, where the “explanations” to the Federal Law concerning the Legal Personality of Religious Communities (BGBl. I 1998/19) define religion as “a historically developed concept of convictions explaining man and world with a transcendent reference, including specific rites and symbols giving precepts for acting according to its fundamental doctrines, and which is presentable regarding its content”. See Richard Potz (1999a), 75.

¹⁰ See Gunn (United Kingdom), 18–19.

¹¹ See Gunn (Germany), 16–17.

¹² See the decisions of the Austrian Constitutional Court of 1950 (VfSlg. 1950/2002) and 1953 (VfSlg. 1953/2494, 1953/2610), quoted by Richard Potz (1999a), 75–76. To the contrary, the Italian Consiglio di Stato affirmed that rites are not necessary: Consiglio di Stato, Sezione I, parere 2151/1989, November 29, 1989, in *Quaderni di diritto e politica ecclesiastica*, 1991–92/1, 531–33.

¹³ See Ferrari (1996), 19–47.

“sect” or “new religious movement”.¹⁴ The inability to provide a legal definition of religion prevents the identification of one of the constitutive characters of these groups: how is it possible to ascertain whether they really are religious when a legal definition of religion is lacking? Therefore most European countries prefer to give no legal definition of “sect” or “new religious movements” in their legal texts; where such definitions are provided, they focus mainly on the harm these movements can provoke, but, in doing so, they end up with definitions that apply equally well to other groups and organisations, including the mainstream religions.¹⁵ In conclusion, the opinion expressed by a noted French lawyer a few years ago is still fully valid:

*Une fois exclue de la discussion la secte-escroquerie, celles dont les organisateurs sont d'une mauvaise foi démontrée, et la secte-sorcellerie [...] ce qui subsiste des sectes n'est pas d'une autre substance que ce que l'on appelle religion: il s'agit toujours de relier collectivement les hommes à Dieu par des croyances et par des cultes.*¹⁶

If this approach is accepted, new religious movements should be *prima facie* protected by the same rights granted to religious organisations in Europe by international and constitutional law: denying them these rights would be acceptable only when there is evidence of the non-religious nature of a movement. Therefore the legal discipline of religious organisations that is in force in Europe provides the context within which the issue of new religious movements needs to be examined.

3. The European legal context

At the European level the relations between law and religion are based on article 9 of the European Convention on Human Rights. It guarantees freedom of thought, conscience, and religion, and recognises the right to manifest, individually or together with others, in public or in private, one's religion or conviction within the sole limits laid down by the law deemed necessary to protect some fundamental

¹⁴ See Woherling, 89.

¹⁵ See Woherling, 69–70. For the definition of sects in Austrian, Belgian and French laws, see *infra*, par. 4.

¹⁶ Carbonnier, 369. See also Woherling, 63–64.

values, such as public safety and order, health or morals, or the rights and freedoms of others.¹⁷ The Draft Treaty establishing a Constitution for Europe contains a provision that defines some features of the European Union (EU) church–state system. Article 52 affirms that the EU will maintain a regular dialogue with the religious communities (as well as philosophical and non-confessional organisations), and will respect and not prejudice the legal status enjoyed by churches and religious associations in member states.¹⁸ But the Draft Treaty has not yet been approved by some European states, and therefore has not entered into force. While in the future the two articles are going to complement each other (at least in the EU states), it is correct to say that, in today’s Europe, religion is taken into consideration primarily from the angle of the protection of individual religious liberty: the legal status of religious communities, old and new, is left (and is going to be left) to national laws. In other words, there is a European law of religious liberty, but there is not a European law of religious communities, whose legal status differs considerably from state to state.¹⁹

This is not without significant consequences. Once the accent is placed on individual religious freedom, the central issue becomes the right of every person to take the decision on religion that he/she deems in compliance with his/her own conscience in absolute freedom, without this choice entailing any negative consequences on juridical grounds. This implies that the right to adopt a religion, and to abandon and change it, is granted in an absolute way, and cannot be limited: if a sane adult wants to leave his/her family, friends, country, work, in order to

¹⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), art. 9: “1. 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 in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary 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.”

¹⁸ Draft Treaty Establishing a Constitution for Europe (2003), art. 52:

“Status of churches and non-confessional organisations

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status of philosophical and non-confessional organisations.

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.”

¹⁹ Although there are some common features that make these national systems increasingly more similar. See Ferrari (2003), 1–24.

follow a religious vocation, he/she exercises a right that is fully protected by article 9 of the European Convention on Human Rights. He/she cannot be stopped from doing so: very fortunately, I would like to add, because the pre-eminence of personal conscience is an acquisition that cannot be called into question without endangering the central core of the European civilisation.

Of course, religious freedom is not boundless: article 9 of the European Convention requires the respecting of principles of public safety, order, health, or morals, and the rights and freedoms of others.²⁰ The member of a religious community who infringes these limits with his/her acts, writings, or words will be punished as any other individual, and cannot invoke obedience to a religious precept as a cause for impunity. But these limitations on freedom only concern the manifestations of a religion and not belonging to a religion: no-one can be punished for the sole fact of belonging to a religious group. A Jehovah's Witness can be punished if he refuses to do military service (at least in those countries where this service is compulsory and no conscientious objection is allowed), although refusing military service is required by his religion; a Scientologist who assures the buyer of an e-meter that its use will provide physical and psychic benefits risks being accused of fraud (even if the Scientologist is convinced the e-meter is beneficial). But the punishment deals with their actions and not their membership of the Christian Congregation of the Jehovah's Witnesses or the Church of Scientology.

There is something more. Two conditions are to be respected when the manifestation of religious liberty is limited: the limitations must be laid down by a law, and, even more important, they must be necessary in a democratic society to protect order, morals, and the other values listed in article 9. In my opinion, the reference to a democratic society prevents the dissolution of a religious organisation even if its doctrine contains some precepts that contradict state law. The Jehovah's Witness can be punished for refusing military service, but the Christian Congregation of the Jehovah's Witnesses cannot be banned simply because it supports the refusal of military service.²¹ The same can be said of the

²⁰ About the limits of religious freedom included in art. 9, see Nowak, 54–77; Evans, 281ff.

²¹ See in this sense the opinion of the Italian Consiglio di Stato, Sez. I, parere 1390/1986, July 7, 1986, in *Quaderni di diritto e politica ecclesiastica*, 1986, 503–10 (in particular, see p. 509).

Adventist or the Jew who does not attend school on Saturday, of the Muslim who concludes a polygamous marriage, etc.: although these behaviours are punishable, dissolving an Adventist Church or a Jewish or Muslim community because it affirms they are coherent with the Adventist, Jewish or Muslim teaching is not admissible. In a democratic society it must be possible to maintain and preach ideals other than those professed by the majority of citizens, and even in contrast with the laws currently in force.²²

This is a delicate point that requires precision in order to avoid dangerous misinterpretations. It is obvious I am not saying that a criminal organisation cannot be prosecuted if it is disguised as a religious organisation. But the main aim of a criminal organisation is to commit criminal acts, and this is not the case of a religious organisation that, pursuing its religious aims,²³ encourages behaviours that clash with the laws of the state. In this case some careful distinctions are required regarding both the contents and the context of the religious teaching. On the one hand, advocating conscientious objection to military service is not the same thing as inciting religious hatred or war in the name of a religion, and, correspondingly, banning a religious organisation that teaches its followers to avoid saluting the national flag is different from banning an organisation that preaches religiously motivated violence. On the other hand, a state law that forbids a religious practice can be criticised in a very dispassionate way on the occasion of an academic gathering, or in a way that is intended or likely to incite imminent violence among an excited crowd: it would be unreasonable to treat the two things in the same way.²⁴

An extremely severe provision like the dissolution of a religious group is proportionate only when the basic rules of the democratic game are seriously and repeatedly violated, or a fundamental human right that cannot be infringed in any case, not even in the name of religious liberty, is at stake.

²² See Motilla (1994), 314, for a discussion of some Spanish Constitutional Court decisions on this point.

²³ Again we are back to the definition of religious organisation and religious aims: the paradigm referred to in the previous paragraph should be sufficient to distinguish a religious from a criminal organisation.

²⁴ See Rolland, 669. According to Durham, Peterson, Sewell, the dissolution of a religious organization could “occur only where the organization qua organization is inciting imminent harmful action, and the nature of both the harm and the organization is such that mere membership would be sufficient to make an individual an accessory to the proposed action” (p. XXXV).

4. Legal initiatives at the national level

The system described in the previous paragraph was conceived to defend religion and its institutions from attacks coming from outside. The European Convention on Human Rights was written in 1950, when the enemy was the militant atheism of the Communist countries. At that time nobody could guess that, forty years later, some religious organisations would be perceived as a danger against which society and individuals had to be defended. How have Western European states reacted to this change of perspective?

It has already been said that there is no common European definition of religious communities: each state is sovereign in developing its own system of relations with religious organisations within the limits fixed by the respect for religious liberty that is required by article 9 of the European Convention. What steps have been taken by Western European states in relation to new religious movements? Have these steps respected the limits fixed by article 9?

Gathering more information about this new and largely unknown phenomenon was the first step every state had to take. The need for a better knowledge of the new religious movements was responded to in different ways. In Britain, the government limited itself to supporting the creation of an independent agency, INFORM (Information Network Focus on Religious Movements): its primary task is to provide accurate and balanced information “about new and/or alternative religious or spiritual movements”, without making “judgements about religious beliefs” or saying “whether a group is ‘good’ or ‘bad’”.²⁵ Practically speaking, the support offered to INFORM was the only initiative taken by the British government, which has always refrained from preparing general reports on or lists of new religious movements, and never took into consideration the idea of

²⁵ <http://www.inform.ac/infmain.html>, accessed July 26, 2004. INFORM was created in 1988: see McClean, 345–46. A similar approach is followed by the *Centre d’information sur les croyances* created in 2002 by some Swiss cantons: see Suisse: un bilan de l’expérience du Centre d’information sur les croyances. Entretien avec Nathalie Narbel, in *Religioscope*, Sept. 24, 2004, available at http://religion.info/french/entretiens/article_99.shtml.

enacting special laws.²⁶ The issue of new religious movements was left to the courts, if and when the activities of these movements required their intervention.²⁷ This does not mean that new religious movements did not experience some difficulties in being registered as religious charities, advertising their activities, and registering their buildings as places of worship:²⁸ but their claims were always judged case by case, and on the whole there is no evidence of any serious bias against new religious movements on the part of the judiciary. This pragmatic approach has worked: in Britain the issue of new religious movements has not raised the same social alarm as it has done in France, Belgium, or Germany.²⁹

The same need for more information was responded to in other countries through the activities of ministries and/or parliamentary committees that prepared reports in which the topic of new religious movements was studied and some legal measures were proposed.³⁰ This is the case, for example, in Spain. In 1990 and 1998 two reports were published: they are not exempt from internal contradictions,³¹ but basically they stick to the line that the Spanish legal system is strong enough to repress eventual illegal acts on the part of new religious movements without the need to enact new laws.³² Although some scholars have detected a bias against the new religious movements in the refusal (only recently overcome) to register them as religious entities,³³ and in the way the criminal case against the Church of Scientology was conducted,³⁴ Spain has approached the issue of new religious movements along lines that are not dissimilar to the British ones.

²⁶ Official reports have been prepared regarding specific new religious movements: see John Foster, *Enquiry into the Practice and Effects of Scientology*, London, HMSO, 1971. Another official enquiry on the Exclusive Brethren remained unpublished (see McClean, 350).

²⁷ For an overview of the judicial pronouncements, see McClean, 341–64; Bradney, 81–100.

²⁸ See McClean, 351–55; Bradney, 89–90.

²⁹ See Gunn (England), 21.

³⁰ See the reports quoted in n. 7.

³¹ See in particular Motilla (1990), 118–27.

³² The contents of the two reports are summarised by Motilla (1990), 112–27 and Navas Renedo, 459–72.

³³ See Motilla (1990), 127–35; Motilla (1999), 85–160; and further bibliographical references in Gunn (Spain), 22. In 2001 the Constitutional Court ordered the registration of the Unification Church as a religious entity (Sentencia 46/2001, in *Boletín Oficial de Estado* de 16 de marzo de 2001 and in *Anuario de derecho eclesiástico del Estado*, 2002, 617–43).

³⁴ See Motilla (1990), 100–105; Gunn (Spain), 22–23. The case against the members of the Church of Scientology was finally dismissed by the Provincial Court of Madrid in 2001 (decision 335 of December 3, 2001; the text is available at http://www.cesnur.org/2001/Spain_Decision.pdf): see Motilla (2001), 122–23.

In some other countries these official reports recommended creating official bodies responsible for investigating and, in some cases, combating the new religious movements.

In Austria the *Bundesstelle für Sektenfragen* was created by a federal law in 1998.³⁵ The law defines a sect as a community referring to religious or philosophical beliefs that can endanger the life or the health of persons, their property, or financial autonomy; the free development of human personality; the integrity of family life; and the free mental and physical development of children. The task of the *Bundesstelle* is to provide “documentation and information about dangers that can emerge from programmes or activities” of these sects.³⁶ As an Austrian scholar pointed out,

*the setting up of this “Bundesstelle” means that Austria has changed its attitude in so far as it expresses the legislator’s opinion that the existing instruments of the legal system are not sufficient and that it is necessary to keep a special sight on those groups in order to prevent abuses of the right of religious freedom.*³⁷

This attitude marks the difference between the Austrian approach on the one hand and that of Britain and Spain on the other. The former requires a definition of “sect”. As it is difficult to provide a viable one, the Austrian law takes a short cut, declaring that its provisions do not apply to legally recognised churches, religious societies and their institutions.³⁸ This differentiation is doubtful from a constitutional point of view,³⁹ and does not solve the problem: how is it possible to distinguish “sects” from religions in the large group of unrecognised churches and religious societies?

Belgium tried to solve this problem in a different way. The *Enquête* of 1996–97⁴⁰ divided the “sects” into two groups. The first is composed of “organised groups of individuals espousing the same doctrine within a religion”: they do not

³⁵ Bundesgesetz über die Einrichtung einer Bundestelle für Sektenfragen, BGBl I 150/1998, par. 4.

³⁶ See arts. 2 and 4. The reference to the dangers that can emerge from the programmes of the sects can easily pave the way to extend control from the activities to the doctrines of these groups.

³⁷ Potz (1999b), 166.

³⁸ In Austria there are about a dozen recognised religious communities: see Potz (2005), 396–99.

³⁹ See Potz (1999b), 170.

⁴⁰ See n. 7. On the work of this commission of enquiry, see Human Rights Without Frontiers (HRWF) (1998), at <http://www.hrwf.net>.

raise any problem and fully enjoy the freedom of religion, assembly and association granted by the Belgian legal system. The second group is constituted of “harmful sectarian organisations”, defined as groups having or claiming to have a philosophical or religious purpose whose organisation or practice involves illegal or harmful activities, harms individuals or society, or impairs human dignity.⁴¹ A list of 189 sectarian organisations was published together with the report. Two new bodies were created in 1998:⁴² an Information and Advisory Centre on Harmful Sectarian Organisations, mainly devoted to studying, gathering documents, and providing information regarding these groups; and an Administrative Coordination Cell for the Fight against Harmful Sectarian Organisations, a body presided over by the Ministry of Justice and charged with the task of monitoring the harmful activities of these groups, promoting a policy for their prevention, and coordinating the action of different public authorities.⁴³ Finally, at the end of 1998 a new legislative act gave the state security apparatus the task of monitoring harmful sectarian organisations as potential threats to the internal security of the country: consequently the Directorate for the Struggle against Criminality opened a division called “Terrorism and Sects”.⁴⁴

Taken together, these initiatives define a militant approach against the new religious movements. What is particularly interesting is the empirical approach to the problem of defining the “sects”: along the lines of a previous French report,⁴⁵ the problem is bypassed through the publication of a list of them. But this solution has not proved to be a good one: the list did not include only “sects” whose harmfulness was proven, but grouped together harmful and non-harmful sects, chosen using criteria that were not always transparent and fair.⁴⁶ In the end, the list

⁴¹ See the *Enquête* quoted at n. 7, part II, p. 100; Lemmens, 88–90.

⁴² Loi du 2 juin 1998 portant création d’un Centre d’information et d’avis sur les organisations sectaires nuisibles et d’une cellule administrative de coordination de la lutte contre les organisations sectaires nuisibles, in *Moniteur belge*, 25 novembre 1998.

⁴³ See Fautré, 113–15; Lemmens, 102–3; Vervliet, 2.

⁴⁴ See Human Rights Without Frontiers, “The Ministry of Interior and the Surveillance of ‘Harmful Sects’”, May 18, 2004, at <http://www.hrwf.net>.

⁴⁵ See the Gest-Guyard report quoted in n. 7.

⁴⁶ See the criticisms of Seguy (1999) and Voyé (1999).

exposed all the groups included in it to the danger of being discriminated against,⁴⁷ without providing useful inputs for building a sound definition of “sect”.

A different path was followed in France. France is the state that has taken the firmest stand against new religious movements. Besides the usual initiatives – reports by parliamentary committees,⁴⁸ lists of “sects”,⁴⁹ the creation of agencies specialising in monitoring and fighting the new religious movements or their “sectarian drifts”,⁵⁰ “mediatic” court cases against some of them⁵¹ – France enacted a specific law whose aim is “to reinforce the prevention and repression of sectarian movements that undermine human rights and fundamental freedoms”.⁵² Contrary to what it is indicated in its title, the law does not apply to sectarian movements only, but to “any legal entity, irrespective of its legal form or purpose, that pursues activities with the objective or effect of achieving, maintaining or exploiting the psychological or physical subjection of persons participating in those activities” (art. 1). These entities can be dissolved once they or their managers have been the subject of definitive convictions for a number of crimes, among which are endangering the life, physical or psychological integrity, freedom, dignity, and identity of a person; placing minors at risk; illegally practising medicine; false advertising; fraud; falsification; etc. Finally the law adds a provision to the Penal Code covering the fraudulent abuse of the state of ignorance or weakness of minors and persons who are particularly vulnerable on account of their age, illness, infirmity, or other physical or mental disability, or of

⁴⁷ See Séguy, 76–77; Voyé, 87–91. The same happened with the list of “sects” published in France: see Willaime (2000), 66, 74–75.

⁴⁸ See n. 7.

⁴⁹ A list of 172 groups was attached to the Gest-Guyard report of 1995.

⁵⁰ In 1996 an *Observatoire interministériel sur les sectes* was created, followed two years later by a *Mission interministérielle de lutte contre les sectes*, which, in 2002, changed its name to *Mission interministérielle de vigilance et de lutte contre les dérives sectaires*. See Messner, 569. The recent change from “*lutte contre les sectes*” to “*lutte contre les dérives sectaires*” has been widely read as an indication of a more balanced approach to the issue of new religious movements on the part of the French government.

⁵¹ For example, the condemnation of the director and some members of the local branch of the Church of Scientology by the Court of Lyon on November 22, 1996 (n. 7388) for a number of crimes, including an adherent’s suicide (the text is available at <http://www.prevensectes.com/lyon1.htm>).

⁵² Loi n. 2001-504 du 12 Juin 2001, in *Journal Officiel*, n. 135 du 13 Juin 2001. On this law, see Duvert, 41–52.

a person who has been reduced to a state of psychological or physical subjection (art. 20).⁵³

The French law marks a turning point in the approach to the issue of new religious movements: for the first time in Western Europe, sectarian movements are the subject of a specific piece of legislation. One would expect the law to provide a precise definition of its subject, but that is not the case: although the title mentions specifically “sectarian movements”, the law does not contain any definition of them, and, with a single exception,⁵⁴ does not employ this expression, preferring to speak always of “legal entities”. It is likely that recourse to such general terminology was required by the need to avoid accusations of discrimination, which would have been made stronger if the law’s provisions had explicitly mentioned the term “sects”: but the final result is very ambiguous. The title of the law suggests that it deals with sectarian movements only, but its provisions are framed in a way that applies to any legal entity (including the mainstream religions).⁵⁵ This hesitant approach confirms the problems of definition that are implicit in the enacting of any law about the new religious movements.

A second feature of the French law requires some attention. The law punishes an organisation for the crimes committed by its managers: if they are convicted for some particularly serious crime, the organisation can be dissolved. This approach inevitably entails the danger of extending to innocent people the prosecution and repression called for by the crimes of some members of the religious group to which they belong. From this point of view, the French law comes close to a number of anti-terrorism laws enacted after September 11,⁵⁶ and indicates a trend towards making use of the same legal instruments to fight “sects” and religiously extremist movements, seen as equally dangerous manifestations of the misuse of religion.⁵⁷

⁵³ See Messner, Prélôt, Woherling, 568–84.

⁵⁴ Art. 19, limiting the advertising of sectarian organisations.

⁵⁵ See Messner, Prélôt, Woherling, 571; Willaime (2004), 315.

⁵⁶ See, for example, the 2002 Russian Federal Law “On Combating Extremist Activity”, the amendment to the law on associations approved in Germany on December 4, 2001, and the UK Terrorism Act of 2000. On these laws, see Ferrari (2004), 367–68.

⁵⁷ As confirmed by the Belgian decision to create a police division for “Terrorism and Sects”: see n. 44.

Finally, the law introduces into the Penal Code the notion of “psychological subjection”. Although less broad than the previously proposed crime of “mental manipulation”,⁵⁸ this notion entails the imprecision and vagueness that is inherent to any legal provision based on an assessment of what happens within the human mind and conscience.⁵⁹ The French law takes care to restrict the scope of application of the notion of “psychological subjection”,⁶⁰ but it cannot eliminate a high degree of subjective evaluation on the part of the judge, which is particularly disturbing in the field of criminal law.

5. Final remarks

At the end of this short review of the actions taken at the state level in some European countries, it is possible to conclude that the legislative and administrative measures specifically directed at new religious movements are based on a weak scientific foundation, due to the absence of a precise notion of what exactly a new religious movement or “sect” is. Consequently, these measures risk being ineffective, or being applied beyond their declared limits to any religious group. In this situation it is better to avoid making special laws for these movements: the crimes that some of their members may commit can be repressed through the general provisions already existing in most European legal systems; the same applies to the acts of a criminal organisation disguised under a religious cloak. There is no real need to create a new sub-group of religious organisations, the “sects”, qualified by its own criminal law, administrative law, tax law, etc. In the European system of church–state relations there are already too many sub-groups (state religions, traditional religions, recognized religions, registered religions, etc.): this system does not need to be further complicated; on the contrary, it needs to be simplified. Moreover, the experience of the last thirty years does not support an approach based on special laws for the new religious movements: the problems deriving from their presence have been less significant

⁵⁸ See Messner, Prélôt, Woherling, 573.

⁵⁹ See Messner, Prélôt, Woherling, 574–75.

⁶⁰ The “psychological subjection” must result “from serious pressures exercised or repeated or from techniques likely to alter” the judgement of a person (Loi n. 2001-504, sect. 9).

in the countries where the opposite path has been followed, like Britain and Spain, than elsewhere.

The legislative and administrative provisions towards new religious movements taken by some countries (France and Belgium, for example) do not sit comfortably with the European system of relations between religion and law.⁶¹ This system is primarily based on the protection of individual religious liberty: all citizens enjoy this right equally, and it can be limited only in well-defined and proven circumstances. The provisions regarding the new religious movements are aimed at protecting individuals and society against the dangers that these movements can pose: they do not focus primarily on the acts of individuals, but on group responsibility, and in some cases consider preventive action against groups to be admissible and even desirable.⁶² As we have seen, this approach can imply a limitation of religious liberty through the dissolution of an entire religious organisation for the crimes some of its members have committed, and the enactment of penal provisions that are at the same time very broad in their scope and very generic in their contents.

These conclusions are not new: a number of sociologists and lawyers have already made these points in past years. But the issue of the new religious movements cannot avoid being reconsidered in the light of the new relationship among religion, society, and politics after September 11.

The “de-privatization” of religion⁶³ and its return into the public square⁶⁴ have again aroused states’ interest in its control. In the past, the declining capacity of religions to shape the political and social choices of their faithful encouraged the benevolent disinterest of public authorities.⁶⁵ Now recourse to (and/or exploitation

⁶¹ See the doubts transpiring from the cautiously worded Resolution 1309 (2002) of the Parliamentary Assembly of the Council of Europe, Freedom of Religion and Religious Minorities in France, adopted on November 18, 2002 (text available at <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2F%2FDocuments%2FAdoptedText%2FTA02%2FERES1309.htm>).

⁶² About this different approach, see Torfs (1999), 59–64; Witteveen and Van Bijsterveld (1999), 259.

⁶³ See Casanova (1994).

⁶⁴ See Kepel (1991).

⁶⁵ New religious movements were an exception: state intervention was requested exactly for their capacity to motivate and mobilise their members, sometimes beyond the limits deemed acceptable in a democratic society.

of) religion for political and even criminal aims has reversed this attitude.⁶⁶ In the name of national security and social peace many countries are enacting provisions that make it difficult to change religion, limit proselytism, restrict the right of foreign religious personnel to enter a country, and put more severe limits on the freedom of religious speech. In the light of the role played by religion in motivating international terrorism, it is difficult to object to these provisions; but they can severely limit the freedom of persons whose only aim is to profess and manifest their faith. Security and freedom of religion are increasingly seen as mutually exclusive and incompatible terms.⁶⁷

What impact does this transformation have on the new religious movements issue? Before September 11 the “sects” represented the exception⁶⁸ in an otherwise stable situation: now they are considered as the forerunners of a harmful way of practising religion, and the legal measures employed against them are taken as a model for the repression of religiously motivated terrorist groups. From this point of view the Belgian decision to associate “sects” and terrorist organisations, giving the same police directorate the task to fight against both of them,⁶⁹ may indicate the path other states will follow.

However, this outcome is not inevitable. The mistakes made in the fight against the new religious movements could serve as a lesson, and teach states to avoid the same kind of stereotyping and generalisations in the struggle against religiously motivated terrorism. Slowly and sometimes painfully many people have realised it is time to change the approach to the “sect” issue. In Europe the turning point was the publication of the German Parliament’s report in 1998.⁷⁰ The parliamentary enquiry had been strongly advocated by the “anti-sect” groups, but the final report did not fulfil their expectations: although carefully worded, it let it be understood that the new religious movements were not a significant social

⁶⁶ See Willaime (1999), 43–46; Yacoub (2002), 290.

⁶⁷ See Ferrari (2004), 357–83.

⁶⁸ Together, in some European countries, with the Islamic communities, whose legal status is far from being settled. See Maréchal, Allievi, Dassetto, Nielsen (2003); Zincone and Aluffi Beck-Peccoz (2004).

⁶⁹ See *supra*, n. 44.

⁷⁰ See n. 7.

problem, and did not constitute a threat to the state or society.⁷¹ After the German report many European states started considering the new religious movements issue more dispassionately, and France remained isolated in its attempt to enact specific “anti-sect” legislation. The new religious movements ceased to attract a disproportionate amount of public attention, and their impact on society was evaluated in a more realistic way. European governments perceived this change, and changed their course of action accordingly: even in France the law About-Picard⁷² was enforced in very few cases, and the last reports of the *Mission interministérielle* shows a more restrained approach to the issue of new religious movements.⁷³

This does not mean that the “sect” issue is settled once and for all: on the contrary, it could resurface at any time. But now it is possible to approach it in a different way.

A few years ago a book was published in France with the title *Pour en finir avec les sectes*:⁷⁴ putting an end to the question of sects does not in any way mean condoning violent or harmful behaviours that deserve to be repressed and punished; it simply means doing so in a way that is consistent with respect for human rights. It is a simple lesson, but it could provide some guidance that goes well beyond the issue of new religious movements and applies to the wider relationship between religious liberty and security.

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⁷¹ On this report, see Seiwert (1999); for an overview of the German approach to the new religious movements issue, see Seiwert (2003).

⁷² See n. 53.

⁷³ See the reports at <http://www.miviludes.com>. On this change of attitude, see “Anti-Sects Policies in France: State of Affairs 2004”, in HRWF, October 6, 2004 (<http://www.hrwf.net>).

⁷⁴ Introigne and Gordon Melton (dir.) (1996).

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