



France: Anti-Sect Law

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FRANCE

ANTI-SECT LAW

This report summarizes the provisions of the Anti-Sect Law enacted in 2001. It briefly addresses its application at the national level and the challenge against the Law before the European Court of Human rights. Finally, it looks at the position of the newly formed French government on efforts relating to sects.

Summary of the Anti-Sect Law

On June 12, 2001, the National Assembly adopted Law No. 2001-504 Towards Reinforcing the Prevention and the Deterrence of Sectarian Movements Infringing Human Rights and Fundamental Liberties. It was promulgated on June 13.¹ The Law allows judges from the Tribunal de grande instance [court of general jurisdiction] to dissolve legal entities whose aim is to create or exploit their members' psychological or physical state of dependency when such entities or their leaders have been convicted, at final judgment, on at least two occasions on charges such as endangering lives, endangering the physical or psychological integrity of a person, infringing on the liberty of the person, infringing on the dignity of the person, endangering minors, illegal practice of medicine, illegal practice of the profession of pharmacist, or false advertising and consumer fraud. The request for dissolution is made by the Prosecutor' office, either ex officio or at the request of any interested party.²

Any individual who participates in the continuance or resumption, overtly or covertly, of a legal entity dissolved under the provisions of article 131-39 of the Penal Code³ may be sentenced to a prison term of three years and a _45,000 fine.⁴ This penalty may be increased to five years and _75,000 if the dissolution was pronounced for a repeated offense.⁵

In addition, the Law establishes the criminal liability of legal entities in relation to certain offenses which before could only be committed by an individual. These offenses include illegal practice of medicine, consumer fraud, willful infringement on the life of a person, torture and barbarous acts, violence against a person, threats, sexual harassment, hindering assistance to or

¹ JOURNAL OFFICIEL (Official Gazette), June 13, 2001, at 9337.

² Id. art 1.

³ CODE PENAL, (Ed. Dalloz 2001). Article 131-39 states that when the law so provides with respect to legal entities, a felony or misdemeanor may be sanctioned by one or more penalties including dissolution when the legal entity was created to commit the incriminated conduct or, in the case of a felony or a misdemeanor punishable by a penalty of misdemeanor imprisonment for more than five years in cases involving natural persons, when the legal entity was diverted from its object to commit the incriminated conduct.

⁴ Supra 1, art 17.

⁵ Id.

failure to render aid, incitement to suicide, and infringement of the respect due to the dead and neglect of family.⁶

Furthermore, a legal entity whose aim is to create or exploit its members' psychological or physical state of dependency is prohibited to distribute messages to minors and to advertise when such entity or its leaders have been convicted on at least two occasions on charges such as endangering lives, endangering the physical or psychological integrity of a person, infringing on the liberty of the person, infringing on the dignity of the person, endangering minors, illegal practice of medicine, illegal practice of the profession of pharmacist, or false advertising and consumer fraud.⁷

Finally, the Law creates a new criminal offense "fraudulently abusing the state of ignorance or weakness" of certain individuals. It provides:⁸

Fraudulently abusing the state of ignorance or weakness either of a minor or a person whose special vulnerability due to age, sickness, infirmity, physical or psychological deficiency, or pregnancy is apparent and known to the perpetrator, or a person in a state of psychological or psychic dependency resulting from grave and repeated pressure or from techniques aimed at altering his/her judgment, to drive that minor or that person to act or to fail to act in a way which is highly damaging to her/him is punishable by three years in prison and a maximum fine of _375,000.

The penalty is increased to five years in prison and to a maximum fine of _750,000 when the perpetrator is the leader of a group whose aim is to create, maintain, or exploit its members' psychological or physical state of dependency.

Public organizations formed to defend individuals or individual liberties may be civil parties in the case against either an individual or a legal entity whose aim is to create or exploit its members' psychological or physical state of dependency when such individual or entity is charged with either one of the following offenses: endangering lives, endangering the physical or psychological integrity of a person, infringing on the liberty of the person, infringing on the dignity of the person, endangering minors, illegal practice of medicine, illegal practice of the profession of pharmacist, or false advertising and consumer fraud. The association must have been regularly formed at least five years before the occurrence of the facts.⁹

Application at the National Level and Challenge before the European Court of Human Rights

The former socialist government which lost office in 2002 stated on several occasions that

⁶ Supra 1, arts 2 through 14.

⁷ Id. art. 19.

⁸ Id. art. 20.

⁹ Id. art. 22.

the campaign by certain European and American organizations against the Law was based on misinformation. It claimed that it is not freedom of religion or freedom of association which are targeted but the criminal activities of certain groups which take advantage of the state of ignorance or weakness of some individuals.

A review of the leading newspapers show only one instance where the prosecutor requested the dissolution of one of the branches of the Church of Scientology. On February 22, 2002, the state prosecutor urged the Paris correctional tribunal to dissolve the Ile-de-France branch of the Church of Scientology applying the new Law. It was the first time that the church was being taken to court. Several of the church's leaders had faced separate legal battles before the French courts earlier. This branch had been charged with attempted fraud, false advertising, and unlawful use of computerized nominative data in connection with its effort to recruit and keep members.¹⁰ The charges stemmed from a complaint by former members. In its judgment rendered on May 17, 2002, the Court did not follow the prosecution and did not dissolve the branch. It fined the church _8,000 for violation of the Law on Data Protection while imposing a fine of _2,000 on the president of the branch.¹¹

The Christian Federation of Jehovah's Witnesses of France challenged Law No. 2001-504 in abstracto before the European Court of Human rights as incompatible with several provisions of the European Convention on Human rights. The articles mentioned were article 9–Freedom of Thought, Conscience and Religion, article 11–Freedom of Peaceful Assembly and of Association, and article 14– Prohibition of Discrimination. The court dismissed its application on November 6, 2001.¹² The court ruled:

As to the act of June 13, 2001, the court notes that its purpose, as its title indicates, is to reinforce the prevention and deterrence of sects which infringe human rights and fundamental freedoms. It is not the Court's task to rule on legislation in abstracto, and it cannot therefore express a view as to the compatibility of the provisions of the new legislation with the Convention (*Findlay v. United Kingdom*, judgment of 25 February 1997, Reports of Judgments and Decisions 1997-I, § 67). It of course notes that in so far as it concerns sects, of which it gives no definition, the act does provide for their dissolution, but this can only be ordered by a court and only when certain conditions are met, in particular when sects or their managers have been finally convicted of one or more of a finite list of offenses which the applicant ought not to fear. Making accusations against parliament, which is anxious to settle a burning social question, on the basis of its supposed intentions does not demonstrate the probability of a risk incurred by the applicant. Furthermore, the applicant cannot, without being inconsistent, claim

¹⁰Le Monde, Xavier Ternisien , Le parquet envisage la dissolution de l'église de scientologie a Paris, Feb. 25, 2002, Lexis: Le Monde.

¹¹ French court fines Church of Scientology over data violation, acquits church of attempted fraud and false advertising, ASSOCIATED PRESS, Lexis: Group news file.

¹² Fédération Chrétienne des Témoins de Jehovah de France contre la France, <http://www.echr.coe.int/Fr/Judgments.htm>.

that it is not a movement that threatens freedoms, and at the same time, maintain that it is, potentially at least, a victim of the future application of the act.

The Council of Europe Committee on Legal Affairs and Human rights published a report dated October 31, 2002, on whether the Law No. 2001-504 is compatible with the European Convention on Human Rights. It concluded that it will be for the European Court of Human Rights to answer this question. It noted that for the most part the law simply reiterates existing provisions contained in the Criminal, Consumer, Public Health and Civil Procedure Codes. In addition, however, it found that the terms “sects,” “de facto leader,” and “psychological or physical dependency” were not defined, and that offenses should be clearly defined in criminal law. The Council, based on this report, issued Resolution No. 1309 on November 18, 2002, inviting the French Government to reconsider the law and to clarify the definition of the terms “offense” and “offender.”¹³

Position of the New French Government on Anti-Sects Efforts

There are some indicia that the new government may put some limits on both domestic and international anti-sects' efforts that were previously promoted by the socialist government. The new Minister of Interior recently criticized Alain Vivien, former president of the Mission interministérielle de lutte contre les sectes [Inter-Ministerial Mission to Fight Sects]. He told Parliament that Vivien created “disturbing and unnecessary controversies” and embarrassed France. Recently, a representative of the Ministry of Foreign Affairs sent to the OSCE meeting in Warsaw explained that the Mission “generated misunderstandings and gave an image which does not correspond to the actual French reality.”¹⁴ The Mission was abolished by Decree No. 2002-1392 of November 28, 2002. It was replaced by the Mission interministérielle de vigilance et de lutte contre les dérives sectaires [Inter-Ministerial Mission to Watch and Fight Illegalities (committed) by Sects]. The change in name seems to reflect a more moderate attitude. The decree also specifies that the Mission should operate “within the respect of public liberties.” It cannot develop its own independent international activities anymore but only participate in activities in its field initiated and directed by the Ministry of Foreign Affairs. Bureaucrat Jean Louis Langlais was appointed president of the new Mission as opposed to Catherine Picard one of the co-sponsors of the anti-sect bill.

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¹³ <http://assembly.coe.int/documents/adoptedtext/ta02/eres1309.htm>.

¹⁴ L'express, François Koch, Gouvernement;sectes: Raffarin attendu, Lexis: Press Group File.