



**Member of the EU Fundamental Rights Agency (FRA) Platform**

**Member of the EU Human Rights and Democracy Network (HRDN)**

**Member of the European Platform against Religious Intolerance & Discrimination (EPRID)**

**Member of the Advisory Board of the European Parliament Platform for Secularism in Politics (EPPSP)**

## **Human Rights Without Frontiers Int'l**

***Newsletter "Intolerance and Discrimination Based on Religion or Belief"***

---

### **Table of contents**

#### **BELGIUM:**

**The draft law on abuse of weakness is dangerous  
despite its good intentions**

***Human Rights Without Frontiers calls on the senators to evoke it and submit it to the Council of State***

**4 July 2011**



**Editor in chief: Willy Fautré**  
**Member of the International Consortium**  
**on Law and Religious Studies (ICLRS)**  
**Website: <http://www.hrwf.net>**  
**<http://www.willyfautre.org>**  
**Email: [international.secretariat.brussels@hrwf.net](mailto:international.secretariat.brussels@hrwf.net)**



---

## **BELGIUM**

### **The draft law on abuse of weakness is dangerous despite its good intentions**

HRWF (04.07.2011) - Articles 32, 33 and 39 of the law project on abuse of weakness is a threat to fundamental freedoms as they are violating the Belgian constitution, are discriminatory, create a great deal of arbitrariness and legal uncertainty for a number of professions.

#### **1) Real but hidden purpose of the law project**

This draft law results from the incoherent merging of several earlier proposals. Thus a reference to "sectarian drifts" appears suddenly and without reason in Article 39 (the last) as the single target of this legislative initiative while "sects" are not mentioned anywhere in the remaining 38 articles.

Yet there is no distinction between a "sect" and a "religion" or a "faith". Nor can there be any "lest of sects" because it would have no legal value which has been confirmed by the CIAOSN (Center for Information and Advice on Harmful Sectarian Organizations). Moreover, the Court of Appeal in Brussels reminded that everyone benefits from the protection provided by Articles 11 and 19 of the Constitution and of Article 9 of the European Convention (religious freedom).

To make a distinction would be an intrusion by the State in the religious field and a discrimination not in accordance with Articles 10 and 11 of the Constitution and Article 14 of the European Convention (discrimination prohibition) a violation of Article 9 of the European Convention (religious freedom), and a "destruction of law" under Article 17 of the same Convention since it is limiting the effective exercise of a protected freedom..

Article 27 of the Constitution also protects freedom of association as well as Article 11 of the European Convention.

#### **2) The "victims"**

In some cases, namely those whose alleged weakness is being abused, could become victims of this law: it was because of their alleged weakness that women were legally incapable. According to the law, victims would in fact have a limited legal capacity, as being considered "*in a situation of weakness*", "*abused*" and "*harmed*" and we allow third parties

to challenge acts they consider to have consented to freely and it makes them legally incapable.

This law is based on the presupposition that the rites and practices of some non-recognized religions would allegedly be practices of "*psychological subjection*"(undefined term) or "*techniques to alter the capacity for discernment*" (another undefined term) and that proselytizing could be described as "*abuse of a position of weakness*". In other words, the conversions would be targeted on the grounds of an alleged danger, which seems to be the exception and not the rule in the matter.

### **3) Very large part of arbitrary**

The law draft is introducing a very large part of arbitrary since the key concepts are not defined such as: "*fraudulent abuse*", "*situation of weakness*", "*judgment alteration*", "*mental impairment*", "*physical harm*", "*property harm*", "*psychological subjection*" and "*techniques likely to alter the capacity of discernment*" etc.

Yet a criminal law:

- **a.** must be sufficiently precise (principle of legality of penalties (Article 7 of the European Convention and Article 12 of the Constitution). It is not up to the judge to make the laws but to apply them and every citizen must be able to avoid committing any offense and organize their behavior accordingly. However, the authors of the law "*do not want that the position of weakness be defined too precisely ... this position of weakness can be both physical and psychological . ... one must leave the broader latitude to judges and prosecutors to assess the situation of weakness ... whether permanent, temporary, transient or continuous. ... The magistrates will be able to... call upon experts (doctors, psychiatrists, psychologists ) to help establish the state of weakness of the victim*". The law requires, however, that the author be deliberately abusing of a "*situation of weakness*" while the concept (deliberately) is not defined and could thus be retrospectively. As for the "*mental harm*" this is a new concept without any definition and which is par excellence the domain of the intangible and unprovable.

- **b.** must also respect fundamental freedoms and deviate from it only under the conditions provided for this purpose. Freedom is the rule and exemption the exception. Fundamental freedoms protected by the European Convention are the protection of privacy and freedom of religion and freedom of association. However we can ignore it only under the conditions laid down by the European Convention not met in this case, namely measures that "*are necessary in a democratic society, for public safety, protection of public order, health or morals or the protection of the rights and freedoms of others.*"

- **c.** must respect the notion of **equality between individuals,**

### **4) Legal uncertainty**

The draft law creates a great deal of **legal uncertainty**, because some people might well invoke a so-called "*situation of weakness*" and an "*abuse*" to put in question some actions.

### **5) Conclusion and call for the senators**

This draft law introduces a high degree of arbitrary, inequality and insecurity, and a very serious violation on fundamental freedoms. Without it being limiting, it could undermine all aspects of our lives in Belgium:

- The medical doctors will not dare to do heavy treatments for seriously ill people; tax inspectors will not dare to control vulnerable people; marketing techniques may be seen as instruments of abuse of weakness; salesmen will not dare to sell high value objects; the religious people will discourage all religious conversions because baptism will become a risky operation; diets will be suspect; associations will not dare to recruit members; the sport coaches will be careful, and the military training too; the fasting of Ramadan and of Sabbath may be challenged as well as circumcision; the "protesters" may be regarded as "sorely" missing "discernment"; the employment agencies could be affected as well as the contemplative religious orders, the youth movements, the hospitals, the homes for elderly people and psychiatric clinics, the banking and insurance sectors, inheritance, donations ... (\*)

**Consequently, Human Rights Without Frontiers calls  
on the senators to evoke this law draft immediately  
and submit it to the Council of State.**