Henri de Cordes, President of the Belgian C.I.A.O.S.N.
(Centre of Information and advice on cultist/sectarian abusive organizations)
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"Criminalization of the abuse weakness : what is at stake in the politico-legal debate"

If the criminalization of the abuse of a person in a situation of weakness concerns the legal domain, the decision to introduce such a provision into the penal code was taken in the political context of the parliamentary assemblies.

In Belgium, the first recommendation to introduce the repression of abuse of a situation of weakness into the penal code is mentioned in the 1997 report of the parliamentary board of inquiry of the House of Representatives relating to the danger of sects.

The Members of the Commission of investigation explained their recommendation by indicating that *"the law only considers a certain number of infringements regarding the physical integrity of human beings. However, only once does it refer to mental integrity in a certain number of articles of the law, and this, only under aggravating circumstances. Aggravating circumstances are envisaged in the event of rape. Finally, in articles 1 and 3 of the law of April 13, 1995 containing the dispositions for the repression of human slave trade and child pornography, the criteria of personal vulnerability are also taken particularly into account"*. In its report, the board of inquiry inspired itself, of three articles of the French penal code which integrate the concept of the victim's vulnerability. This recommendation was approved during the adoption, in plenary session of the House of Representatives, by a motion supporting the conclusions of the commission's investigation.

Following the board of inquiry, several members deposited private bills once more taking the recommendations of their commission, such as the creation of a federal observatory on sects, which become the C.I.A.O.S.N., penal repression of the incitement to suicide, a non penal measure of the protection of human rights guaranteed by the Constitution and the European Convention of human rights. Curiously, no proposal relating to the punishment of the abuse of a situation of weakness was made at this time. It is only in 2003 that Philippe Monfils, member of the parliamentary assembly, deposited a private bill *"aiming at repressing the fraudulent abuse of someone's weakness in order to push him to commit an act or abstain from acting..."*.

Meanwhile, in December 2000, the C.I.A.O.S.N, *"noting that this recommendation had not been followed up in Belgian substantive law and considering that such a modification of the Penal code was likely to protect the people's interests, in particular of those who were victims of harmful sectarian organizations, recommended to the Minister of Justice to present a preliminary draft of the law introducing into the Penal code the provisions aiming at sanctioning the abuse of a situation of weakness"* to the government.

In 2005, professor Saroglou, a psychologist, and professor Christians, a lawyer, both of the catholic University of Louvain-la-Neuve, published "Disputed religious Movements. Psychology, Law and policies of precaution", a publication resulting from their research on the project "Of the sect in a pluralist world: strategy for a policy of precaution".

The call for offer for this project which went back to 2002 was written in these terms: *"Sectarian organizations have often prevailed of the freedom of association, of conscience and expression to guarantee themselves of any monitoring exerted by public authorities in opposition to them. Up to what point can these organizations really claim these human rights, especially when they do not respect them within their organization?"*

"[…] What higher circumstances or values allow the interference of the authorities in these organizations? Can these problems be treated in the current legislative framework or is there a need for additional laws in this field". The authors of this study examined, in particular, the private bills relating to the abuse of the situation of weakness deposited in Parliament and in the Senate. The proposal of the Member of Parliament Monfils referred to above and that of Senator De Schamphelaere were compared with the article of the French law of 2001, known as the About-Picard law, which represses the fraudulent abuse of the state of ignorance or the situation of weakness of a vulnerable person. The authors presented, within the framework of this study, a new formulation of the infringement of the abuse of a situation of weakness, considered as a penal reference."

In 2005, the Parliamentarian Andre Frederic proposed the creation of a working group charged with the follow-up of the recommendations of the parliamentary board of inquiry on "sects". In his report of March 2006, the working group "estimated that the Belgian legal arsenal needed the addition of a new provision in the Penal code aiming at repressing activities causing physical or psychological constraint and the fraudulent abuse of the state of ignorance or the situation of weakness of the individual, whether this situation should be due to the abuser using means of serious or reiterated pressure or techniques suitable to destabilize or deteriorate the victims' judgment, or that it should result from a state preliminary to recruitment by the sectarian organization". Compared to the recommendations of 1997, this step aimed particularly at the serious or reiterated pressures or the techniques suitable to destabilize or deteriorate judgment which made it possible to qualify the state of psychological or physical subjection, elements borrowed from the French penal code as modified by the law "About-Picard" of June 12, 2001. The recommendation of the working group was also approved in plenary session of the House of Representatives.

In the stride of the working group's report, the government, on the proposal of Minister of Justice, filed a bill in July 2006 "aiming at repressing the fraudulent abuse of the state of ignorance or the situation of weakness of individuals". The draft text of the new article 442 quater of the penal code essentially took up article 313.4 of the French penal code quoted by the board of inquiry in support of its recommendation but innovated by envisaging as sanction, in addition to imprisonment and a fine, banning the offender from employment in public office or from exerting supervision on children other than his own. As soon as the adoption of the pre-draft by the Council of Ministers was announced and even before the Council of State had given its opinion on the text, this modification of the penal code was criticized by those who saw an attack against "minorities of conviction" perceived *a priori* as dangerous. Criticism related in particular to the fact that the text used "poorly defined concepts which left very broad margins of interpretation", which would have as a consequence that one could not "be sure when one adopted a certain behaviour, if this latter was or not at fault".

After the deposit of the project, another form of criticism appeared in what was presented as a report by experts, which insisted that the Belgian Parliament should not adopt the bill. The opponents to the government's project had recourse in their criticism to the concept of mental manipulation [undue influence], term which appeared only once in the explanatory note of the bill. To refer to mental manipulation had the advantage, in terms of communication, to revisit the criticism which had risen in France, a few years back, against the private bill of Senator About and the MP Picard and which led to the exclusion of the term from the French law of June 12, 2001.

The government's initiative which accepted the recommendation of the parliamentary commission, reiterated by C.l.A.O.S.N and by the working group, however did not lead to a modification of the penal code. If certain opponents of this bill believed that their lobbying had prevented the passing of this bill, the reason of this "failed test" was more prosaically due to a particularly heavy agenda of the commission of Justice at the end of the legislature. The bill became null and void following the dissolution of the legislative house in the spring 2007.

With the new legislature, whereas the project of the government was still lapsed, private bills were again deposited, one in the Senate by the Senator Philippe Monfils and the other in the House by MP Andre Frederic. When the parliamentarian Frederic, in May 2008, questioned the Minister of Justice on what he thought of a modification of the penal code aiming at the repression of the abuse of the situation of weakness, the minister replied "I am quite willing to support a private bill which would take as a starting point the project filed by my predecessor". This ministerial support was not sufficient to make the private bill succeed before the end of the legislature. There were several reasons for this: a change of minister in the department of Justice, a discreet interest by Members of the Commission of the Justice of the House who asked for the opinion of the Council of State, a prolongation of the work by auditions in March 2010 and especially an anticipated dissolution of the parliamentary assemblies which again involved the nullity of the private bill.

At this stage of reflection one may ask why the French Parliament managed to adopt a law sanctioning the penally the abuse of the situation of weakness and what appeared as an impossible mission for its Belgian counterpart. One can find a reply in the fact that the French political community, in spite of its partisan divisions, supports the lay state unanimously. By doing this, the arguments based on religious principles receive little echo from the members of Parliament.

On the contrary, in Belgium where the influence of religious groups on political parties is stronger - even figuring in the title of a party - it is more difficult for elected officials of different parties to carry out a joint project which finds its legitimacy on the defense of secularity. Another explanation can be found in the operation of the parliamentary assemblies: in France, the National Assembly counts a study group on the sects, group in which the debate can be prepared, whereas in Belgium, in spite of the efforts of the Representative Frederic, this kind of body does not exist.

With the new legislature resulting from the poll of June 2010, one can hope that the repression of the abuse situation of weakness will make its entry in the penal code: the deputy André Frederic re-deposed his private bill last August, the debates in the committee of Justice of the House proved that the question which consists in approaching human rights in the penal field is no longer taboo and, finally, the French example shows, that when jurisprudence is observed, penal repression of the abuse of weakness is compatible with the respect of human rights. Therefore, one can hope that a majority will be harnessed to secure a breach in the penal arsenal which makes it possible for individuals without scruples to mislead people in a state of weakness by calling for freedom that they monopolize for their own profit.

. One can thus reasonably consider that this file has reached maturity and that, consequently, the penal repression of the abuse situation of weakness cannot become a "never-ending story" but rather a legal instrument of protection of individuals in a situation of weakness against the mean operations of individuals who claim to be exerting their religious liberty.