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A EUROPEAN APPROACH TO THE PROBLEM OF DESTRUCTIVE GROUPS AND THEIR ACTIVITIES.

The legal regulation of the activities of sects in a country in transition

1. Purpose of the analysis

The debates, sustained by active moderators and the views of participants, during the International conference on “Destructive groups and youth”, held in Rijeka on 20 November 2010, led to the Rijeka Declaration, which represents a first step towards a single European approach to the problem of the activities of destructive groups in Croatia. In the European context, its unique approach should enable an enhanced defence against such groups. This, of course, is only a first step towards the adoption of a universal legal model which should be endorsed by the United Nations.

1.1 The concept of a destructive group

First of all we need to precisely and accurately establish to which groups the new legal model refer to. This is the first issue to tackle. There are indeed several types of groups. There is no doubt that some of them are destructive, but there are others which, *a priori* are not destructive. They may nevertheless be legal, but in this particular case the activities of its members turn out to be destructive. Then you have groups that declare themselves to be religious, others who call themselves associations- which, for instance, promote physical exercises, a certain type of nutrition, a certain lifestyle, etc. It is very difficult to determine the destructive nature of a group, unless it declares itself to be a destructive group, which is not usually the case...

1.2 The concept of vulnerable persons

The International Conference on “Destructive groups and youth” which was held in Rijeka was addressed to youth. In fact, one must take into account vulnerable people, which are not only the young ones. The concept of vulnerable person, stemming from the recent evolution of law, was formulated so as to better protect those who are most exposed to certain activities. In law, this concept of vulnerable persons most often applies to: a) persons under age; b) the disabled; c) sick persons and d) very old people. But it could also apply to persons who do not master the language properly¹. An important task of the European Legal Model is to embrace the concept of groups to which this special law applies.

There is no doubt that freedom of thought, conscience and religion is justified for people capable of thinking and acting in an autonomous and independent manner. However, there are people who are not capable of thinking and acting autonomously and independently. These are vulnerable people. Vulnerable people need to be protected from the activities of destructive groups, whether they are religious groups or groupings of another kind. The protection of these people is particularly important in situations where decisions have to be taken regarding their property. It is a matter of *quaestio facti*.

II. Destructive groups and freedom of thought, conscience and religion

Numerous groupings operate under the right guaranteed by article 9 of the Convention on protection of human rights and fundamental freedoms. In most cases, these groups define themselves as religious groupings, by endorsing the position of the European Court of Human Rights,

¹ To this first concept, for these two last categories (which, until recently, and contrary to the case of minors, had very little protection from the Law), there is an additional doubt as to their capacity to give “enlightened consent” on to express an “enlightened consent”, as many regulatory or legal texts now require (for instance to obtain a loan, to undergo an operation)

whereby freedom of thought, conscience and religion is one of the essential freedoms which determine someone's identity². The goals of destructive groups are however often different.

III. Countries in transition and the activities of destructive groups

A characteristic which countries in transition have in common is the inexistence of legal provisions needed to regulate destructive groupings. This means preventing and repressing certain types of behaviour. As regards prevention, it is obvious that several groupings "operate without any restrictions on the territories of countries in transition, but not only. As for repression, there are no provisions referring to destructive activities of a certain group.

One particular issue is the lack of systematic and specialised training of those involved in exceptional procedures. It is an important feature of countries in transition, but not only. In most cases, the public at large is not informed of harmful acts carried out by destructive groups, while legislation does not have the necessary provisions.

IV. Group activities and their compliance with National Law

National law must take into account, first of all, that any organisation operating on the territory of a State, under the jurisdiction of that State, must act according to National Law. If the organisation does not comply with National Law, this organisation shall be subjected to a procedure, the outcome of which would be the stopping of their activities on the national territory. This would need to be done at all levels, from the constitutional level down to the subordinate one. There is no doubt that this is particularly important for States in transition. The question which arises is the following: "Must States promulgate special laws covering the above mentioned activities?" Many arguments speak in favour of a single "European" approach, because otherwise destructive groups might hide in the transition countries, and at the same time act beyond the borders of a certain country.

² See *Buscarini et al. versus San Marino*, *Kokkinakis versus Greece*, *Cha're Shalom Ve Tsedek versus France*, *Metropolitan Church of Bessarabia versus Moldova*, *Serif versus Greece*, *Manoussakis versus Greece*, *Agga versus Greece*, *Hasanj avnd Chaush versus Bulgaria*, *Larissis et al. v. Greece*, *Leyla Sahin versus Turkey et al.*

V. Liability in cases where one acts against the provisions of National Law.

The fact that a certain organisation acts, as a whole and according to the law, does not mean that this is also the case for its members. We must therefore distinguish the situation where members who act (or who have acted) in breach of national legal provisions have done so as members of the organisation, from that where they have acted as individuals. In this regard, one must take into consideration all the facts, particularly the circumstances under which their actions were carried out, the actual situation and the evidence of the victim, etc. If it is seen that there is a cause and effect relationship between the activities of a member of the group and the group itself, sanctions will also have to be applied to the organisation³. If the causal relationship is not established (which is rarely the case), there is no justification for applying sanctions against the legal person. In those cases, liability is restricted to the individual.

VI. By way of conclusion: the proposal for a model of legal provisions

VI.1 While taking into account that it is only in one country that the activity of destructive groups is defined by a special law, as an offense committed both by the principal and the legal person, one must start by considering its contents.⁴ Persons able to think and decide in an autonomous and independent manner may undertake actions which are (even) to the detriment of their personal assets and of the defence of other entitlements. As regards the procedures which affect these people, preventive measures may be the only solution. Preventive measures need to be developed and improved. At the same time, one needs to develop the social elements which are now lacking. Generally, society must devote itself seriously to the problem of the activities carried out by these

³ Article 1 of the About-Picard law in France is very much to the point: "The law aiming at embracing the prevention and repression of sectarian movements which affect human rights and fundamental liberties." The above mentioned law allows for "the civil dissolution of some legal persons". The Law's text is as follows: "According to the conditions laid down in this article, the dissolution of any legal person, whatever its legal shape or purpose, which perform activities whose aim or effect, are to create, to maintain or exploit the psychological or physical dominance over persons taking part in their activities when criminal judgements have been handed down, without right of appeal, against the legal entity itself or its legal representatives, *de facto* or *de jure*, for one or the other of the several infringements mentioned below. "

⁴ One takes into consideration the Law aiming at enhancing the prevention and repression of sectarian movements which are detrimental to human rights and fundamental liberties (About-Picard Law).

destructive groups, especially when their activities are secret. Vulnerable people must be subject to special conditions. Usually, young people don't have assets of their own. Their parents or legal guardians decide matters on their behalf. Other vulnerable people may decide on matters which negatively affect their own assets, only under special conditions.

VI.2. The legal provisions to be promulgated as the expression of a single European approach must be simple, so they can easily be incorporated in national legislation. Their contents must deter those who act to commit certain actions. At the same time, they must incorporate the main component, which is the purpose of penalising the principal and the legal person, but only in those cases where the principal's behaviour is in a cause and effect relationship with the group's activity. A vast operation is the goal of national legislation. International Law must restrict itself to a prevention which the various national systems can accept.

VI.3. I believe that a single European approach needs to be adopted. This approach should comprise at least the following provisions:

Article 1

- 1) Vulnerable persons may dispose freely of their own assets or act freely with regard to their other entitlements only with prior written approval issued by a competent State Authority set up under the National Law.
- 2) In the case of vulnerable people, the arrangements made for their own assets or other entitlements are null and void without an explicit written agreement issued by a State body, as indicated in sub-paragraph (1) of this article.

Article 2

- 1) According to the Law, vulnerable people are: a) persons under age 16, b) the disabled, c) sick persons, and d) very old persons, as well as anyone who is unable to work according to National legislation

- 2) The fact of concealing that this person falls under those indicated in sub-paragraph (1) of this article, and that this is not mentioned by one of the parties to the contract or by another person representing a principal in the procedure for disposing of own assets or other entitlements, is an offence in accordance with National Legislation.

Article 3

- 1) The State Authority will not grant its authorisation, as indicated in sub-paragraph (1) of article 1 of this Law:
 - a. If there are circumstances suggesting that the procedure is really to the detriment of the vulnerable person,
 - b. If there are circumstances suggesting that the procedures for disposal of own assets or other entitlements are indeed an offence.
- 2) The State Authority may refuse to grant the approval indicated in sub-paragraph (1) of article 1 of this Law if it believes that there is another reason for this.
- 3) The State Authority indicated in sub-paragraph (1) of article 1 of this Law may implement the proper procedure in accordance with National Legislation. The decision must be made within 60 days.
- 4) The State Authority mentioned in sub-paragraph (1) of article 1 of this Law must explain in writing the reasons for refusing the approval.

Article 4

- 1) The National Law specifies which offences give rise to criminal proceedings to be taken against the individual and against the group.
- 2) The National Law specifies which sanctions are to be applied in relation to the offences mentioned in sub-paragraph (1) of this article.