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Committee on Equality and Non-Discrimination

Tackling intolerance and discrimination in Europe with a special focus on Christianity

Introductory memorandum

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1. Introduction

1. Freedom of thought, conscience and religion is a fundamental right, enshrined not only in Article 9 of the European Convention on Human Rights (ETS No. 5) and Article 18 of the Universal Declaration of Human Rights but also in many national, international and European instruments. It is a basic right that is extremely important. The right to hold religious beliefs, to change them, or abandon them freely, to promote and express them openly, and to expect the state to protect individuals as they exercise them are among the most fundamental civil rights of Europe's citizens.

2. The Council of Europe's legal basis includes the European Convention on Human Rights (Article 9) and the case-law of the European Court of Human Rights. Other relevant international instruments include the International Covenant on Civil and Political Rights (Article 18) and the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The following documents adopted by the Parliamentary Assembly of the Council of Europe are also relevant in this context: Resolution 1846 (2011) *on combating all forms of discrimination based on religion*; Resolution 1763 (2010) *on the right to conscientious objection in lawful medical care* and Resolution 1928 (2013) *on safeguarding human rights in relation to religion and belief and protecting religious communities from violence*.

3. In his 2012 Address to the Members of the Diplomatic Corps accredited to the Holy See, Pope Benedict XVI said: "In many countries Christians are deprived of fundamental rights and side-lined from public life; in other countries they endure violent attacks against their churches and their homes. At times they are forced to leave the countries they have helped to build because of persistent tensions and policies which frequently relegate them to being second-class spectators of national life. In other parts of the world, we see policies aimed at marginalising the role of religion in the life of society, as if it were a cause of intolerance rather than a valued contribution to education in respect for human dignity, justice and peace."¹

4. Therefore, incidents of intolerance and discrimination directed against Christians strike at the core values of the Council of Europe.

5. On 29 April 2012, I tabled, with other members of the Assembly, a motion for a resolution on "Tackling intolerance and discrimination in Europe with a special focus on Christianity". This motion for a resolution stated that "in seeking to respect and equality, it is also necessary to shed light on the growing bias against practising Christians". However, there are not yet any Europe-wide surveys on intolerance and discrimination against Christians. An illustrative cross-section of incidents that have taken place over the past two years are referred to below based on national reports provided by governments, NGOs and civil society organisations.

2. Religious Discrimination Cases: Freedom of Conscience

6. The right to freedom of conscience is protected by Article 18 of the Universal Declaration of Human Rights (UDHR), Article 18 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the European Convention on Human Rights (ECHR) and Article 10 of the Charter of Fundamental Rights of the European Union (EUFRC). The Parliamentary Assembly of the Council of Europe (PACE) also drew attention to the issue by adopting the Resolution 1763 (2010) *on the right to conscientious objection in lawful medical care*², a text that invites member States to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services. However, serious violations of freedom of conscience continue to take place in Council of Europe's member States.

7. **Conscience in Employment:** There are numerous cases where Christian nurses face losing their job once they avoid participation in abortion based on their right to conscientious objection. Norway's Health ministry confirmed that all doctors must be prepared to refer patients to abortion clinics even if abortion runs counter to their own beliefs. The Secretary of State at the Health ministry, Robin Kåss, stated that: "If you refuse to perform a blood transfusion, you can't be a surgeon. If you deny a patient contraception or a referral for an abortion, you can't be a general physician"³.

8. Marriage commissioners are challenged to register same-sex partnerships despite their beliefs about the sanity of traditional marriage. In Britain, Christian employees Ladele and McFarlane were dismissed from employment for refusing to work with same-sex couples (*Ladele and McFarlane v. United Kingdom*)⁴. The

¹ <http://www.fides.org/en/news/30738?idnews=30738&lan=eng#.UZFqv7X7BqU>

² <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17909&LANG=EN>

³ <http://www.thelocal.no/page/view/doctors-cant-opt-out-of-abortion-duties>

⁴ European Court of Human Rights, Applications Nos. 5167/10 and 36516/10 by Lillian Ladele and Gary McFarlane against the United Kingdom; <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001->

Netherlands is only one of the Western European countries where marriage commissioners are denied freedom of conscience in the face of legislation allowing same-sex “marriages” or civil unions. In 2008, the Equal Treatment Commission of the Netherlands ruled that civil union registrars were required to celebrate “same-sex marriages” and the public authorities must play an “exemplary role” in combating discrimination. Therefore, it regarded that the conscience of an individual civil servant can no longer be accommodated in the workplace regardless of whether or not they could practically be accommodated⁵.

9. Archbishop Mamberti, Secretary for Relations with States of the Holy See, commented on the freedom of religion cases ruled on by the European Court of Human Rights: “There is a real risk that moral relativism, which imposes itself as a new social norm, will come to undermine the foundations of individual freedom of conscience and religion (...) the rationality of the human conscience in general and of the moral action of Christians in particular requires explanation. Regarding morally controversial subjects, such as abortion or homosexuality, freedom of consciences must be respected. Rather than being an obstacle to the establishment of a tolerant society in its pluralism, respect for freedom of conscience and religion is a condition for it”⁶.

10. **Conscience in use of own home and family life.** Christian Bed & Breakfast owners experience discrimination if they refuse to accommodate same-sex couples. Christian families also face a foster parenting ban for declaring the views on homosexuality.

3. Religious institutions’ conscience rights

11. In a number of countries, religious institutions are forced to recognise or conduct same-sex partnerships⁷. They are also challenged to provide adoption services to same-sex couples. Some religious leaders are accused of religious intolerance and homophobia for expressing their views on the subject.

12. In his speech, Pope Benedict XVI emphasised that: “in order effectively to safeguard the exercise of religious liberty it is essential to respect the right of conscientious objection. This “frontier” of liberty touches upon principles of great importance of an ethical and religious character, rooted in the very dignity of the human person. They are, as it were, the “bearing walls” of any society that wishes to be truly free and democratic. Thus, outlawing individual and institutional conscientious objection in the name of liberty and pluralism paradoxically opens by contrast the door to intolerance and forced uniformity”⁸.

4. Religious Discrimination Cases: Freedom of Expression

13. Freedom of expression is protected under Article 19 of the UDHR, Article 11 of the EUFRC and Article 10 of the ECHR. However, Christians in some member states are being harassed and detained while publically promoting and defending religious values, including traditional marriage. Pro-life campaigners have been prosecuted for holding demonstrations outside abortion facilities. Christians suffer discrimination while exercising their right to the freedom to wear religious symbols in the workplace, in schools or public space, expressing freedom to manifest religion in public. As a case in point, *Eweida and others v. United Kingdom* involved Christian women who were told they must either cover up or remove their cross necklaces. In both cases, accommodation was made for some employees of other faiths to wear distinctive religious symbols or clothing, such as Hindus or Muslims, but not for these women⁹.

5. Religious Discrimination Cases: Freedom of Assembly

14. Freedom of assembly is guaranteed under Article 20 of the UDHR, Article 21 of the ICCPR and Article 11 of the ECHR. Nevertheless, Christian events, prayer meetings or services, other Christian manifestations are disrupted by attacking groups which disagree with different standpoints Christian groups hold. The attacking groups include the radical left anti-religion groups, antifascist groups, radical feminist groups or radical LGBT activists. The methods contain verbal insult, incitement to violence, material damage and even physical attacks. Such incidents took place in Austria¹⁰, Belgium, Germany¹¹, Italy, the Netherlands and Spain.

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⁵ <http://www.christian.org.uk/news/dutch-officials-to-be-quizzed-each-year-on-gay-marriage/?e030611>

⁶ <http://en.radiovaticana.va/articolo.asp?c=656095>

⁷ <http://en.radiovaticana.va/articolo.asp?c=656095>

⁸ http://www.vatican.va/roman_curia/secretariat_state/2013/documents/rc_seg-st_20130116_liberta-autonomia_en.html

⁹ European Court of Human Rights, *Eweida and others v. United Kingdom*, Judgment of 15 January 2013; [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#{“itemid”:\[“001-115881”\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#{“itemid”:[“001-115881”]})

¹⁰ <http://en.gloria.tv/?media=182142>

15. According to a 2012 inquiry by British Members of the Parliament, some UK local authorities “place unnecessary barriers to wider Christian contribution”¹². “Christians are not asking for special treatment, but we are looking for a level playing field and for sincerely held beliefs to be given equal space in our law and in our society. I hope the Government will take this report very seriously”, noted MP Gary Streeter.

6. Discriminatory Equality Policies

16. Christians also experience an increasing unequal, prejudiced treatment in the workplace based on their religious beliefs. Premier Christian Media, a UK Christian media company, committed to monitoring the increasing marginalisation of Christianity in British public life, emphasised in their research an inconsistency in the way the Courts apply and interpret equality laws in relation to Christians. When it comes to competing rights between different groups, the rights of Christians seem to be consistently “sacrificed on the altar of political correctness”¹³.

17. In the abovementioned report “Clearing the Ground”, UK parliamentarians stated that Christians are facing genuine legal difficulties in Britain. They suggested promoting a concept of “reasonable accommodation” for religious belief in the public sphere. It also suggested that the UK Equality and Human Rights Commission should be reviewed and restructured so that it better includes and represents religious beliefs.

18. In August 2011, the Equality and Human Rights Commission (EHRC) publicly stated that Christians were experiencing more discrimination than other religious groups in the work place and suggested that, where possible, the concept of reasonable accommodation should be considered. However, the EHRC retracted this statement as a result of Angela Mason’s (formerly of “Gay lobby” group Stonewall) intervention.

7. Acts of vandalism and desecration

19. A mood of hostility in European countries toward Christianity comes across in the numerous instances of vandalism, destruction of property, and defamatory displays, including the destruction or defamation of Christian symbols, demolition of places of worship and the desecration of cemeteries or tombs of historical and cultural heritage value.

20. The Observatory on Intolerance and Discrimination against Christians, based in Vienna (Austria), reported incidents of cemetery desecration, vandalism of churches, damage to property, arson, physical assault in Russia, Spain, Turkey¹⁴, Bosnia and Herzegovina¹⁵, France, Slovenia, Slovakia, Austria¹⁶, Ireland¹⁷, Switzerland, Germany¹⁸ and Belgium.

21. 84% of the vandalism in France in 2010 was directed against Christian sites, stated the former French minister of the Interior Brice Hortefeux. In Sweden, official law-enforcement figures record a total of 651 anti-religious crimes, of those 162 were classified as motivated by bias against Christians. The Italian Observatory “No Cristianofobia” has highlighted Radio Vatican’s report that 2012 has been the worst year for religious freedom in Spain with numerous incidents of attacks against religious symbols or clergy¹⁹.

8. Violating of Educational Rights of Christian Parents

22. Limitations of the right of parents to opt their child out of individual classes or an entire course that the parents deem contrary to their religious, moral and ethical beliefs, for example, certain forms of sex education classes, still exist in some European countries.

¹¹ <http://www.lifesitenews.com/news/german-pro-life-groups-complain-to-un-human-rights-council-about-attacks-ha/>

¹² Christians in Parliament (United Kingdom), “Clearing the Ground inquiry – Preliminary report into the freedom of Christians in the UK”, February 2012; <http://www.eauk.org/current-affairs/publications/upload/Clearing-the-ground.pdf>

¹³ <http://www.premier.org.uk/~media/906806AC2C844635BAD1F9518A48CCD2.ashx>

¹⁴ OSCE/ODIHR, “Hate crimes in the OSCE region : incidents and responses - annual report for 2011”, 16 November 2012; http://tandis.odhr.pl/hcr2011/pdf/Section_7.5_CRIMES_AGAINST_CHRISTIANS.pdf

¹⁵ *Ibidem*, http://tandis.odhr.pl/hcr2011/pdf/Section_7.5_CRIMES_AGAINST_CHRISTIANS.pdf

¹⁶ <http://noe.orf.at/news/stories/2564381/>

¹⁷ <http://www.rte.ie/news/2012/0303/314222-laurenceotoole/>

¹⁸ <http://www.youtube.com/watch?v=BUXziwYQuxw>

¹⁹ <http://www.nocristianofobia.org/spagna-in-aumento-episodi-di-intolleranza-religiosa/Radio>

23. Parents in Germany seeking to educate their children with a Christian worldview have been jailed and/or fined for trying to exempt their children from state-mandated sex education program. Home-schooling remains illegal in Germany, regardless of parents' religious or cultural reasons for wishing to do so.

24. The new Spanish Government discontinued the compulsory class education for citizenship²⁰ which nearly 55 000 parents had conscientiously objected to. They have appealed to the European Court of Human Rights to "require the Spanish state to respect ideological neutrality in the educational system to prevent future violations of rights." "Schools need to recover the tranquillity, consensus and respect for the freedom of all in order to carry out their mission"²¹.

25. In a statement to the UN, the Vatican has underlined that parents have a right to home-school. Parents "have the right and duty to choose schools inclusive of home-schooling, and they must possess the freedom to do so, which in turn, must be respected and facilitated by the State." "The State should respect the choices that parents make for their children and avoid attempts at ideological indoctrination", the permanent observer mission of the Holy See to the United Nations wrote in a statement released in April 2012²².

9. Best practices and preventive measures

26. The Organisation for Security and Cooperation in Europe, including its Office for Democratic Institutions and Human Rights (ODIHR), has drawn close attention to the problem of intolerance and discrimination against Christians. The OSCE Parliamentary Assembly recommended in its Resolution on Combating Intolerance and Discrimination against Christians in the OSCE area, adopted in Belgrade in July 2011, that a "**public debate** on intolerance and discrimination against Christians be initiated and that the right of Christians to participate fully in public life be ensured" (12); that "**legislation** in the participating States, including labour law, **equality law, laws on freedom of expression and assembly, and laws related to religious communities and right of conscientious objection be assessed**" in view of discrimination and intolerance against Christians, (13); and "encourage(d) the media not to spread prejudices against Christians and to combat negative stereotyping" (15)²³.

27. "That hate crimes against individuals based on their real or perceived adherence to Christianity occur in the OSCE region is indisputable", said Ambassador Janez Lenarčič, the Director of ODIHR. "Such attacks instil fear, not just in the individuals they target directly, but also in the wider community"²⁴.

28. Observing that "the growing tensions involving religion, worldview and ideology have become a massive global problem", an international group of leading academics and activists launched *the Global Charter of Conscience* in June 2012²⁵. *The Global Charter of Conscience* is a declaration reaffirming and supporting Article 18 of the Universal Declaration of Human Rights (about "freedom of thought, conscience and religion"). It was crafted over the course of three years by people of many faiths and none, including more than 50 academics, politicians of many persuasions and NGOs, all committed to a partnership on behalf of "freedom of thought, conscience and religion" for all. "We need to provide a solution to do away with the polarisations and the aggravating bitterness surrounding religion in public life – as in the so-called culture wars," said Dr Thomas Schirrmacher, a German sociologist of religion, who oversaw the drafting of the text of the Charter. *The Global Charter of Conscience* encourages a new culture of civility where robust and noisy public debate is seen as good for society.

29. The articles, values and principles of the Charter, and the promotion of these, have been instrumental already in opening spaces for the understanding, discussion and prevention of attacks to freedom of thought, conscience and religion or belief in Europe for all, including Christians. This has happened in Germany, Sweden and the United Kingdom, since its launch in June 2012. It is paving the way to establish guidelines to solve issues surrounding religion in the public sphere by building a *civil and cosmopolitan public square* which would be hospitable to people's worldviews and the way they manifest themselves in the public, where people and communities would be mindful of social peace, public order and the rights of others as they manifest their convictions alone or in community with others, and where freedom of conscience would be recognised by all as a fundamental right, the enjoyment of which should only be limited as a matter of

²⁰ <http://www.adfmedia.org/News/PRDetail/5315>

²¹ <http://www.euractiv.com/culture/catholics-sue-spain-sex-educatio-news-382532>

²² <http://www.holyseemission.org/statements/statement.aspx?id=380>

²³ OSCE Parliamentary Assembly, AS(11)R E, Resolution adopted at the 20th annual session, Belgrade, 6-10 July 2011, <http://www.parlament.ch/e/organe-mitglieder/delegationen/parl-versammlung-osze/Documents/osce-belgrad-resolutions-2011-e.pdf>

²⁴ <http://www.osce.org/odihhr/82407>

²⁵ <http://www.charterofconscience.org>

exception, which demands restrictive conditions prescribed in international instruments such as the International Covenant on Civil and Political Rights.

30. The Charter is also helping the emergence of discussions about promoting education and understanding about various worldviews, including through civic education about religions and beliefs, and related civil liberties. Finally, it has helped to provide training for employees in the public sector in order to understand, rigorously assess and deal with achievements and challenges to freedom of thought, conscience and religion.

31. In a special recommendation for this text, Prof Dr Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief, said: “the *Global Charter of Conscience* is a powerful document. I appreciate its enormous potential to inspire practical commitment on behalf of freedom of thought, conscience, and religion or belief and to contribute to a better understanding of human rights in general. In the spirit of the 1948 Universal Declaration of Human Rights (UDHR), the Charter underlines the universal validity of freedom of religion or belief as an inextricable part of a holistic human rights agenda in which civil, political, economic, social and cultural rights can mutually reinforce each other.”

32. The concept of “**reasonable accommodation**” provides a “common sense” approach to many of the legal challenges Christians face in the workplace. Reasonable accommodation places the onus on the employer to accommodate the religious practice of an employee providing it does not cause the employer an undue burden. In Europe this concept has been used in disability discrimination for many years and in North America it has been successfully applied to religion or belief. In the case before the European Court of Human Rights involving the four British Christians (*Eweida and others v. United Kingdom*), this legal concept was promoted before the Court by the applicants and several third party interveners. On that occasion the Court decided not to consider the legal concept in its decision; however, there is no reason why reasonable accommodation cannot be adopted in the European setting. In its Resolution 1928 (2013) *on safeguarding human rights in relation to religion and belief and protecting religious communities from violence*, **the Parliamentary Assembly of the Council of Europe, almost unanimously, called on member States to:**

- “**accommodate religious beliefs in the public sphere**”;
- “**ensure the right to well-defined conscientious objection** in relation to morally sensitive matters”;
- “**respect the right of parents** to ensure education and teaching in conformity with their own religious and philosophical convictions”;
- “**change their legal regulations whenever these go against the freedom of association** for groups (including religious communities defined by their religion or beliefs)”;
- and “urge(d) member States where the restitution of church property is not yet concluded, to speed up this process and finish it in the short or medium term.”²⁶”

10. Conclusions

33. While a legal response remains important, legislation is only part of a larger toolbox to respond to the challenges of intolerance and discrimination against Christians. Any related legislation should be complemented by initiatives coming from various sectors of society geared towards a plurality of policies, practices and measures nurturing social consciousness, tolerance and understanding change and public discussion. This is with a view to creating and strengthening a culture of peace, tolerance and mutual respect among individuals, public officials and members of the judiciary as well as rendering media organisations and religious/community leaders more ethically aware and socially responsible. States, media and society have a collective responsibility to ensure that acts of incitement to intolerance and discrimination targeted at Christians are spoken out against and acted upon with the appropriate measures in accordance with international human rights law.

²⁶ [http:// assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19695&Language=EN](http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19695&Language=EN)