

**Mandates of the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief**

REFERENCE:  
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5 July 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/6 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **discriminatory measures against Scientologists on the basis of religious belief**.

According to the information received:

*Continued use of discriminatory 'Schutzerklärung' against Scientologists in the obtainment of grants and gainful employment*

The Church of Scientology (Church), first became active in Germany in 1970, and at present operate Churches in Munich, Hamburg, Berlin, Düsseldorf, Frankfurt am Main, Hannover and Stuttgart, as well as Missions, with nine in Baden-Württemberg, and three in Bavaria. The legal status of the Church of Scientology remains a subject of debate in the country, with certain state entities regarding it as a commercial enterprise operating under the guise of a religion, and its genuine interests as incompatible with German democratic values. This has given rise to the use of 'Schutzerklärung' (declaration of protection), sometimes known as sect filters.

In practical application, 'Schutzerklärungen' exist to regulate the issuing of grants, and to prohibit membership or employment positions where considered inappropriate within the public sector. Reportedly, several private sector companies have also adopted the same sect filter template provided by the authorities, further limiting the opportunities of individuals identifying as Scientologists.

The 'Schutzerklärung' specifically demands the applicants to declare that they do not use, teach, or disseminate the methods and technology of L. Ron Hubbard (Scientology founder), and do not support any group or organization that uses or disseminates these methods and technology, or participate in any training or seminar by such a group or organization, and will not do so for the duration of their contract.

These individuals are thus directly deprived of opportunities ranging from those of a personal (application for childcare funding, subsidies for an electric bicycle (Bavaria)) to professional nature (business and sports funding, maintenance grants, public sector tenders (Bavaria and Berlin)).

In response to previous questions regarding these measures in Bavaria by Mr. Abdelfattah Amor, former Special Rapporteur on freedom of religion or belief following his visit to Germany in 1998, the authorities at the time stated that these were 'directed against the system of Scientology and not against individuals in need of counselling and assistance' (E/CN.4/1998/6/Add.2, page 19, 79). Furthermore, at least in the context of employment in the civil service, the 'Schutzerklärung' exists to determine if the candidate 'conforms to the democratic order'. Candidates are still entitled to an interview to demonstrate their compatibility with the position, and therefore not automatically excluded on the basis of religion or belief.

This practice allegedly continues, and templates for them remain available on state websites, despite German court ruling it incompatible with the state mandate of neutrality (*Krueger v. City of Hamburg*, in reference to the use of Schutzerklärung), and that Scientologists obtain the protection of art. 4 (freedom of religion or belief) of the German Constitution.

Without prejudging the accuracy of these allegations, we would like to express our concern about the continued use of measures that explicitly prevent individuals from obtaining grants and employment opportunities otherwise extended to the general population, on the basis of religion or belief. Regardless of the official state position on the status of Scientology as a religious organisation, group, sect, or otherwise, religion or belief is a matter of personal conscience rather than government designation. Individuals identifying as Scientologists should not have to endure undue scrutiny nor disclose their beliefs unless a legitimate, substantiated reason can be provided, for which the burden of proof falls upon the State. By continuing to uphold measures that reinforce negative stereotypes about Scientologists, the State may cultivate an environment not fully conducive to the enjoyment of the right to freedom of religion or belief particularly for religious minorities. By allegedly operating from a negative presumption as to the aims of the Church, these measures may also constitute a conflict with the State mandate of neutrality, which requires a fundamental attitude of tolerance and equitable treatment of all religious groups within the context and limits of public interest, and in conformity with the provisions of international human rights law. The State does not have the responsibility of judging the intrinsic value or truth of religion or belief. (E/CN.4/1998/6/Add.2)

If found to be true, these measures constitute serious impediments to the freedom of religion or belief and to the fulfilment of the rights and freedoms of religious minorities as enshrined in the applicable international human rights standards that

Germany has committed to, and furthermore art. 4 and art. 140 of the German Constitution. These acts also have consequences in conflict with the State responsibility to promote human rights for all and to ensure non-discrimination against religious minorities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide details on the legal basis as to the compatibility of sect filters or 'Schutzerklärung' with your Government's obligations under international human rights law.
3. Please provide detailed and updated information on the concrete measures undertaken by the Government to ensure the protection and promotion of freedom of religion or belief in the country.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Fernand de Varennes  
Special Rapporteur on minority issues

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

If these allegations are proven accurate, by directly excluding individuals from opportunities on the basis of religion or belief, these measures would be in violation of art. 18 of the International Covenant on Civil and Political Rights (ICCPR) as ratified by your Excellency's Government on 17 Dec 1973, which stresses that everyone shall have the right to freedom of thought, conscience and religion. Furthermore, forcing individuals to declare their religion or belief is in violation of ICCPR art. 18, which stipulates that the right to freedom of religion or belief includes "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private". In this regard we respectfully highlight General Comment 22 of the Human Rights Committee, para 3, which stipulates that "no one can be compelled to reveal his thoughts or adherence to a religion or belief". The choice of religion or belief is part of the *forum internum*, i.e. a non-derogable right which allows for no limitations under international law. Any State policy of such coercive nature that clearly discriminates religious minorities or any individual based on her or his religion or belief therefore violates international human rights law. Furthermore, Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language".

In reference to the personal and professional impact suffered by individuals from the usage of 'Schutzerklärung', we wish to draw your attention to General Comment 22, of the Human Rights Committee, which states that the scope of art. 18 of the ICCPR is not limited to traditional religions or to religions and beliefs with institutional characteristics analogous to those of traditional religions. In its para 2, the Committee views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community. Furthermore, para 9 explicitly states that 'imposing special restrictions on the practice of other (minority) faiths are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 of ICCPR'.

We respectfully note that the right to freedom of religion or belief does not disqualify the State from intervention; this however applies only to the freedom to manifest religion or belief, and only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief cannot be

restricted. Furthermore, the measures taken must be applied proportionately and shown to be the least restrictive measure available, (HRC GC 22 para 7-8).

Finally, we would like to bring to your Excellency's Government's attention the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).