



PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN
ASSEMBLEE PARLEMENTAIRE DE LA MEDITERRANEE
الجمعية البرلمانية للبحر الأبيض المتوسط

PAM 3rd Standing Committee on Dialogue among Civilizations and Human Rights

“Freedom of expression and freedom of religion: the religious pluralism in the Mediterranean region”

Based on the outcome of the 2nd Meeting on Human Rights for PAM MPs, held in conjunction with the European Court of Human Rights, at the Court headquarter, in Strasbourg on 8-9 November 2016, and that of the PAM Meeting on “Dialogue in the encounter between cultures and religions: the role of politics and education”, held in Rome, on 15 December 2016, at the Italian Senate

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INTRODUCTION

The Mediterranean basin is the cradle of all our cultures and religions and remains, to this day, a platform of incredible cultural and economic exchange. Unfortunately, as we know, the region is also characterized by endless conflicts and disputes on matters that are the concern of all of us. Starting with 11 September 2001 - the same year that the United Nations designated the “Year of Dialogue of Civilizations” - global political violence and conflicts have reached a critical new level, and the shadow of a possible “clash of civilizations” has been hammering down on the world and in the collective psychologies of all the peoples. In this environment, the growing cultural misunderstanding and mistrust, has prompted some to refer to a real danger of a clash of civilisations. This perception has also been amplified by the lack of a real international consensus on the legitimate boundaries between freedom of religion and freedom of expression, and the consequent return of religion on the center stage of domestic and international politics in many parts of the world. Therefore, the ideal of building bridges of mutual understanding, aiming at achieving peaceful coexistence between different cultural and religious communities, is being increasingly recognized as critical for securing collective peace and security.

The Parliamentary Assembly of the Mediterranean (PAM) has been attaching great importance to religions and the religious dimension of intercultural dialogue since its establishment. In particular, it dedicated a Special Task Force on Dialogue of Cultures and Religions, on occasion of its 2nd Plenary Session, held on 22-24 November 2007 in Malta, adopted numerous resolutions and recommendations, and organized meetings on this subject.¹

¹ The first resolution on this topic was adopted. In 2008, the Assembly endorsed by consensus the report and resolution on “Religious Freedom and Dialogue of Cultures”, and established The Mediterranean Day, to be celebrated on 21st March every year, dedicated to integration, unity and diversity. Moreover, the Special Task Force developed the “Fez

The present report is based on the conclusions and recommendations resulted from two recent major PAM events, which have taken place within the framework of the activities of its 3rd Standing Committee on the Dialogue of Civilizations and Human Rights in 2016:

- The 2nd Seminar on Human Rights for PAM MPs, which has been organized in conjunction with the European Court of Human Rights, at the Court Headquarter in Strasbourg on 8-9 November 2016,
- The PAM Meeting on “Dialogue in the encounter between cultures and religions: the role of politics and education”, held in Rome, on 15 December 2016, at the Italian Senate.

During both events, participants expressed their concerns about the challenges being faced by the region, and recalled their commitment to take a firm stand on human rights, by formulating proposals for actions at the national and regional level, and by reiterating the need to establish a new paradigm for living together and root it in the minds of our peoples.

Therefore, particular attention in this report has been devoted to the right to the “freedom of religion or belief” in human rights instruments and its coexistence with freedom of expression, as well as the various approaches to the relationship between state and religion. The report offers also a brief description of the religious diversity and pluralism in the Mediterranean societies today. It also explores the question of religions’ contribution to the promotion and effective enforcement of the fundamental values, which are the common heritage of the peoples of the Mediterranean region. These are, among others, the recognition of human dignity by all religious beliefs, considering dialogue between religions as an essential tool for developing a culture of openness and receptiveness to others and for building a cohesive society together.

THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

1. The state of play in human rights instruments

The right to “freedom of religion or belief” is a fundamental human right recognized in all the major human rights treaties. Article 18 of the Universal Declaration of Human Rights (UDHR); article 18(1) of the International Covenant on Civil and Political Rights (ICCPR); and article 9(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), they all guarantee freedom of thought, conscience and religion. The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, of 1981, has a special role. Its article 1, very similar to the above-mentioned instruments, states that “this right shall include freedom to have a religion or whatever belief of his/her choice” and determines, in article 1(2), that “no one shall be subject to coercion, which would impair his/her freedom to have a religion or belief of his/her choice”.

Within the EU, the Charter of Fundamental Rights of the European Union (EUCFR), which became binding through the Treaty of Lisbon, also contains the right to freedom of thought, conscience and

Programme” to foster “mutual understanding and the promotion of tolerance and respect for the cultural and religious diversity” among the peoples of the Mediterranean. In 2009, the Assembly adopted unanimously the report and resolution on “Building on Dialogue “, whereas in 2010, the report and resolution on “The Intercultural and Interreligious Dialogue in the Western Balkans as a platform to strengthen and consolidate peaceful and good-neighbourly relations among its peoples”, a have been adopted unanimously adopted.

religion in article 10. This article echoes article 9(1). The EU Guidelines on the promotion and protection of freedom of religion or belief reflect all these international standards.²

2. Limitations and restrictions on the right to freedom of religion or belief

Under international human rights law, freedom of religion or belief has two components. The first is the right to freedom of thought, conscience and religion, which means the right to hold or to change one's religion or belief, and which cannot be restricted under any circumstances. The second is the right to manifest one's religion or belief. This is in accordance with articles 9(2) ECHR and 18(3) ICCPR, and can be restricted - but only if the restriction is prescribed by law and is necessary. Furthermore, article 9(2) specifies that the restriction is also applicable 'in a democratic society' – for the protection of public safety, public health or morals or for the protection of the rights and freedoms of others. The ECHR has held that 'necessary in a democratic society' means that the interference must fulfil a pressing social need and must be proportionate to the legitimate aim pursued. This means that there must be a reasonable relationship between the aim of the restriction and the means used to achieve that aim.³

Member states of the European Court of Human Rights (ECtHR) enjoy a margin of appreciation (flexibility) in deciding how to give effect to the Convention rights and freedoms, subject to the ultimate supervisory jurisdiction of the ECtHR. The Court has established that states enjoy 'a broad margin of appreciation in determining how to give effect to its responsibilities as the neutral and impartial organizer of religious life whilst ensuring the fullest possible enjoyment of the freedom of religion or belief that is consistent with respect for the rights and freedoms of others'.⁴

Article 18 UDHR does not mention any limitations to the right. However, Article 29(2) UDHR allows for limitations in the exercise of the rights and freedoms which are determined by law and are 'solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society'. In relation to limitations, the Declaration on Religion or Belief states the same as Article 18(3) ICCPR.

According to Article 52(1) EUCFR, any limitation on the exercise of the rights and freedoms in the Charter must be provided for by law and, subject to the principle of proportionality, may be made only if it is necessary and genuinely meets objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others. Article 54 EUCFR determines that the rights in the Charter, which correspond to rights in the ECHR, have the same meaning and scope as they have under the ECHR.

3. Freedom of expression and freedom of religion

Tensions between these two fundamental rights are not new. As explained during the PAM Seminar on human rights in respect of religion or belief, held at the ECtHR Headquarters, the right to freedom of expression can be engaged in two ways: - when someone is expressing their religion or

² Council of the European Union, EU Guidelines on the promotion and protection of freedom of religion or belief (adopted 24 June 2013).

³ *Handyside v UK* No. 5493/72, 7 December 1976, para 49.

⁴ M. Evans (2009) *Manual on the wearing of religious symbols in public areas* (Strasbourg: Council of Europe/Martinus Nijhoff) 83-84.

belief; - or when someone is expressing views about the religion or belief of others, which might be deemed offensive. However, there is no right not to be offended in either international or the European human rights law. The ECtHR has stated that the right to freedom of expression applies ‘not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society."⁵

The highest point of tension is reached when the exercise of a fundamental freedom by one part is regarded as the violation of another fundamental freedom by the other. In particular, a “clash of freedoms” occurs when an individual’s or a group’s exercise of freedom to speech/expression collides with another individual’s or group’s exercise of freedom to religion⁶. In these situations, it seems that freedom of religion may not be exercised without restricting freedom of speech/expression and vice-versa. Similar situations have great impact in the international arena because of the globalization of communication and the media’s tendency to emphasize this kind of news. While both rights should be equally respected, the exercise of the right to freedom of expression carries with it special duties and responsibilities. It requires good judgment, tolerance and a sense of responsibility.⁷

FORMAL RELATIONS BETWEEN STATE AND RELIGION AND THEIR IMPLICATIONS IN THE MEDITERRANEAN COUNTRIES

Due to historical and geopolitical reasons, Western and Islamic countries have adopted over the years different approaches to the issue of freedom of religion that have become more visible in the context of the recent discussions on religious freedom at the UN and in other international fora. Moreover, the so-called Arab Spring on the one hand, and the economic and identity crisis of Europe on the other has changed the scenario on both shores of the Mediterranean. Therefore, various models of political and legal regulation of relations between states and religions have been recorded in the different regions of the Mediterranean.

1. Western Europe

Western European countries distinguish between religion at the private level on the one hand, and religion at the public level on the other.

In respect to religion at the public level, some countries, consider the central role that traditional religions can still play in granting the national cohesion, and give a special position to religion in the public space. In this perspective, the dominant religion of a country is seen as a central component of the civil religion. Italy, Spain, Portugal and Malta could be considered an example of this trend, together with a number of other countries from Eastern Europe where the Christian Orthodox religion is the majority religion of the population.

⁵ HRC, General Comment No. 34, Article 19: Freedoms of opinion and expression, para. 11, which states that the right to freedom of expression “embraces even expression that may be regarded as deeply offensive”.

⁶ Silvio Ferrari and Fabio Petito, *ISPI report on “Promoting Religious Freedom and Peace through Cross-Cultural Dialogue”*, October 2013.

⁷ *Ibidem*

Other countries, instead, are convinced that consider national identity and social cohesion can no longer be granted by the traditional religions, which have become too weak to serve as a unifying factor. In this perspective, common citizenship could only be built around a set of ‘secular’ principles – liberty, equality, tolerance, democracy etc. – that every individual and group must embrace independently of their origins, preferences, and creed. These principles should shape the whole public space, in which every citizen can feel at home precisely because it does not contain any reference to the particular values and symbols of the different religious, racial, ethnic, cultural and political communities living in the country. France provides an illustration of this second approach⁸ that is also prevalent in some international organizations like the Council of Europe and the European Court of Human Rights.

In respect to religion at the private level, European countries are characterized by a common approach and a similar understanding of religion. In particular, freedom of religion is not only understood as a freedom to religion, but also as freedom from religion. The guarantee of this freedom is reflected in the state’s non-denominationalism and neutrality in matters of religion. This principle is enshrined in the constitutions of many European Union member States and is established by law or specified in case law in others. Although this is not the case in the past, it is now accepted in Europe that one can freely exercise one's religion. As far as religion in the public sphere is concerned, Europe is not characterized by unity but rather by diversity. States like France have incorporated the principle of secularism into their constitution.⁹

2. The Eastern Mediterranean and the MENA region

The countries of Eastern Mediterranean and North Africa also regulate relations between states and religious communities according to different patterns.

Turkey, as a secular state with a deep-rooted multi-faith legacy, goes with countries that distinguish between religion at the private level on the one hand and religion at the public level on the other.

The Turkish constitutional system is based on equality before the law, fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law. The constitution and relevant legislation provide for freedom of religion, conscience, religious belief, conviction, expression, and worship, and prohibits discrimination based on religious grounds. In this regard, Turkish citizens belonging to different faith groups enjoy and exercise the same rights and freedoms.

In other countries, the role of mediator between the Muslim tradition and the principles of liberal constitutionalism has been taken by the Heads of State. This is the case of **Morocco** and **Jordan** where, under the impulse of King Muhammad VI and King Abdullah II, important constitutional and legislative reforms were made. In particular, as specified by Dr. Ahmed Kostass, Director of Islamic Affairs at the Moroccan Ministry of Endowments and Islamic Affairs, during the PAM

⁸ In France, under the law of 9 December 1905 on the separation of the Church and the State, there is a strict separation between the two: laïcité. Moreover, the law n° 2004-228 of 15 March 2004 forbids the displaying of religious symbols by students in state schools “conspicuously”. Public buildings may not exhibit religious symbols and, likewise, cemeteries cannot be denominational. In reality, however, the degree of separation is less rigid than it might appear at first blush.

⁹Ms Anne Brasseur, report on “The religious dimension of intercultural dialogue”, Doc. 12553, 25 March 2011 Parliamentary Assembly of the Council of Europe (PACE).

meeting in Rome, in Morocco, all imams preaching in mosques are required to obtain state certification, and mosques and sermons are regularly monitored by the authorities. Moreover, the government also operates a large and well-financed training program for imams and female religious counsellors. The same approach is followed by the Jordanian government, who monitors sermons at mosques and issues permissions that authorize the preachers to practice. Moreover, only state-appointed councils may issue religious edicts, and political, sectarian, and extremist speeches are outlawed in mosques under the Preaching and Guidance law.

Regarding **Tunisia**, article 1 of its Constitution states that “its religion is Islam, its language Arabic and its system is republican”, and article 6 guarantees freedom of belief and of conscience for all religions, as well as for the nonreligious. However, the State retains significant influence over the internal affairs of religious institutions, particularly mosques, by appointing local imams and banning any unauthorized activity at mosques, which are surveilled by the minister of religious affairs.

Mauritania, together with the Gambia, it is the second Islamic Republic in Africa, where only Muslim people can obtain the citizenship, and all those who convert from Islam to another religion lose it automatically.

The constitution of **Algeria** provides for freedom of conscience, declares Islam to be the state religion and prohibits state institutions from behaving in a manner incompatible with Islam. Moreover, the law grants all individuals the right to practice their religion as long as they respect public order and regulations.

Islam is the state religion also in **Egypt**. In particular, the 2014 constitution made the right to freedom of religion “absolute”. However, abuses and violent attacks against the Coptic Christian community targeted by armed groups, including DAESH, have not stopped.

This is also the case in **Libya**, where the political vacuum and weak security condition have created an environment conducive for terrorist groups to persecute Christians violently with impunity.

In **Syria** there is no state religion, and the regime has generally allowed freedom of worship as long as religious activities do not spill over into the political sphere. Moreover, the government tightly monitors mosques and controls the appointment of Muslim religious leaders. In opposition-held areas, freedom of worship in general prevails, except in the territory controlled by DAESH, where living Christian minorities are forced to pay special taxes and remove all external symbols of their faith.

Lebanon provides a completely different picture. In this country, the relationship between state and religion is based on the presence of two large religious groups. In this situation, which is unique in the Middle East and North Africa region, freedom of religion and belief is guaranteed by a carefully regulated system of distribution of public offices among the leaders of the religious groups, in order to avoid one community gaining the upper hand over the other. The impartiality of the state is not guaranteed by its secular nature, but by a counterweight system, that guarantees equal representation in the vital state institutions of the two religious communities.

While **Israel** defines itself as a Jewish state, Judaism is not the official religion of the state, and the institutions of the country are secular, although a number of domestic initiatives to change this have been recorded in recent times.

On the other hand, even if the **Palestinian Territories** lack a Constitution of their own, the Palestinian Basic Law declares Islam as the official religion, respect for the sanctity of all other monotheistic religions is guaranteed, and the principles of Islamic Shari'ah are the main source of law.

3. Implications on freedom of religion and belief

The impact that these different patterns of state-religion regulation can have on the respect for freedom of religion and belief is more evident in the following areas: apostasy, proselytism, blasphemy, places of worship¹⁰, registration of religious communities¹¹ and the religious symbols in the public space (such as wearing or displaying religious symbols in public space).

With reference to this last point, as stated during the PAM meeting in Rome, some of the traditional models of state-religion relations – and particularly those based on rigid separation of state and religious organizations, or strict identification of the state with one religion, are no longer working and need to be re-thought. Therefore, organization of the public space should be redesigned to reflect the current religious plurality which is considered an irreversible phenomenon of contemporary societies. As underlined by Dr Abdallah Redouane, Secretary General of the Islamic and Cultural Centre "The Great Mosque of Rome", the need to find a balance between human rights and religious rights is the biggest challenge that the northern democracies and the emerging ones in the south of the Mediterranean are facing, in order to be able to integrate and ensure the protection of the rights of all minorities who are part of society.

With reference to the issue of blasphemy, the need for a new approach to the relation between freedom of religion and freedom of expression has been strongly reiterated. The problem is frequently seen as a conflict between two fundamental rights of equal importance. However, as explained by the ECHR lawyers during the PAM Induction Seminar on Human Rights held in Strasbourg, from a human rights perspective, freedom of religion and freedom of expression are located on a legal continuum rather than standing in opposition to each other. Realizing that freedom of religion and belief cannot exist without freedom of expression (and vice versa) is a fundamental step towards defusing the unnecessary tensions that have recently obscured this issue.

In compliance with art 20(2) of the International Covenant on Civil and Political Rights, a number of European countries have started punishing hate speech directed against members of religious groups, as part of a broader system of protection that concerns individuals and groups identified according to characteristics such as colour, disability, ethnicity, gender, nationality, race, and sexual orientation. However, this shift from blasphemy laws to laws penalizing hate speech (including hate

¹⁰ Places of worship and cemeteries have become a primary target of destruction and desecration in many parts of the world. Even where such attacks are infrequent, building a place of worship may be the subject of legal restrictions and popular hostility (this is the case of building mosques and minarets in some European countries).

¹¹ Religious communities need to perform some basic activities, such as renting or buying premises, opening bank accounts, receiving donations from their faithful etc. In many countries such activities can be performed only by religious communities that are registered or recognized at local or national level. States enjoy some discretion in this field.

speech against religion) has not yet taken place in most countries with a Muslim background, where traditional blasphemy laws still prevail.

TOLERANCE, PLURALISM AND DIALOGUE IN THE MEDITERRANEAN

During the PAM meeting on interreligious dialogue held in Rome, participants stated that, when dealing with the present international situation of great cultural tensions and growing religious intolerance, religion itself is not the problem. On the contrary, it can and should be part of the solution, as a tool for promoting non-violent civic engagement, conflict-resolution and reconciliation. Moreover, they recognized that the religious-inspired political violence is often characterized by doctrinally weak religion. Such a pattern has been observed in the personal and religious background of the terrorists who committed attacks in Europe.

Promoting knowledge and education, developing international programs aimed to increase respect for freedom of religion and expression, and revising school textbooks so that they provide cross-cultural information and counter the threat of conflict the risk of a “clash of civilisations”, are some of the proposals made on that occasion.

Moreover, they emphasized a conception of secularism that incorporates values of different faiths by recognizing the cultural and educational values, calling for the re-designation of the public space in order to reflect the current religious plurality, which is considered an irreversible phenomenon of contemporary societies.

This can be achieved by raising public awareness that freedom of religion and belief is a key human rights issue. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the 1981 United Nations Declaration on Religious Intolerance and, in Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) offer a set of legal instruments that contain legal provisions that effectively protect the freedom of religion and belief of individuals and communities, including minority religious communities that are the most exposed to acts of intolerance and persecution.

PROMOTION OF CULTURAL AND EDUCATIONAL POLICIES BY PAM NATIONAL PARLIAMENTS

Participants at both PAM meetings agreed that more cross-cultural and inter-religious dialogue is needed to combat religious intolerance, to overcome cultural misunderstanding and mistrust and build a more peaceful environment. Therefore, the need to develop policies and educational strategies, and facilitate a proactive role for religious leaders and institutions in combating religious intolerance and building mutual understanding has been strongly reiterated.

In this context, parliamentarians, as representatives of the region’s peoples, must act on the front line to promote dialogue not only between the members of Parliaments, but also inter-university encounters at student and professorial level and inter-parliamentary exchanges. Moreover, as stated in the PAM resolution on “The role of parliaments in fostering the dissemination of knowledge about the major civilizations and religions of the Mediterranean Basin and the promotion of

dialogue between them”,¹² parliamentarians can and should move beyond high-level diplomacy and conservative, rigid positions and envisage new ways of settling the conflicts and breaking the political deadlocks that are holding back the region’s development. A key tool to achieve this is the inter-parliamentary cooperation, which is essential in managing the problems that all the countries of the Mediterranean region are facing jointly.

As suggested by the PACE Rapporteur, Ms Anne Brasseur, in her report Doc. 13142 and Resolution 1929 (2013) on “Culture and education through national parliaments: European policies” of the Parliamentary Assembly of the Council of Europe (PACE), interreligious dialogue is a constituent part of intercultural dialogue. Therefore, policies should also take account of the need to encourage religious communities to engage actively in promoting human rights, democracy and the rule of law in a multicultural Europe.¹³

Moreover, in its Recommendation 1962 (2011) on the religious dimension of intercultural dialogue, PACE recommends “the public authorities at local and national levels facilitate encounters organised in the framework of inter-religious dialogue and encourage and support projects jointly conducted by several communities, including humanist and non-religious associations, that seek to consolidate social bonds and that “States and religious communities review together, on the basis of the guidelines provided the questions regarding teaching on religions, denominational education, and training of teachers and of religious ministers or those with religious responsibilities, according to a holistic approach”. In this context, in her report Doc. 13142, Ms Anne Brasseur states that Parliaments should create an institutional and legal framework that offers all necessary conditions for cultural democracy and intercultural dialogue. This includes, of course, fully fledged non-discrimination legislation and the establishment of independent bodies entrusted to scrutinise its effective implementation, but should also comprise a well-established democratic culture within the whole range of public authorities and administrations. These should respect neutrality when cultural and religious matters are at stake, and at the same time should be sensitive and responsive to the expectations of a culturally diverse population.

CONCLUSIONS AND WAY AHEAD

All States have the necessary role and the duty of establishing the proper conditions for religious pluralism. Freedom of thought, conscience and religion is an inalienable right, one of the foundations of a “democratic society”, and one of the most vital elements of every person’s identity, and should be placed in a much broader framework of the system of relations between states and religions, by promoting the inclusion of all religious groups and avoiding forms of exclusion and discrimination of religious minorities.

At the time of drafting this report, PAM is organizing, together with Parliament of Morocco, a Meeting for of PAM Delegations to the Western Mediterranean Group - 5+5 Dialogue, on "The fight against terrorism and violent extremism in the Mediterranean, what cooperation between the two shores (the Moroccan model)", which will take place on 9-11 February 2017, in Rabat, Morocco.

¹² The Resolution was adopted by consensus by the 3rd Committee and by the 2nd Plenary Session of the Assembly, 24 November 2007, St. Julians (Malta).

¹³ See item 3.5 of the White Paper on Intercultural Dialogue, op. cit.

In relation to the peaceful coexistence, cohabitation and interest in the entire Mediterranean region, and in line with what was already suggested by PAM at the joint UN/IPU/PAM conference in Aswan on 31 January – 2 February 2017, it is proposed that in 2017 or 2018 a large regional conference for all PAM countries takes place. This event would be held together with the appropriate bodies of the United Nations, the European Institutions, the Arab League, the Organization of Islamic Cooperation, and religious leaders of the entire region, the various national realities, the legislative frameworks, the way they are implemented, and identify those critical actions necessary to ensure the attention and action considered as necessary by PAM MPs to address effectively the question. Therefore, it is recommended for the Secretariat to identify a PAM country ready to host this conference.