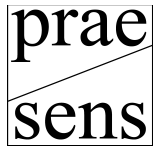
prae
sens

Religion in Austria is peer-reviewed

Hans Gerald Hödl and Lukas Pokorny
(editors)

Religion in Austria

Volume 2

PRAESENS VERLAG

Published with support from the
Kulturabteilung der Stadt Wien, Forschungs- und
Wissenschaftsförderung
and the Research Platform *Religion and Transformation in Contemporary European Society*

Layout
Julia Peitl

Cover art
Simon Steinbeiss

The emblems on the previous page and the front cover show widely used logos (Soka Gakkai International, the Unification Movement) and symbols, representing the religious context and the religious groups discussed in this volume. Permission to reproduce the logos has been granted by the respective organisations. The emblems signify (from left to right) Soka Gakkai International, Sephardic Jewry, the city of Vienna, the Unification Movement, and the Republic of Austria.

Bibliographic information published by the Deutsche Nationalbibliothek
The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at http://dnb.dnb.de

ISBN 978-3-7069-0836-8

Contents

„Sekten“ im Schussfeld von Staat und Gesellschaft. Ein Angriff auf Religionsfreiheit und Religionspluralismus

by Christian Brünner. Schriftenreihe Colloquium Band 10. Wien: Verlag Österreich, 2004. Pp. 123. ISBN: 3-7046-4413-7. €28.80

Lukas Pokorny

With the commencement of the *Bundesgesetz über die Einrichtung einer Dokumentations- und Informationsstelle für Sektenfragen (Bundesstelle für Sektenfragen)* (EDISG; Federal Law concerning the Establishment of a Documentation and Information Office for Sect Affairs [Federal Office for Sect Affairs]) in September 1998 (BGBl I 150/ 1998), the term *Sekte*—after a long absence—re-entered Austrian legal terminology.[1] By contrast the domestic political discourse has never let go of nor even tried to critically reconsider the use of the term or other related pejorative designations as can, for instance, be seen in the idiosyncratic wording of the National Assembly's resolution of July 14, 1994 (E 155-NR/XVIII.GP), which gave way to the aforementioned legislative act. There the Federal Government was requested to address and take measures to publicly inform about so-called 'sects, pseudo-religious groups, associations and organisations as well as destructive cults' (*Sekten, pseudoreligiöse Gruppen, Vereinigungen und Organisationen sowie destruktive Kulte*). In both the legal and the political context, a negative connotation is assigned to *Sekte*, echoing its derogatory usage in common parlance. §2 and §4.1 of the EDISG indicate that a *Sekte* is a 'faith-related community' (*glaubensbezogene Gemeinschaft*) or a 'community centring around a particular world view' (*weltanschauungsbezogene Gemeinschaft*) from which a threat may arise for one's life or physical/mental health, the free development of one's personality including the freedom to join or leave such community at will, the integrity of family life, one's possessions or financial independence, or the unhindered intellectual and physical development of children and adolescents. Apart from the

1 Before the term *Sekte* was included in the Penal Law Code (*Strafgesetz*) of 1803 and 1852 as well as in the reissuing of the latter in 1945.

harsh meaning attributed in the statutory usage, the term essentially does not render a clear definition possible and as such remains rather vague, as is regularly pointed out by Austrian legal scholars. The combination of both, that is, an ill-defined and elastic term entailing the image of latent or factual danger, makes it imperative to only apply it very cautiously in an official context. At best, however, the term ought to be simply replaced—suggestions, of which indeed every single one is better suited, are abundant. What is adding to the problem is the ever-present referential nexus. That is to say, the potentially harmful character ascribed to a given movement by employing the label *Sekte* is by extension imputed to its members. Similarly, because the term has its firm place in popular language (incidentally, with a meaning very much akin to the legal understanding), generalisation may naturally follow involving religious groups outside the dominant religious culture, creating an *a priori* blanket judgement towards the (marginal) religious *other*. Against this backdrop, government institutions must exercise all the more prudence vis-à-vis religion and religious movements.

Taking this as a premise, the study investigates the varied legal implications that arise once due diligence—that is, the principle of the state's religious neutrality—has obviously been neglected. The case upon which the author draws to make his reflections in particular concerns a CD (compact disc) providing information on 'cults' (*Sekten*) and 'religious groups and streams' (*religiöse Gruppen und Strömungen*), released in 2002 by the Family Department of the Upper Austrian Provincial Government (*Familienreferat der Oberösterreichischen Landesregierung*). The CD entitled *Auf der Suche nach dem Sinn* (On the Quest for Meaning) was produced in close collaboration with the 'sect advice centre' (*Sektenberatungsstelle*) of the Roman Catholic diocese of Linz. That a government institution disseminates information materials on religious movements (also being made freely accessible for pupils and teachers via the Upper Austrian school intranet), which have largely been compiled and created by representative/s of one religion—namely the Catholic Church—is a prima facie case of a government institution exceeding its authority. To examine this further the author Christian Brünner (b. 1942), now professor emeritus of public law at the University of Graz, prepared a legal opinion (Brünner 2003) entitled *Gutachten zur Frage der rechtlichen und verwaltungspraktischen Determinanten staatlicher Information betreffend "Sekten"* (Expert Opinion on the Issue of Legal and Administrative Determinants of State Information concerning 'Sects') in March 2003, the reproduction of which (pp. 29-85) makes up the main part of the book. The Appendix (pp. 85-123) contains a number of crucial documents pertaining to the right to freedom of thought, conscience, and religion devised by various international governmental

organisations (UN, OSCE, Council of Europe, EU, UNESCO) in recent years. Additionally, in a preface Richard Potz (b. 1943), today professor emeritus of canon law at the Department of Legal Philosophy, Law of Religion and Culture, University of Vienna, briefly introduces and critically comments on Brünner's assessment (pp. 19-27). A former rector at the University of Graz (1985–1989), member of the Austrian parliament (1990–1994), and member of the Styrian *Landtag* (1995–2000), Brünner has been a major voice against religious discrimination particularly over the past ten years. He is a founding member and former president of the NGO *Forum Religionsfreiheit Europa* (Forum for Religious Freedom Europe), in short *FOREF Europa* (cf. p. 133, note 19),[2] publishing widely on the subject (see, for example, Brünner 2009 and 2011; Brünner and Neger 2011 and 2012).

Chapter 1 (pp. 29-31) of the expert report succinctly outlines the contents of the said CD, stressing that the evaluation does not consider the quality of the information provided but instead focuses merely on the legal dimension prompted by a twofold observation involving government institutions that apparently contributed to the project—namely, the Family Department of the Upper Austrian Provincial Government, the Federal Office for Sect Affairs, and the Austrian Federal Ministry of Social Security and Generations (*Bundesministerium für soziale Sicherheit und Generationen*; dissolved in 2007). Firstly, that warning against religious movements is issued and, secondly, that private institutions—or more specifically those of the Roman Catholic diocese of Linz—are being subsidised (or at least asked) for their engagement in supplying related information and consulting. The following main chapter (pp. 31-85), besides the concluding remarks, is divided into four subsections, analysing aspects of (1) constitutional law and (2) civil law, and touching tersely on issues of (3) criminal law and (4) administration. Brünner begins with a discussion of the legal framework surrounding state-conducted information gathering and provision. Next, he elaborates on the EDISG and pertinent Austrian, German, and EU jurisdiction, the former through reference to two cases where religious groups—*Universelles Leben* (Universal Life) and the Sri Chinmoy movement—applied to the court in view of information given in the notoriously polemic brochure *Sekten – Wissen schützt!* Sects – Knowledge Protects) published by the Federal Ministry of Environment, Youth and Family (*Bundesministerium für Umwelt, Jugend und Familie*) in 1996 (reissued in 1999). He contends that governmental information involving religious movements certainly qualifies as exercise of public power, which would

2 The legal opinion upon which the book is based was officially commissioned by FOREF and presented to the public in a press event in Linz on March 28, 2003.

render the providing institution potentially liable (pp. 37 and 75). In the light of fundamental human rights principles and based on an exploration of the EDISG, Brünner argues that documentation and information activities effectively trench upon the right of freedom of thought, conscience, and religion. It would therefore suffice to cultivate conscious citizens with a distinctly critical faculty (p. 47) rather than engaging in cult monitoring, a position receiving critique by Potz in the preface (p. 22). Brünner goes on to dismiss the argument that warning and criticism have to reach a certain intensity before a violation of the basic right of freedom of religion takes place (p. 54). He emphasises the *Bewertungszusammenhang* (evaluative nexus), saying that critique, whatever its intensity, raised against a particular group does naturally affect its individual members (p. 56). In fact, the use of the term *Sekte* itself would already interfere with constitutional obligation because it does contain a clearly negative value judgement and as such contradicts the necessity of religious neutrality (p. 61). Conversely, a monitoring body such as the *Bundesstelle für Sektenfragen* may not arrive at a judgement by induction, that is, establishing general assumptions based on the assessment of individual action, which would infringe the requirement of objectivity (p. 46).

Brünner holds that in general a private institution may be assigned the task of collecting information about religious movements but must then adhere to the same catalogue of constitutional principles including religious neutrality. He makes clear, with an eye to the said CD, however, that devolving such task unto a private *religious* institution is *eo ipso* highly problematic and eventually represents a breach of constitutional law (p. 65). Ultimately, Brünner concludes that the state must not decide what group qualifies as a *bona fide* religion. In extension and based on the prior legal analysis, the governmental institutions involved in the production or circulation of the said CD violate constitutionally guaranteed human rights and the constitutional precept of utmost neutrality and objectivity.[3] Another grave legal shortcoming of current information practice, according to Brünner, pertains to procedural law (pp. 70-71). Members of religious groups

3 In respect to the CD, Brünner also notes the problem of negligently presenting religious groups or streams of different legal status in a predominantly cautionary context without distinction. Both a gesetzlich anerkannte Religionsgesellschaft (Legally Recognised Religious Society) and an eingetragene Bekenntnisgemeinschaft (Registered Confessional Community) are by definition not or not potentially dangerous, contrary to a Sekte according to the EDISG (p. 51). In this regard, it is particularly worrying that according to §1.2 of the EDISG, Legally Recognised Religious Societies are exempt from this legislation whilst Registered Confessional Communities are not expressly excluded: 'Auf gesetzlich anerkannte Kirchen und Religionsgesellschaften und ihre Einrichtungen findet dieses Bundesgesetz keine Anwendung'.

must, amongst others, be notified if any documentation and information activities are carried out, be granted the right to inspect relevant records (whilst of course respecting third party rights), and receive the permission to be formally heard prior to the possible issuance of a warning. As previously mentioned, Brünner expounds that cult information activities by the State also have a civil law dimension (e.g., public liability, defamation). Moreover, criminal offences such as vilification of religious teachings, libel and slander need to be considered.

Brünner's expert scrutiny is indeed an important and formally solid (though I wonder, for example, about his understanding of the difference between religiosity and spirituality which he does not follow up) contribution (p. 27). Based on an individual case—the publication of a CD with rather questionable contents concerning Austria's religious diversity—he challenges general legal practice and jurisdiction in Austria. The comments by Potz (a leading authority on Austrian and European religious law), albeit very compact, show that Brünner's reasoning is not entirely uncontested; however, it assuredly occupies an original and much-needed perspective in the debate. Notably, I agree with Potz (p. 25) that government-administered documentation and information service is basically justified provided it does not take the form of a 'major legislation on sects' and is solely limited to the pursuing of a high-quality scholarly approach. Brünner rightly draws attention to a number of legal deficiencies that noticeably encroach upon fundamental human rights, and thus represents a major exhortation to introduce change. Austrian religious law still has quite a bit of leeway for improvement. Here Christian Brünner's study supplies some helpful means, strengthening the rights and status of the adherents of religious minorities.

References

Brünner, Christian (2003), Gutachten zur Frage der rechtlichen und verwaltungspraktischen Determinanten staatlicher Information betreffend "Sekten", Graz: n/a

Brünner, Christian (ed.) (2009), Diskriminierung aus religiösen Gründen, Wien: Verlag Österreich

Brünner, Christian (2011), 'Religiöse Diskriminierung im säkularen Staat – Eine Einführung', in: Religion – Staat – Gesellschaft: Zeitschrift für Glaubensformen und Weltanschauung/Journal for the Study of Beliefs and Worldviews (Special Topic: Religious Intolerance and Discrimination in Selected European Countries – Part I), 11 (2), 2010, pp. 105-124

Brünner, Christian and Thomas Neger (2011), 'Österreich/Austria', in: Religion – Staat – Gesellschaft: Zeitschrift für Glaubensformen und Weltanschauung/Journal for the Study of Beliefs and Worldviews (Special Topic: Reli-

gious Intolerance and Discrimination in Selected European Countries – Part II) 12 (1), pp. 79-142

Brünner, Christian and Thomas Neger (2012), 'FECRIS and Its Affiliate in Austria: State and Mainline Religions Against Religious Diversity', in: Religion – Staat – Gesellschaft: Zeitschrift für Glaubensformen und Weltanschauung/Journal for the Study of Beliefs and Worldviews (Special Topic: Freedom of Religion or Belief: Anti-Sect Movements and State Neutrality, A Case Study: FECRIS) 13 (2), pp. 307-339

Bundesgesetzblatt für die Republik Österreich [Federal Law Gazette of the Republic of Austria], issued on January 9, 1998, Teil I, 19. Bundesgesetz: Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften, http://www.ris.bka.gv.at/Dokumente/BgblPdf/1998_19_1/1998_19_1.pdf (accessed: May 12, 2014)

Bundesgesetzblatt für die Republik Österreich [Federal Law Gazette of the Republic of Austria], issued on August 20, 1998, Teil I, 150. Bundesgesetz über die Einrichtung einer Dokumentations- und Informationsstelle für Sektenfragen (Bundesstelle für Sektenfragen), http://www.ris.bka.gv.at/Dokumente/BgblPdf/1998_150_1/1998_150_1.pdf (accessed: May 12, 2014)