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*Religion in Austria* is peer-reviewed

Hans Gerald Hödl and Lukas Pokorny  
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# Religion in Austria

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## **Staat und „Sekten“: Staatliche Information und Rechtsschutz.**

Edited by Heinz Mayer. Schriftenreihe Colloquium, Band 3.  
Wien: Verlag Österreich, 2001. Pp. 159. ISBN: 3-7046-1687-7. €21.66

*Lukas Pokorny*

In the aftermath of the critical “Report on the Activity of Certain New Religious Movements Within the European Community” (cf. Chryssides and Wilkins 2006: 386-397)—which itself had only little impact on the situation of new religious movements in Europe—that was submitted by the Committee on Youth, Culture, Education, Information and Sport of the European Parliament in 1984, Europe’s political discourse throughout the 1990s took a heightened interest in the phenomenon of new religiosity.<sup>1</sup> Recommendation 1178 of February 1992, on ‘Sects and New Religious Movements’ by the Parliamentary Assembly of the Council of Europe (cf. Parliamentary Assembly 1992), effectively set the ball rolling for pertinent legislative action. Whereas “major legislation on sects” was deemed “undesirable, since such legislation might well interfere” with “the freedom of conscience and religion guaranteed by Article 9 of the European Convention on Human Rights” as well as “harm traditional religions”, it was made clear “that educational as well as legislative and other measures should be taken in response to the problems raised by some of the activities of sects or new religious movements” (an odd distinction of which, incidentally, no defining explanation is given in this or any related documents). The Parliamentary Assembly emphasised that genuine monitoring of ‘sect activities’ and public circulation of relevant information thereof are recommended in order to curb potential dangers arising from scattered groups. Following this recommendation, the Council of the European Union was advised to accordingly introduce measures of information, which, consequently, prompted

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<sup>1</sup> Commonly, the report is called ‘Cottrell Report’ referring to the Committee’s rapporteur and then British Member of the European Parliament Richard J. Cottrell (b. 1943). The report was prompted by ‘anti-cult’ organisations that had approached members of the European Parliament with complaints, especially concerning activities of the Unification Movement (UM).

various European countries to constitute parliamentary committees of enquiry in order to investigate the local situation of new religious movements. In this way, on July 14, 1994, the Austrian Federal Government was requested by a resolution of the National Assembly (E 155-NR/XVIII.GP) to take concrete measures regarding ‘sects, pseudo-religious groups, associations and organisations, as well as destructive cults’ (*Sekten, pseudoreligiöse Gruppen, Vereinigungen und Organisationen sowie destruktive Kulte*). In a first step, that resolution led to the publication of a much-criticised information brochure that was released by the Federal Ministry of Environment, Youth and Family (*Bundesministerium für Umwelt, Jugend und Familie*) in 1996—*Sekten – Wissen schützt!* (‘Sects – Knowledge Protects!’) (Kalb, Potz, and Schinkele 1999: 355-356). Finally, on September 1, 1998, based on 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]) (*BGBI I 150/ 1998*), a monitoring, information, and advisory body was launched, namely the Federal Office for Sect Affairs, under the supervision of the Federal Ministry of Environment, Youth and Family, today’s Federal Ministry of Family and Youth (*Bundesministerium für Familie und Jugend*). According to §1.1 of the *EDISG*, the purpose of the Federal Office is to “document and, on that basis, to inform of threats that may arise from sects or sect-like activities”.<sup>2</sup> A state-run institution, the Federal Office must adhere to the principles of non-confessionality and religious neutrality. State-conducted gathering and provision of information and counselling on distinct religious movements may easily come into conflict with the latter and so jeopardise the rule of law. This tension between legal protection and government action constitutes the point of departure for this edited volume. Three questions crucial in this respect are raised in the preface (p. 9): “To what extent is it the obligation of a religiously neutral state to issue ‘warnings about sects’? May the state assess religious movements by qualifying them as ‘sects’? Which legal protection exists for religious minorities?”<sup>3</sup> Although published back in 2001, with three of the seven chapters based on contributions to a legal symposium on “State Information on Religious Minorities” held at the University of Vienna a year earlier, the contents of

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2 “[...] Gefährdungen, die von Sekten oder von sektenähnlichen Aktivitäten ausgehen können, zu dokumentieren und darüber zu informieren”.

3 “In welchem Umfang kann es die Aufgabe des religiös neutralen Staates sein, ‘Sektenwarnungen’ von sich zu geben? Kann und darf der Staat religiöse Bewegungen bewerten, indem er sie als ‘Sekten’ qualifiziert? Welchen Rechtsschutz gibt es für religiöse Minderheiten?”



the edited volume have not lost any significance and topicality. Both the *EDISG* and the Federal Office continue being active.

The volume's editor, Heinz Mayer (b. 1946), a well-known Austrian legal scholar and now professor emeritus at the Department of Constitutional and Administrative Law at the University of Vienna, opens the discussion (pp. 19-28). From the perspective of constitutional law, Mayer takes a look at legal protection (*Rechtsschutz*) in regard to publicised warnings about 'sects' by the state. He reasons that once cautioning or criticism reaches to a certain level of intensity, so that it might possibly result in particular 'inconveniences' (such as social ostracism) for a member of a movement, it would present a fundamental right violation. Administrative action (*Verwaltungshandeln*) accordingly becomes a de facto official act (*faktische Amtshandlung*), of which an infringement of a fundamental right can be challenged at court. Alfred J. Noll (b. 1960), a Vienna-based lawyer and docent (now professor) specialising in Public Law and Jurisprudence at the University of Natural Resources and Life Sciences, Vienna, takes on the subject from the perspective of civil law (pp. 29-36). He emphatically shows that, in fact, none of the means of legal protection against libel and falsehood commonly available in the Austrian legal system (such as the possibility to ask for injunction and revocation) are applicable vis-à-vis public entities and their organs; a gap in legal protection deliberately ignored by the Austrian Supreme Court of Justice, a view also affirmed by Jürgen Noll (b. 1975) in the next chapter (pp. 42-43). Noll, at the time of publication legal scholar and research assistant at the University of Vienna's Department of Business Administration (now lecturer at FHWien University of Applied Sciences), investigates the use and meaning of the term *Sekte* ('sect' or 'cult') in the *EDISG* (pp. 37-54). Drawing on a short etymological analysis and by looking at the negative and vague connotation of the term in ordinary usage, he concludes that *Sekte* does not qualify as an adequate *verbum legalium*, which he sees confirmed through the ambiguity of key passages in the legal text. He notes that although the law apparently applies the term *Sekte* also to State-registered religious confessional communities (*staatlich eingetragene Bekenntnisgemeinschaft*)—since they are not explicitly exempted from the scope of the law (§1.2) like Legally Recognised Churches and Religious Societies (*gesetzlich anerkannte Kirchen und Religionsgesellschaften*)—they do not meet the definition given for a *Sekte*<sup>4</sup> and, therefore, they too must be excluded from the area of legal application. State-registered religious confessional communities obtained their

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4 That is to say, a 'faith-related community' (*glaubensbezogene Gemeinschaft*) or a 'community centring around a particular worldview' (*weltanschauungsbezogene Gemeinschaft*) from which a threat may arise.

level of state recognition following an examination procedure in which their absolute conformity with the legal environment, that is, the inexistence of potential threats, was ascertained.<sup>5</sup> As such, the *EDISG* only ought to apply to loosely organised religious groups or religious movements incorporated as associations (*Vereine*). However, Noll eventually argues that in dealing with those groups to which the *EDISG* is applicable, information activity by the state—especially considering that this occurs before any infringement has been even committed by a group or individual—must be cautious and mindful of the principle of proportionality (*Verhältnismässigkeitsprinzip*), since public reporting would encroach upon fundamental rights (p. 54). In the fourth chapter (pp. 55-78), Christian Brünner (b. 1942), now professor emeritus of public law at the University of Graz, sheds light on the state of religious freedom in Austria as seen through the legal framework of (new) religious groups and the domestic anti-cult milieu. The essay, written in English, is based on lectures held at two conferences (Washington and Tōkyō) of the UM-affiliated International Coalition for Religious Freedom (“Religious Freedom in Europe” and “European Perspective on Religious Freedom”), and the twelfth CESNUR conference in Torino (“The State of Religious Freedom and Anti-Cult Movements in Austria”), all three held in 1998. Brünner provides a handy compilation of key information on the subject. Starting with a brief outline of the value and status of (largely Catholic) religion among Austrians, he then moves to a list of stereotypical harmful activities attributed to sects/cults in the anti-cult literature and, in part, beyond. Sub-section 3 itemises relevant hard law and soft law regulations on the European level, whereas sub-section 4 delineates the anti-sect scene and some of its activities in Austria. Brünner goes on to overview the cornerstones of Austrian religious law, and in particular the *EDISG*, of which he is a vocal critic, concluding that the “law threatens the right of respect for private and family life, the freedom of thought, conscience and religion and the freedom of expression” (p. 73). He adds alarmingly that “Austria is playing a leading role in the anti-cult policy and legislation but in a way which threatens the state of religious freedom” (p. 74) in the country. Rejecting the constitutionality of the Federal Office for Sect Affairs in its current form, Brünner points to the London-based Information Network Focus on Religious Movements (INFORM) as a better, that is, a more objective alternative. He proposes that indeed “regulations should follow the philosophy of Mrs. Eileen Barker [b. 1938; a well-known British sociologist

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5 Austrian religious law comprises three levels of state acknowledgement for religious movements—i.e., associations, State-registered Religious Confessional Communities, and Legally Recognised Churches and Religious Societies—connected to a rise in legal status (for the latter, in public privileges as well).

of religion and the founder of INFORM] [...]: ‘No advice or counselling, only information is given!’” Brünner ends with a number of action points and guidance that, he opines, need to be addressed in order to end discrimination especially of religious minorities—for example, to avoid pejorative labels such as ‘sect’ or ‘cult’ in the academic and public discourse, or to establish world-wide databanks of religious movements which are run by non-governmental, independent institutions, adhere to scholarly standards, and engage in informing instead of counselling such as INFORM (p. 76). The remaining three chapters take the focus away from Austria and introduce the German (Armin Piki) and the French context (Alain Garay and Gerson Kern). Piki, a German lawyer, perceptively examines legal protection concerning warnings released by the state in Germany (pp. 79-108). Like Alfred Noll, who used to be litigator for the Austrian Sri Chinmoy movement, Piki’s expertise also draws on pertinent practical experience as a Jehova’s Witnesses solicitor. He alerts that—similar to the Austrian case—there is in fact only limited legal protection against state-issued warnings dealing with so-called sects. Piki contends that such warnings bear noticeably negative ramifications for those groups, and undoubtedly trench upon state-protected freedom of religion (p. 86-87). He continues by arguing that the state by virtue of its religious neutrality must not: (i) evaluate religious tenets in terms of ‘good’ and ‘bad’, ‘useful’ and ‘harmful’, or ‘desired’ and ‘unwanted’, etc; (ii) categorise or ‘hierarchisise’ religion in terms of value; and (iii) impinge on the freedom of conscience, religion, and belief of any of its citizens because certain religious convictions are held to be uncondusive (p. 96). Overall, the German legal system would in principle offer ample opportunities to take matters relating to state activities to court, in spite of their definition as simple or informal administrative actions (*einfaches or informales Verwaltungshandeln*), which indicates the lack of an ‘imperative element’ leading directly to fundamental right encroachment (p. 104). Yet, ultimately, the actual application of law so far proved to be largely deficient, effectively hampering legal protection especially for religious minorities. Switching to France, Alain Garay, a French attorney specialising in religious freedom cases and Jehova’s Witnesses counsel, who has challenged state practice in a number of countries, including Austria, before European courts, contributes an essay written in French on the anti-cult campaign in France (pp. 109-135). Garay’s essay is summarised and commented in the final chapter of the volume by Gerson Kern, an Austrian legal scholar (pp. 137-158). Garay’s tour d’horizon of the action taken by the French authorities to combat ‘sects’ in the mid- to late 1990s reveals a veritable state-orchestrated ‘sectophobia’, as Kern calls it (p. 141). Devoid of a proper definition, the state via the intelligence service of the national police

(*Renseignements Généraux*) adopted a polemic typology devised by anti-cult groups to describe sects, of which 173 were identified as being active in France. Its 1995 report on sect activities evoked a number of political measures that resulted in state-wide discrimination of religious minorities. For instance, already in early 1996, the minister of justice called upon the public prosecutors to resort to a stricter application of existing laws towards 'sects'. A year later, the minister of the interior announced that the issue of combatting sects was of national priority. In 1998, a monitoring institution, the infamous *Mission interministérielle de lutte contre les sectes* (Interministerial Mission for Combatting Sects/Cults) was established (pp. 114-115), which was replaced in 2002 by the *Mission interministérielle de vigilance et de lutte contre les dérives sectaires* (Interministerial Mission for Monitoring and Combatting Sectarian/Cultic Deviances). The political and administrative discourse created an atmosphere of general suspicion, a downright legal "witch hunt" (*chasse aux sorcières*) towards non-mainstream religion (pp. 126-127), a situation that has however improved in recent years. Kern, in his final remarks, refers to this "climate of uncertainty and disinformation", recognising it as the matrix for panic and persecution, which can only be eliminated once the state and concomitantly the media function as a 'corrective', changing the climate for the better. For Kern, sect monitoring facilities are thus an indicator that the state still performs "disproportionate discrimination" (*unverhältnismäßige Ungleichbehandlung*) (pp. 156-158). His bottom line connects to the golden thread that permeates the entire volume, namely that religious minorities and their adherents—be it in Austria, Germany, or France—face discriminatory treatment by the state, a devastating verdict indeed that is still valid today.

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