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BILL TO REINFORCE THE FIGHT AGAINST CULTIC DEVIANCES

**A REAL THREAT TO FREEDOM OF CONSCIENCE,
OF RELIGION AND BELIEF**

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Summary

The bill "aimed at reinforcing the combat against cultic deviances" was presented to the Council of Ministers on November 15, 2023, and discussed in plenary session in the Senate on December 19[1], where it was amended and then forwarded to the National Assembly's Law Commission (under an "accelerated procedure"). A rapporteur, Madame Brigitte Liso, was appointed on January 10, 2024. The bill will be discussed in committee on February 7, 2024, and in public senate on February 13 and 14. if passed into law, it would seriously undermine basic principles of freedom of conscience, religion and belief, and poses real problems of conventionality and conformity with the French Constitution and international law on fundamental freedoms.

- Article 1 of the original draft was withdrawn by the Senate, but the current rapporteur now wants to reintroduce it. Its aim was to create a new offence in the penal code of "placing or keeping in a state of psychological or physical subjection". **Psychological subjection" (or mental manipulation) is a pseudo-scientific concept** repeatedly rejected by scientists the world over, whose application to criminal law, and in particular to the religious and spiritual sphere, represents a danger to democracy and fundamental freedoms. The ECHR itself has already ruled ***that*** "***there is no generally accepted and scientific definition of what constitutes "mind control"***".

The adoption of this article would lead to the **criminalization of numerous practices,** which could easily be considered as "techniques capable of altering judgment" leading to psychological subjection. It would also lead to a worrying trend in criminal law, allowing psychiatrist to interpret vague legal definitions, since in the end, it would be the appointed psychiatrist who would be called upon to decide on the validity of a religious or spiritual practice, and the validity of a devotee's consent to a particular faith and practices.

[1] https://www.senat.fr/dossier-legislatif/pjl23-111.html

- Article 1a (new) of the bill aims to 1) fix in law the existence and mission of Miviludes, 2) introduce a general and absolute exception to the right of access to administrative documents for referrals to Miviludes, and 3) confer immunity from prosecution on the President of Miviludes for comments made in the Miviludes annual report, for which he alone would be responsible. These provisions are unconstitutional for several reasons: 1) they do not fall within the scope of the law within the meaning of article 34 of the Constitution (which regulates the distinction between the legislative and the executive power), and are as unnecessary as they are dangerous; 2) they constitute a disproportionate infringement of the constitutional right to hold the administration to account; and 3) they infringe the principle of equality and accountability.

- Article 2 *bis* (new) makes the statute of limitations run from the victim's majority for the offence of fraudulent abuse of a state of ignorance or weakness. However, derogations from the rules of prescription should be reserved for the most serious and damaging offenses. Derogating from these rules for the offence in question would open the way to multiple derogations, notably for more severely punished offences. The criminal statute of limitations would be completely overturned. Secondly, this de facto extension of the statute of limitations would, in practice, run up against an evidential difficulty for the offence in question: the assessment of a state of psychological subjection - a concept on which there is no scientific consensus - already appears risky when it occurs contemporaneously.

- Article 3 of the draft law would enable associations antagonistic to minority religions, some of whom may be entirely financed by the State and known for their discriminatory practices towards religious minorities, to act as civil parties (plaintiffs) in lawsuits that would otherwise not concern them at all, thus seriously undermining the right to a fair trial guaranteed by the article 6 of the European Convention on Human Rights.

- Article 4 of the initial bill, against the advice of the Conseil d'Etat, (French supreme administrative court which has also a role of advisor to the government when it comes to draft laws), creates an offence of "provocation to abandon or refrain from following a therapeutic or prophylactic medical treatment". The Conseil d'Etat considered that this article would allow "the criminalization of challenges to the current state of therapeutic practices", endangering "the freedom of scientific debate and the role of whistle-blowers. It considered that "such provisions constitute an attack on the exercise of freedom of expression", and advised the government, in vain, to withdraw the article. Whilst this article may only affect some peripheral religious practices it shows the intolerance of the drafters and intent to maintain a kind of “orthodoxy” with regards to medical treatments as it would potentially criminalise many areas of alternative medicine practice.

- Article 6 is designed to enable MIVILUDES (*Interministerial Mission of Vigilance and Fight Against Cultic Deviances*, a French governmental agency based in the Ministry of Interior, also known for its intolerance towards minorities) to be called upon by public prosecutors or the courts in the context of criminal proceedings. The Conseil d'Etat, in its November 9 opinion on the bill, considered "that a State service, not specially empowered as an expert before the courts, could not intervene on its own initiative in legal proceedings without **infringing the right to a fair trial** guaranteed by articles 16 of the Declaration of 1789 and 6 of the European Convention on Human Rights."

It is of special concern that this law is being proposed at this current time when the social and political climate in France makes it difficult to oppose such legislation due to such proponents being pilloried as would be tarred in the media as "cultists" or "cult apologists" without any regard to the basic principles of freedom of religion or belief.

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Development

Article 1 (withdrawn by the Senate)

Article 1 of the original bill, withdrawn in the version approved by the Senate, aimed to create a new offence in the penal code of *"placing or maintaining a person in a state of psychological or physical subjection resulting from the direct exercise of serious or repeated pressure or techniques designed to alter his or her judgment and having the effect of causing a serious deterioration in his or her physical or mental health, or of leading this person to an act or abstention which is seriously prejudicial to him or her"* (new article 223-15-3 of the penal code). While this offence appears to be modelled on the one created by the About-Picard law in 2001, which was already highly contested at the time of its adoption, it differs from the latter in several respects, and goes much further in terms of interference with freedom of religion and belief. Under the About Picard law, it was the offence of *"fraudulent abuse of a state of weakness created by psychological subjection"* which was punishable. It was therefore necessary to identify an abuse, a fraud, a "psychological subjection" (an indefinable pseudo-scientific term), all of which having to lead to an act or abstention seriously prejudicial to the person. Although, as mentioned above, this article was withdrawn from the bill by the Senate, the government and the rapporteur have announced their intention to reintroduce it at the National Assembly.

The About Picard law already heavily criticized at the time

Even back then, the law was heavily criticized. As Professor Patrice Rolland (An eminent jurist, university professor at Paris and member of the *École pratique des hautes études*) wrote in 2003[2] : *"In September 2000, the National Advisory Commission of Human Rights and the Human Rights League issued a negative opinion, which Parliament and the government took into account. The public commitment of the churches and representative bodies of the various religions was overwhelmingly critical and negative. The Council of Europe expressed strong mistrust of the law. Without concluding that there had been a clear violation of the European Convention on Human Rights, the Resolution adopted referred to the possible judgment of the European Court, and invited the French government to review the law"*.

However, the new bill goes much further. It is no longer fraudulent abuse that is punished, but simply "maintenance or placement in a state of psychological or physical subjection", with all the vagueness that this notion leaves (Patrice Rolland writes: "How can we define, for

[2] Archives De Sciences Sociales Des Religions, 2003, 121, (January-March2003)149-166. Patrice ROLLAND

example, what has the effect of creating psychological subjection? Can't a political party or a trade union also fall within the scope of such a question?) And it is no longer necessary for this placement or maintenance to result in "an act or abstention seriously prejudicial to the person", but only that "serious or repeated pressure" or "techniques likely to alter his judgment" have had "the effect of causing a serious deterioration in his physical or mental health".

It is easy to see how the continued insistence of a minister towards individuals to pray for forgiveness of sins, could also be characterised as psychological or physical subjection by a former church member. And what of monks and nuns who submit to a strict regime even more intensely that a normal parishioner? All that is needed is for an ex-parishioner to complain about how he was forced to pray when he did not really want to for a sin, which he no longer considers a sin,, or did not really think it was at the time but was so in the eyes of the minister; or for a nun to assert that she had been subject to a harsh physical/psychological treatment regime, after leaving the order – these examples could easily lead to a criminal action under the present law proposal.

All the "victim" has to do is obtain a psychiatric report which determines that there has been "psychological subjection" and that this subjection has created a serious deterioration in his or her mental health, for the offence to be characterized. Thus, the conclusion of the criminal case will rest solely on the arbitrariness of the psychiatric expertise, which alone will determine the outcome of the legal debate. When you consider that a not inconsiderable current of psychiatry considers religious belief to be the manifestation of a psychotic delusion, you can see the danger of leaving the conclusion of the trial in the hands of the "expert".

Psychological subjection: a pseudo-scientific concept

This is all the more dangerous given that the concept of "psychological subjection", interchangeable with those of "mental manipulation", "mind control" and "brainwashing", applied to "cults" or religious movements in general, has long been widely regarded as pseudo-science internationally.

This notion of "mind control" originated in the USA in the 50s, but was applied to new religious movements in the 1980s by psychiatrist Margaret Singer. Singer set up a task force on "Deceptive and Indirect Methods of Persuasion and Control" by minority religions, and submitted a report to the American Psychological Association (APA). On May 11, 1987, APA's *Board of Social and Ethical Responsibility for Psychology* formally rejected Singer's notions of "coercive persuasion". The APA Council declared that "in general, the report lacks the scientific rigor and evenhanded critical approach needed for APA imprimatur". In May 1989, the APA, the American Sociological Association, the Society for the Scientific Study of Religion and individual sociologists reiterated the APA's position in an amicus brief to the U.S. Supreme Court. They asserted that Singer's theories on religious brainwashing had "no scientific validity". Since then, American courts have consistently rejected these theories as applied to new religious movements.

Fascist Italy at the forefront of "mind control”

Closer to France, in Italy, an offence of mental manipulation known as "plagio" existed in the Penal Code, inherited from the Fascist period. Its use against minorities - first homosexuals, then Catholic charismatic priests, who were unpopular in the 1970s - led to the elimination of the article from the Penal Code by the Constitutional Court in 1981. “Plagio" was considered by academic psychiatry to be so vague and of such dubious existence that it constituted a danger to democracy.

ECHR confirms lack of scientific basis for mind control

More recently, the European Court of Human Rights, in its final judgment of June 10, 2010 CASE OF THE JEHOVAH WITNESSES OF MOSCOW AND OTHERS v. RUSSIA (Application no. RUSSIA (Application no. 302/02), noted in recital 110: "The Court observes at the outset that the term “coercion” in its ordinary meaning implies an action directed at making an individual do something against his or her will by using force or intimidation to achieve compliance", which effectively excludes the notion of "psychological subjection", which does not require any force or intimidation. Then, in response to the fact that "The Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, ‘mind control’ techniques and totalitarian discipline", the Court replied: "there is no generally accepted and scientific definition of what constitutes ‘mind control’".

The criminalization of beliefs and the psychiatricization of law

With the bill "aimed at reinforcing the fight against cultic deviances", any religious practice could be considered as "techniques capable of altering judgment". What about prayer, confession, mantra recitation, meditation practices, spiritual exercises like those of Loyola, or rigorous monastic practices? Obviously, with such vague wording, all these practices could fall foul of the law. It would be enough for a former devotee to claim that he has suffered psychologically, that these practices (which we know can be demanding) have altered his judgment, and to convince a psychiatrist of this, for the offence to be characterized.

What's more, such a formulation could lead to the situation where a faithful believer who is still practicing could be considered to be under psychological subjection, and thus have his or her consent considered vitiated. In this way, free will, the essential foundation of our democratic vision of society, would disappear in favor of a paradigm in which the State decides, through psychiatric expertise, who sincerely believes and who is not capable of freely deciding on his or her beliefs.

This is a criminalization of religious practice, a psychiatricization of criminal procedure, and an unprecedented attack on fundamental freedoms.

Article 1 A (new)

This article, added by the Senate, raises obvious problems of constitutionality. It sets down in law the scope of activities and mode of action of the interministerial mission of vigilance and combat against cultic deviances (MIVILUDES), as already defined by decree n°2002-1392 of November 28, 2002, instituting an interministerial mission of vigilance and combat against

cultic deviances. In addition to the fact that such a provision does not fall within the scope of the law as defined by article 34 of the Constitution, it is both unnecessary and dangerous.

Unnecessary because, in over twenty years of existence, MIVILUDES has never been threatened with abolition. Dangerous, because this provision crystallizes in law the scope of MIVILUDES' activities and mode of action. Yet, as the explanatory memorandum to the bill points out, the phenomenon of cultic movements is highly evolutionary - particularly in terms of radicalization. Combating this phenomenon therefore requires agility and rapid adaptation to changing threats.

This legislative totemization of MIVILUDES flies in the face of this need, and only serves to weigh down the government's capacity for action in the combat against cultic deviances, to serve the sole interest of political posturing.

In addition, this article introduces a general and absolute exception to the right of access to administrative documents, the constitutional value of which has been recognized by the French Constitutional Council on the basis of article 15 of the 1789 Declaration of the Rights of Man and of the Citizen, which states: "*Society has the right to demand an account from any public official of its administration*" (Cons. const., April 3, 2020, n°2020-834 QPC).

This exception is undesirable: individuals and groups implicated by the work of MIVILUDES have an obvious interest in obtaining communication of the elements - duly anonymized where applicable - on which these accusations are based. Otherwise, MIVILUDES would benefit from a highly prejudicial blank check: it could target and stigmatize any movement - spiritual, political, sporting, associative, etc. - without having to justify its action. It could target and stigmatize any movement - spiritual, political, sporting, associative, etc. - without having to justify its methodology or the reasons behind the stigmatization.

The exception introduced by this article constitutes a disproportionate infringement of the right to call the administration to account, while the administrative judge already exercises close control to reconcile and preserve the various interests concerned by a request for access to administrative documents.

Lastly, the immunity conferred by this article on the Chairman of MIVILUDES, in respect of the latter's annual activity report, constitutes an unjustified privilege and, consequently, an infringement of the principle of equality and accountability. It would be particularly dangerous to allow the Chairman of MIVILUDES to use the annual report to make stigmatizing, discriminatory or defamatory remarks about, for example, economic players, political movements or spiritual movements, without incurring the slightest liability. Moreover, no public official enjoys such immunity from criminal, administrative or disciplinary proceedings.

Article 2 (withdrawn by the Senate)

Article 2 makes "psychological or physical subjection" an aggravating circumstance for the following crimes: murder, acts of torture and barbarism, violence and fraud. This article does not call for any particular comment beyond what has already been said about the pseudo-scientific notion of "psychological subjection".

Article 2 *bis* (new)

The proposed deletion of this article makes the statute of limitations run from the date of the victim's majority for the offence of fraudulent abuse of a state of ignorance or weakness provided for in article 223-15-2 of the French penal code.

The haphazard multiplication of derogations to the rules of prescription is undesirable in terms of the imperative of legal certainty and the principle of the necessity of penalties. Indeed, in 2014, the National Assembly opposed the scattering of these rules and set up a parliamentary mission, entrusted to deputies Alain Touret and Georges Fenech, to ensure coordination of criminal statutes of limitation.

In addition, the Conseil constitutionnel noted that "*the principle of the necessity of penalties, protected by Article 8 of the Declaration of 1789, and the guarantee of rights, proclaimed by Article 16 of the same Declaration, give rise to a principle according to which, in criminal matters, it is for the legislator, in order to take account of the consequences of the passage of time, to lay down rules relating to the statute of limitations on public action which are not manifestly unsuited to the nature or seriousness of offenses.*" (Cons. const., May 24, 2019, n°2019-785 QPC). In light of this jurisprudence, derogating from the rules of criminal prescription for the offence of fraudulent abuse of a state of ignorance or weakness would be inappropriate for two reasons.

Firstly, derogations from the statute of limitations must be reserved for the most serious and damaging offences. Derogating from these rules for the offence in question would open the way to multiple derogations, notably for more severely punished offences. The criminal statute of limitations would be completely overturned.

Secondly, this de facto extension of the statute of limitations will, in practice, run up against an evidential difficulty for the offence in question: the assessment of a state of psychological subjection - a concept on which there is no scientific consensus - already appears hazardous when it occurs contemporaneously. Such an assessment will be all the more illusory when carried out *a posteriori*. How can we determine, for example, ten years after the event, that a minor was in a state of psychological subjection, even though he was under the authority of his parents?

Under the guise of pursuing a just cause, this article opens the way to the unknown, to legal uncertainty and arbitrariness, which is totally incompatible with the requirements of criminal law.

Article 3

Article 3 of the bill opens up the possibility for anti-cult associations to act as civil parties in criminal cases for "cultic offences", once they have been approved by the Ministry of Justice. While the article may seem trivial, it is far from it. Whereas, as a rule, there are exceptions allowing a legal entity to act as a civil party, even when it is not the direct victim of an offence, so that civil society can compensate for the State's failure to prosecute, here we have

associations which are merely an extension of Miviludes (Mission Interministerielle de Vigilance et de Lutte Contre les Dérives Sectaires - Interministerial Mission for Vigilance and Fight against Cultic deviances) and have no vocation whatsoever to act as a counterweight.

These anti-cult associations are almost exclusively funded by the State (often in a very dubious way: several criminal complaints have recently been lodged concerning serious offences allegedly committed in connection with the funding of these associations, notably UNADFI and CCMM, by Miviludes). They can be considered a quasi-State service. It was precisely as a result of lobbying by these associations, which have to justify their existence, that this bill was drafted and submitted to parliament. Anti-cult associations almost exclusively target the religious minorities they loathe, and the blank cheque they would be given to act as civil parties in lawsuits that do not directly concern them would have a deleterious effect on the right to a fair trial.

Article 4 (withdrawn by the Senate)

Article 4 of the original bill, which was withdrawn by the Senate but which the government intends to reintroduce in the National Assembly, was intended to create a new offence of "incitement to abandon or refrain from following a therapeutic or prophylactic medical treatment, when this abandonment or abstention is presented as beneficial to the health of the persons targeted when, given the state of medical knowledge, it is clearly likely to have serious consequences for their physical or mental health, given the pathology they are suffering from".

In its opinion on the bill, issued on November 9, the Conseil d'Etat considered that this article did not "guarantee a balance between constitutional rights, in particular so as not to jeopardize the freedom of scientific debate and the role of whistle-blowers by criminalizing challenges to the current state of therapeutic practices. It considers that, insofar as they aim to prevent the promotion of so-called "unconventional" healthcare practices in the press, on the internet and on social networks, such provisions constitute an infringement of the exercise of freedom of expression." The Conseil d'Etat therefore advised the government not to include this article in the bill. This advice went unheeded by the government.

Article 5

Article 5 aims to facilitate disciplinary sanctions against deviant practitioners, particularly in the field of cultic deviances, by including in the code of criminal procedure the obligation for the public prosecutor's office to transmit to the professional orders concerned the convictions of these practitioners for offences linked to cultic deviances. We have no particular comment to make on this article.

Article 6

The purpose of article 6 is to enable government departments, including MIVILUDES, to be called upon by public prosecutors or the courts to provide them with any general information they may require, thus introducing the amicus curiae mechanism into criminal proceedings.

In its opinion of November 9, the Conseil d'Etat "considers that a State agency, not specially empowered as an expert before the courts, cannot intervene on its own initiative in legal proceedings without infringing the right to a fair trial guaranteed by articles 16 of the Declaration of 1789 and 6 of the European Convention on Human Rights".

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