



## *Institute on Religion and Public Policy*

The status of religious rights in both society and under law is challenged significantly in several member states of the Organization for Security and Cooperation in Europe. From active legislative measures to social public contempt directed at religious minorities, the current condition of religious freedom has failed to demonstrate a significant departure from rigid form and draconian practice that the Helsinki Final Accords and the human rights basket of the OSCE were meant to amend. Regression of religious rights in the Balkans is a reflection of a greater rollback of democratic processes in general in Central and Southeast Europe that must be addressed and dealt with through political and diplomatic tools readily available to the United States, the Organization for Security and Cooperation in Europe, and the entire international community.

Two factors in particular are key to understanding the devolution of religious rights in the region, particularly in the scope of legislative restrictions, each of which plays on the other. First, many of the states in the region have yet to amend the religion laws on the books from the Soviet days. It is their belief that to be a modern European state, the laws must be amended to demonstrate their progress away from Soviet-era systems. Second, and immediately following on the footsteps on the first, these states mistakenly believe that it is imperative that there be religion laws at all, and they are using as models restraining legislation from other European states, including France and Russia.

Following is a brief overview of the status of religious freedom across the OSCE region. The list is not intended to be exhaustive of all the current trends or restrictive laws, but rather to highlight particular examples of failures by member states to meet OSCE human rights standards.

### **ARMENIA**

The Constitution as amended in December 2005 provides for freedom of religion; however, the law places some restrictions on the religious freedom of adherents of minority religious groups, and there were some restrictions in practice. The Armenian (Apostolic) Church, which has formal legal status as the national church, enjoys some privileges not available to other religious groups.

Only registered organizations have legal status. Only registered groups may publish newspapers or magazines, rent meeting places, broadcast programs on television or radio,

or officially sponsor the visas of visitors, although there is no prohibition on individual members doing so.

The law on alternative military service allows conscientious objectors, subject to government panel approval, to perform either noncombatant military or civilian service duties rather than serve as combat-trained military personnel. The law took effect in 2004 and applied to subsequent draftees and those serving prison terms for draft evasion. An amendment to the law on military service that took effect in January 2006 criminalizes evasion of alternative labor service.

Armenia has a record number of religious conscientious objectors to military service in jail, despite a 2004 promise to free these prisoners of conscience. Seventy-two (72) Jehovah's Witnesses are imprisoned, with an average jail sentence for each of the four young men of just under two and a half years. military control of the alternative labor service amounted to unacceptable military service. The allegedly "civilian" service is under the complete control of the Armenian General Staff, supervised by the Military Police under military law, and pacifists are forced to wear uniform provided by the military. Jehovah's Witnesses and Molokans insist that they would be happy to perform a genuinely civilian alternative service – but Armenia does not allow this.

## **AUSTRIA**

The Expert Committee on Legislation and Implementation of the Institute on Religion and Public Policy propose that Austria amend its December 10, 1997, Religion Law ("Religion Law") as that law contravenes fundamental international human rights standards. Under the Religion Law, non-traditional religions are not recognized as religions, but as "Confessional Communities," which may only attain government recognition if they meet onerous requirements. For religions to be recognized, they must have a membership equal to two thousandths of the population (at least 16,000 members), their teachings must not be considered dangerous by the government, and they must first spend ten years as a "Confessional Community" prior to recognition.

The law expressly denies to "Confessional Communities" the rights provided to previously-recognized "first-class" religious communities, such as the right to provide religious instruction in state schools, the right to invite workers into Austria to act as ministers of religion, missionaries, or teachers, and the right to publish documents about their faith. The Austrian system, and especially the law's explicit discrimination against some religious communities, is being challenged at the European Court of Human Rights (ECHR) in a case brought by the Jehovah's Witnesses (case No. 40825/98).

These requirements violate international religious freedom standards. As the Organization for Security and Cooperation in Europe (OSCE) Advisory Panel of Experts on Freedom of Religion or Belief note in the OSCE publication *Guidelines for Review of Legislation Pertaining to Religion or Belief*, "high minimum membership requirements

should not be allowed with respect to obtaining legal personality” and “it is not appropriate to require lengthy existence in the State before registration is permitted”.

The OSCE Panel of Experts has indicated that it finds these requirements in the law as discriminatory and in violation of OSCE human dimension standards. In the OSCE publication *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*, the Religious Experts Panel specifically criticizes the Austrian law for its onerous requirements:

"Particularly troublesome are proposals such as one advanced in Hungary in 1993 and being reconsidered currently that would make a minimum membership of 10,000 necessary for registration. Such a requirement would result in de-registration of approximately two-thirds of the currently registered religious associations in Hungary. Similarly, Austrian law now requires that in order to qualify as a recognized Church, a religious denominational community must have followers that number at least two per cent of the population of Austria according to the most recent census. Although these requirements may apply only to 'upper tier' entities, they are sufficiently problematic to warrant special mention, as they can result in permanent discrimination against smaller groups".

Moreover, the provision in the law requiring government scrutiny and evaluation of religious beliefs directly contravenes the mandate of the European Human Rights Court directing governments to refrain from evaluating religious beliefs.

“While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to “manifest [one's] religion” alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.”

International human rights standards require that all religions, faith communities, and belief systems be treated equally under the law. The most important finding by the United Nations on religion is Human Rights Committee General Comment No. 22 on Article 18 of the Covenant, which guarantees freedom of thought, conscience and religion. This General Comment provides the Human Rights Committee's definitive interpretation of the right to freedom of religion. The Human Rights Committee has found that:

“Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. *The Committee therefore 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 by a predominant religious community.* (Para. 2) (Emphasis supplied).”

The European Court of Human Rights has emphasized “the need to secure true religious pluralism, an inherent feature of the notion of a democratic society”. Yet, laws that target minority faiths for discrimination and second-tier status undermine the democratic principle of religious pluralism.

The second-tier registration system and the onerous requirements to register as a religion for a "Confessional Community" under the Austrian Religion Law contravene fundamental international human rights standards.

The Expert Committee on Legislation and Implementation of the Institute on Religion and Public Policy respectfully recommends that the current government promptly remedy these defects in the 1997 Religion Law by introducing new provisions amending the law to provide for equal registration of all religions without discrimination. These amendments should remove evaluation, population and duration requirements so that every religion in Austria is provided the right to register in conformance with international human rights.

## **AZERBAIJAN**

On December 24, 2006, Azerbaijan officials demonstrated its latest manifestation of hostility to Protestant Christian and other religious minorities in a raid on the Kingdom Hall in the capital, Baku. Property was confiscated, money was apparently stolen by police, congregation members were detained and at least two were beaten up. In a repeated pattern during police raids on religious minorities, a local TV station which encourages religious intolerance was present. Six foreign attendees – three of whom grew up in Azerbaijan - may be deported.

In the biggest expulsion of foreigners involved in religious activity in Azerbaijan since 1999, two Georgian and two Russian Jehovah's Witnesses were deported in January 2007, with a Dutch and a British citizen about to follow. The administrative deportation orders – which do not require any court proceedings – followed a massive police raid on a Jehovah's Witness meeting, which only four of the six foreign residents were attending. As Forum 18 News reports, Jehovah's Witnesses totally reject these allegations. A steady trickle of foreigners have in recent years been deported for their religious activity.

On May 20, 2007, local police raided the meeting of a Baptist community in Aliabad and detained the pastor, Zaur Balaev. The church consists of members of the local Georgian-speaking Ingilo minority. Other church members were also briefly detained; police

reportedly hit Balaev's wife on the face and may have assaulted another female member. Officials claimed the pastor resisted the police; local Baptists strongly disputed this assertion.

Baku-based Baptist leader Ilya Zenchenko said police claimed they had a court order to break up the unregistered religious community but refused to show any evidence to the congregation. Pastor Balaev's trial was scheduled to begin on July 20, 2007 in Zaqatala; Balaev remained imprisoned in Ganja at the end of the reporting period. Zenchenko said Balaev's health was not good and raised concern that the SCWRA was unwilling to investigate the circumstances of the episode. Some witnesses believed the arrest was retaliation for protests by church members against the officials' attempts to demolish a shop, subsequently destroyed on June 4, 2007, belonging to one of the members. Another member of the community was detained on May 28 and held for eight hours; audio and videotapes and religious books were taken from his apartment.

## **BOSNIA & HERZEGOVINA**

The Law on Freedom of Religion and Legal Position of Religious Communities and Churches in Bosnia and Herzegovina violates OSCE and international standards on religious freedom. Not only does the law generate a great societal conflict, it perpetuates ethnic and nationalistic tensions and cultural and religious intolerance among various religious communities in Bosnia and Herzegovina.

Religious tensions that occasionally erupt in violence against religious communities are directly related to the ethnic lines dividing the country. A religious identity, for the most part, is reflected in the ethnic identity in the Bosnian population. Bosnians generally are associated with Islam, Bosnian Croats with the Roman Catholic Church, and Bosnian Serbs with the Serb Orthodox Church. The Jewish community maintains a very small but important presence in Bosnian society. Despite the constitutional and legal provisions protecting religious freedom, discrimination against religious minorities occurs in virtually all parts of the country through a high threshold required for registration and penalties associated with free speech expressions.

A third form of religious discrimination continues in the form of obstruction to the building of places of worship, suffered by all religious communities. In the Bosnia-controlled (primarily Muslim) area of the Federation, for example, many mosques have been built apparently without official controls, while Christian places of worship are delayed for years while awaiting official paperwork. In each section of the country, the minority religious groups are obstructed in this manner while the majority religious groups appear to pass under the radar in their efforts to build. These act as the three predominantly used mechanisms to hinder the activities of religious minorities in the country. State favoritism expressed toward particular religious communities contributes to the increase in inter-ethnic tensions in the country. The State Department annual report also notes cases of misuse of religious symbols for political purposes and instigation of nationalistic sentiments. Moreover, a greater divergence within the society is perpetrated by foreign missionaries preaching a fundamentalist form of Islam, unfamiliar to the

indigenous Bosnian Muslim traditions. This advances a greater division not among various religious communities of Bosnia, but within the Muslim community.

## **BULGARIA**

In 2002, a law was passed in Bulgaria that required all religious communities and organizations, except for the Orthodox Church, to register with the government. Even though the law requires only registration with the Sofia City Court, some religious organizations are still harassed by local authorities for not registering with the local courts.

The U.S. State Department reported that many religious communities expressed a very real concern that some missionaries and other religious leaders were being denied visas to enter Bulgaria. Also being denied by the government were religious leaders trying to renew their residency visas to remain in the country. They have since resorted to applying for tourist visas but that visa greatly limits the time they are allowed to stay in the country.

Although showing some progress, the Bulgarian government has been very slow and reluctant to restore the property that was confiscated under the Communist regime. Many religious organizations still have outstanding claims on property that has not been restored to them.

## **FRANCE**

There are two laws of concern in France which limit religious freedom are of great concern to the international community, and are clear violations of OSCE religious freedom standards. The first, a law prohibiting the wearing of conspicuous religious symbols in public schools by employees and students, took effect beginning in September 2004. This law prohibits public school employees and students from wearing conspicuous religious symbols, including the Muslim headscarf, the Jewish skullcap, the Sikh turban or hair wrap, and large crosses. The law was passed on the recommendation of an inter-ministerial commission established by the president to study secularism, integration, and the place of religion in the country.

As was reported by the U.S. State Department, some Christian, Jewish, Muslim, and Sikh leaders, human rights groups, and foreign governments have voiced concerns about the law's potential to restrict religious freedom. Following the enactment of the law, media reports indicated that Muslim girls and Sikh boys had been expelled from public school for violating this law, the State Department explained. Estimates indicate that over one thousand Muslim girls and over 200 Sikh boys were immediately and negatively affected by this law. The law creates the situation in which children who wear religious symbols are de facto excluded from public school.

The second French law restricting religious freedom is referred to as the About-Picard law, named after the legislators who drafted it. The law, enacted in 2001, allows for restrictions on associations and provides for the dissolution of groups, including religious groups, under certain conditions. These conditions include: endangering the life or the physical or psychological well-being of a person; placing minors at mortal risk; violation of another person's freedom, dignity, or identity; the illegal practice of medicine or pharmacology; false advertising; and fraud or falsification.

Significantly, the law makes it a crime to defraud a person in a state of psychological or physical subjection resulting from grave or reiterated pressures or techniques able to alter judgment. Such wording makes this law tantamount to a mental manipulation law, to some observers.

## **GREECE**

Greece is the only European Union (EU) country to ban proselytism in its constitution, and for this reason the only EU country to have been condemned by the European Court of Human Rights for a lack of religious freedom. The position of the Church of Greece and its relations with the State are set forth in Article 3, par. 1 of the present Constitution (1975/1986/2001). According to this article: (a) The Greek-Orthodox dogma is the prevailing religion, (b) The Church of Greece is inseparably united in doctrine with the Ecumenical Patriarchate of Constantinople and with all other Orthodox Churches, and (c) The Church is self-administered and autocephalous.

About 98% of the population is Christian Orthodox. The remaining percentage represents Muslims, Roman Catholics, Eastern-rite Catholics and Jews. The Government, under the direction of the Ministry of Education and Religion, provides some financial support by, for example, paying for the salaries and religious training of clergy, and financing the maintenance of Orthodox Church buildings. This special relation between the Greek State and the Orthodox Church has come about for historical reasons and long-established tradition, many Greeks attributing the preservation of Greek national identity during the 400 years of Ottoman occupation to the Orthodox Church. A separation of Church and State would require an amendment of the Constitution.

Being Greek Orthodox is a necessary requirement for those who wish to join the Hellenic Army special forces.

An Athens court recently ordered the adulation of Zeus, Hera, Hermes, Athena, et al to be unbanned, paving the way for more religious freedom for Hellenic Polytheism.

Under Article 13 of the Greek Constitution, proselytism is forbidden. Greece is the only member state of the European Union to list such a prohibition in its constitution. The Greek Orthodox Church has a significant amount of influence over the political and cultural environment in Greece. The government provides financial assistance in maintenance of Orthodox Church buildings and also pays for salaries and training for clergy.

Greece does not have a formal application process for recognition as a religion. The two components that create distinctions between religious organizations are their legal standing and their possession of, or lack there of, house of prayer permits.

In Greece two categorizations of legal entities exist. “Legal persons of public law” only describe three religious organizations: The Orthodox Church, Judaism, and Islam. All other religious groups are deemed “legal persons of private law.” As private bodies, these religious groups face many limitations. As private organizations these religious groups cannot be represented in court as a religious entity. They also are not permitted to purchase or own property as a religious body; instead, all property must be registered with a legal entity with the expressed purpose of property ownership.

According to Law 1363 from 1938 and Law 1672 from 1939, in order to open houses of worship religious groups are required to apply for houses of prayer permits from the Ministry of Education and Religion. By law the Ministry can consult with local Greek Orthodox Bishops when making a decision on permit applications and has done so in recent applications of Scientology and Jehovah’s Witnesses. The Church of Scientology was denied a permit on the grounds that it failed to meet the standards of a religion. As a result, Scientology has registered as a non-profit organization.

The government has an agreement with the Muslim community of Thrace under the 1923 Treaty of Lausanne to allow for the establishment of “wakfs” – charitable and social organizations in the community. The Government also appoints and subsidizes two muftis and one assistant mufti in Thrace, arguing such practice keeps with procedure in Muslim countries. This has been met with opposition by many Muslims who insist that a non-Muslim country does not have the right to appoint muftis.

Another example of the Orthodox Church’s relationship with the government can be seen in the building of a church is the case of the Evangelical Free Church of Filiatra, on the Peloponese peninsula. Although the government had given its permission, the local Orthodox bishop objected to this by declaring the need to prohibit illegal proselytism. This opinion of the Orthodox bishop leaves the legal situation of these Protestant believers still unclear.

## **KAZAKHSTAN**

In September 2007, four members of the Grace Presbyterian Church – including its leader Igor Kim - were investigated on treason charges which the National Security Committee (KNB) secret police have refused to explain. KNB officers in Karaganda said that the cases are being handled from the capital Astana, but no-one at the national KNB would talk to Forum 18 News Service about it. Tax authorities are checking up on many of their 250 congregations across Kazakhstan, while computers and documents confiscated in 24 August raids have not been returned. Amanbek Mukhashev of the Justice Ministry's Religious Affairs Committee refused to answer Forum 18's questions by telephone.



Kazakhstan's Human Rights Ombudsperson Bolat Baikadamov told Forum 18 that he has asked the KNB about the case.

A mother and her young child were barred from their home after a Court Executor sealed the Baptist church premises in Shymkent where they live, to prevent the church from meeting, Baptists announced. The move followed the church's refusal to follow a court order halting its activity, because it does not wish to undergo state registration. This is part of an increasing trend of seizing homes and other property to punish unregistered religious activity. In Semey, Baptist Pastor Viktor Kandyba, his wife and their twelve children were threatened with the seizure of half their home by 18 July after he refused to pay a fine for leading unregistered worship. "No-one appeared or summoned us on 18 July, but this could come at any time," Kandyba complained to Forum 18. Cars and pigs have already been seized from other Baptists for non-payment of fines. Kazakhstan's senior religious affairs official, Yeraly Tugzhanov, denies absolutely that the fines and seizure of property represent persecution. "No-one is being persecuted for their faith," he told Forum 18.

Workers and police arrived very early on the morning of 15 June at the village near Almaty where the embattled Hare Krishna commune is based to demolish twelve more Hare Krishna-owned homes. "The houses were literally crushed into dust. By ten o'clock it was all over," Hare Krishna spokesperson Maksim Varfolomeyev – who witnessed the latest demolitions - commented. Asked to explain the latest demolitions, one local official stated: "Here in Kazakhstan the Hare Krishnas are considered to be non-traditional."

Addressing the OSCE conference on combating discrimination on 7 June in the Romanian capital Bucharest, Kazakhstan's senior religious affairs official Yeraly Tugzhanov boasted that his country is an "oasis of stability and religious accord". He claimed that there are "no grounds" for discrimination on the basis of religion. He spoke three days after six Jehovah's Witnesses in the Caspian Sea port of Atyrau were given heavy fines for meeting for worship without registration. Two of the six are pensioners, with only a low income. "They don't have the right to meet for worship without registration," Atyrau's religious affairs official commented. The Atyrau Jehovah's Witnesses' four registration applications since 2001 have got nowhere. Tugzhanov himself declined to discuss the latest fines - or the 5 June order to demolish a Hare Krishna temple - with Forum 18.

Kazakh officials have denied to Forum 18 News Service that a raid on a religious community was a raid. "You can't call this a raid," commented Atyrau region Deputy Prosecutor Aspenbi Zharylgasov on a Prosecutor's Office raid on a Jehovah's Witness worship service. Officials confiscated religious literature, filmed those present and are prosecuting six Witnesses for unregistered religious activity. The raid and prosecutions may have been sparked by the community's latest registration application, the fourth in six years. Amanbek Mukhashev, head of the state Religious Affairs Committee, also denied that the raid was a raid, earlier asking the Jehovah's Witnesses "Why do you want to go there? It's a region where Muslims live." Protestant churches have had similar problems in Atyrau region. Asked how denying the right to freedom of thought

conscience and belief to unregistered religious communities matches Kazakhstan's OSCE human rights commitments and its ambition to chair the OSCE, Mukhashev replied "we have our own norms."

The Institute on Religion and Public Policy is concerned that unless Kazakhstan improves systematically its protection and promotion of religious freedom,

## **MACEDONIA**

The primary religious target in Macedonia remains the Serbian Orthodox Church. The most recent judicial measures against it was a ban on the establishment of the Serbian Orthodox Church in the country, a law endorsed and upheld by Macedonia's highest court. Deterioration of relations between the Macedonian and Serbian churches followed the initiative by the Serbian Orthodox Church to re-unite in 2002 after 45 years of independence from the Serbian Orthodox Church by the MOC.

The impediment to the establishment of the Serbian church in Macedonia is rooted in the historical confrontation of ethno-nationalistic sentiments between Macedonia and Serbia. Integral in this is Macedonia's accusation of the Serbian government and the church of the imperial attitude and intentions by refusing to recognize Macedonian nationality.

As an example of the continued opposition to the Serbian church in Macedonia, Bishop Jovan has been imprisoned by the Government of Macedonia since 2004 for returning to the religious practices of the Serbian Orthodox Church and charged with the criminal offense of "causing national, racial and religious hatred and intolerance." Banished by the Macedonian Orthodox Church, Father Jovan was appointed in 2003 by the Serbian Orthodox Church as the head of the Serbian church within Macedonia. He remains incarcerated by the Macedonian government. The Court's decision in the case of Bishop Jovan demonstrates that a personal decision of an individual to join and advance religious beliefs, particularly of the Serbian Orthodox Church, in the Republic of Macedonia equates to causing religious hatred, dissonance and intolerance as sufficient grounds for a criminal conviction. This hence undermines the very essence of the religious freedom concept.

Moreover, the draft Law on Churches, Religious Communities and Religious Groups limits each religion to only one registered religious community, does not permit foreign citizens to form a religious group or a religious community in the country and requires the headquarters of the Churches or religious communities to be based in the Republic of Macedonia along with other restrictions challenging religious freedom in Macedonia.

The endeavors to stake out national identity in Macedonia often lead to social discrimination of the Serb population and followers of the Serbian Orthodox Church in Macedonia. Various incidents of discrimination as well as incidents involving police harassment of followers have been recorded as well. Other religious minorities that have been suffering unequal treatment by the government in Macedonia include Macedonian

Catholics, Jehovah's Witnesses, Baptists, Protestant Evangelicals, Seventh-day Adventists and Muslims.

## **MOLDOVA**

The Institute on Religion and Public Policy has actively opposed the Moldovan Religion Law since its earliest days. In a letter dated February 6, 2007, to Mr. Marian Lupu, Chairman of the Parliament, Institute President Joseph K. Grieboski, and William C. Walsh, Chair of the Institute's Expert Committee on Legislation and Implementation, described the legislation as "a serious setback for religious freedom in Moldova," and urged the Chairman to "promote and uphold religious freedom rather than discriminate against minority religious groups". The letter also detailed the various international and regional standards, such as the Organization for Security and Cooperation in Europe, the Council of Europe and the United Nations, that the law would contravene.

The Institute on Religion and Public Policy is concerned that the religion law in Moldova serves only to restrict overall religious freedom and religious pluralism while offering special privileges and protections of the predominant faith. Registered communities also have the exclusive privilege to create, publish or import materials or objects pertaining to their faith. Additionally, these communities could only be led by citizens of Moldova.

One improvement put forth by Stefan Secareanu, Chair of Parliament's Committee for Human Rights and National Minorities, regards an alteration to one of the law's more controversial sections addressing "abusive proselytism". Secareanu states the newest version no longer includes "disinformation" in the list of illegal methods of proselytism. With this change administered to the formerly submitted definition, "abusive proselytism" is described as the following: action of changing the religious beliefs of a person or a group of persons through means of violence, abuse of authority, blackmail, threats, constraints, religious hatred, psychological manipulation or subliminal techniques.

President Vladimir Voronin refused to sign the first draft of the law passed by Parliament in June 2007, returning it to the MPs for further revision. The President's Office states that he did not like that the law failed to mention "Orthodoxy as the traditional religion of the people of Moldova." Furthermore, he claimed that the draft – which was far more closely aligned with international, European, and Organization for Security and Cooperation in Europe standards than the present one – established a "too easy registration procedure for other faith groups." According to amendments made to the original version of the law, "the state recognizes special significance and primary role of the Orthodox Christian religion and the Orthodox Church in life, history and culture of the people of Moldova."

“Other” faith groups have every right under international standards to have as equal access to registration as does the predominant faith in a country. As a matter of fact, in an April 2007 decision, the European Court of Human Rights reiterated the rights of

religious communities to organize without undue State interference. Article 72 states: 'Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see Metropolitan Church of Bessarabia, cited above, §§ 118 and 123, and Hasan and Chaush v. Bulgaria [GC], no. 30985/96, § 62, ECHR 2000-XI).

If President Voronin chooses to proceed with the legislation and its current amendments, the Institute on Religion and Public Policy can guarantee he will find a similar decision coming down against Moldova as it did Russia.

## **ROMANIA**

The Law on Religion that was rushed through the Chamber of Deputies and passed on 13 December 2006, and promulgated on December 27, 2006, represents a serious setback for religious freedom in Romania. The legislation contravenes Organization for Security and Cooperation in Europe (OSCE), European Union, Council of Europe and United Nations standards as it clearly discriminates against minority religious groups.

The law creates the most burdensome registration system in the entire OSCE region. The draft law's three-tier system of state recognition is completely inconsistent with fundamental rights as it contravenes the principles of equality and non-discrimination. Enjoying the greatest rights under the proposed new law are the recognized "religious denominations," a category that it is almost impossible for some faiths to join (applicant religious communities for the most preferential status must wait 12 years and show their membership exceeds 0.1% of the population of Romania, or 23,000 adult citizen members persons). Of the 18 currently registered religious groups, approximately one-fourth would fail to meet the proposed numerical threshold.

Religions with fewer than 22,000 members can register as "religious associations" with lesser rights, while religions with fewer than 300 members can only function as "religious groups" which have no legal status.

Thus, religious communities new to Romania with less than 300 members are deprived of the right to purchase property, to build houses of worship, to protect their rights in legal proceedings, to own assets or to have paid staff or clergy. History is replete with examples of laws which constrain individual religious practice by denying legal entity status and recognition to certain religious organizations. The OSCE has from its inception recognized the importance of legal personality and entity structure to religious organizations as part of their right to freedom of religion or belief. The concern with this issue has been reemphasized in recent years during the OSCE Human Dimension Seminar on "Constitutional, Legal and Administrative Aspects of the Freedom of Religion" held in 1996, and by the Advisory Panel of Experts on Freedom of Religion of the Office of Democratic Institutions and Human Rights of the OSCE.

As the OSCE Advisory Panel of Experts on Freedom of Religion or Belief note in the OSCE publication Guidelines for Review of Legislation Pertaining to Religion or Belief:

"It is difficult to imagine that there is a pressing social need for registration that is compelling enough to make proscribing protected religious conduct a "proportionate" response. Moreover, it is difficult to say that registration of small informal groups is "necessary in a democratic society" when the unanimous experience in most democracies is to the contrary. In most cases, such registration requirements typically operate to penalize law-abiding groups and to drive others underground. Any social gains are at best marginal, but the costs to religious freedom are substantial".

The OSCE panel of experts also noted that these population laws are particularly problematic for religious traditions that take a congregational approach to church polity, and prefer to maintain smaller and more intimate congregations. In such a tradition, it may be impossible as a matter of religious practice to cross the 300-member threshold. Finally, the OSCE panel of experts has emphatically rejected laws much less stringent than Romania's draft law as being discriminatory and in violation of OSCE human dimension standards:

"Particularly troublesome are proposals such as one advanced in Hungary in 1993 and being reconsidered currently that would make a minimum membership of 10,000 necessary for registration. Such a requirement would result in de-registration of approximately two-thirds of the currently registered religious associations in Hungary. Similarly, Austrian law now requires that in order to qualify as a recognized Church, a religious denominational community must have followers that number at least two per cent of the population of Austria according to the most recent census. Although these requirements may apply only to 'upper tier' entities, they are sufficiently problematic to warrant special mention, as they can result in permanent discrimination against smaller groups".

In addition to the egregious human rights defects in the legislation, the method and manner in which the draft law was passed by the legislature merits sending the legislation back to the Parliament for debate and further study. This is especially appropriate as human rights and interfaith groups have reported that passage of the draft law broke parliamentary procedures. Members of the Chamber of Deputies were not given the five days that Romanian law requires for them to consider the law. Article 69 paragraph 2 of the procedures of the Chamber says that "the report will be printed and distributed to the deputies at least three days before the day that was established for the debate on the draft law within the plenary session of the Chamber". In addition, when the Chamber has the final decision on a law - as was the case with the Religion Law, which had already been approved in the Senate - the time between the distribution of the committees' report and the debate within the plenary session has to be at least five days. However, the committees' report with the text of the draft law had reached the deputies only a few hours before the final vote. The draft law was rushed through Parliament with such great speed that it did not receive thoughtful consideration, the opportunity for amendments, and debate on its merits. Surely, under these circumstances, the law should be returned to the Parliament.

## **SERBIA**

Government respect for religious freedom continued to deteriorate thank to the egregious law on religion and the Ministry of Religion's arbitrary execution of the law.

The Institute on Religion and Public Policy has pressed heavily for changes in the laws on religion and restitution that would rectify some of the discriminatory aspects of the legislation, particularly in light of the Serbian Chairmanship of the Council of Europe.

The Government continues to refuse recognition of other Orthodox churches, despite attempts by the Macedonian and Montenegrin Orthodox Churches to gain recognition. The April 2006 religion law reinforces this unwillingness to recognize them by stipulating that the name of a religious organization cannot contain a name or part of a name of an existing registered group. However inappropriately, the Minister of Religion declared that the Government would recognize the Romanian Orthodox Church under the Serbian Orthodox Church, and that the Greek- and Latin-rite Catholic churches could be registered as one church.

The Institute on Religion and Public Policy continues to call for amendments to the religion law putting it into compliance with international, European, and OSCE standards. Many of the groups required to reregister had been recognized officially for more than 50 years and present for as long as 150 years. The registration requirements are themselves violations of rights, as they include submission of members' names, identity numbers, and signatures; proof that the religious group has at least 100 members; the group's statute and summary of its religious teachings, ceremonies, religious goals, and basic activities; and information on sources of funding.

President Tadic, upon signing the legislation, declared that it was problematic and vowed to bring amendments to address the discriminatory aspects of the law but has refused to do so thus far.

Many minority religious groups reported confusion and irregularities after attempting to register with the Ministry of Religion. The Ministry sometimes failed to respond within the legal 60-day limit, and it advised some groups (such as the Hare Krishna community and the Adventist Reform movement) that they should register instead as "citizen associations" with the Ministry of State Administration and Local Self-Government. The latter Ministry then advised the communities to register with the Ministry of Religion. Both groups remained unregistered to this day.

Although Milan Radulovic has been replaced as Serbian Religion Minister by Radomir Naumov, Radulovic is still responsible for deciding whether legal status should be given to religious communities, Forum 18 News Service has found. Some see Radulovic as still in charge of the Ministry, with new Minister Naumov functioning as a figurehead. Many of Serbia's so-called "non-traditional" religious communities are still being denied legal status, including Baptists, Old Catholics, Pentecostals, Jehovah's Witnesses and Hare Krishna devotees. This means that they are unable to legally carry out activities such as running bank accounts, owning property, or paying tax.

## **TURKEY**

Turkey has numerous laws in place that fail to reach acceptable standards of religious freedom. Although the Constitution provides for freedom of religion, the Government plays an active role in protecting the secular ideology of the State.

Most religious communities have no legal standing in the state and have no means of recognition.

Two governmental bodies supervise the state of religious affairs in Turkey. The Diyanet, under the control of the Prime Minister, oversees the country's 75,000 mosques and imams, who are categorized as civil servants. The second agency – the General Directorate for Foundations (Vakıflar Genel Müdürlüğü) – is responsible for oversight of all non-Muslim religious organizations and their corresponding places of worship, education and all other related areas.

The General Directorate for Foundations currently recognizes the legal status of 161 non-Muslim religious communities or “minority foundations.” However, the Government has utilized the Law on Foundations as a method to reclaim land for the State from minority religious groups. In recent years a number of these foundations have lost properties due to an inability to support the land or insufficient community population in the area. When reclaiming land the General Directorate has cited a 1974 High Court of Appeals ruling that stated minority foundations did not possess the right to obtain land beyond that which was declared in 1936. No legislation is currently in place that allows foundations to apply for reacquisition of lost property nor are foundations permitted to claim property listed as owned by a third party, which were often simply names of religious saints.

Many religious communities also have trouble providing education and training in their own faith tradition. In 1997 the Government enacted a law mandating eight years of compulsory secular education. Only after completion of this eight-year term can students elect to attend schools with a religious curriculum, such as imam hatip high schools, where young men receive education in both secular and Islamic theology. In addition, all religious courses taught outside of schools are controlled by the Diyanet, restricting children under the age of 12 from registering for official Qur'an courses.

Perhaps the most egregious offense to religious freedom in Turkey is commonly referred to as the headscarf law. Since the 1960s the Turkish government has periodically outlawed the wearing of headscarves for female students and professors in the university setting. The argument made by the government was that in doing so, it protected the laws of others – of those not wearing religiously associated clothing. Such a law maintains secularity and ensures that people not wearing headscarves could not be accused of being non-religious.

In 1997 the implementation of the headscarf law increased in intensity with the Turkish military strictly enforcing the law without exception. This strict interpretation of the law has barred women wearing headscarves from assuming elected positions in parliament, practicing law in court, teaching in private schools and universities, and working as state

employees. Despite much international outrage over the law, the European Court on Human Rights upheld Turkey's implementation of the headscarf law in 2005.

Turkish Prime Minister Recep Tayyip Erdogan has said, in a Financial Times interview, that he wants to lift Turkey's ban on Muslim women wearing headscarves at state universities. President Abdullah Gul supported Erdogan, saying: "It is much better for [women who are covered] to go to university than to stay home and be isolated from social life." In Turkey, the headscarf has become a symbol of a perceived threat to the country's secular foundations, and was a major issue in the Parliamentary election of Gul as President earlier this year. Military and judicial leaders oppose any changes that would erode Turkey's official secularist rules.

Several Turkish laws have collided to effectively make it impossible for the Ecumenical Patriarchate to continue in Istanbul. The Ecumenical Patriarch, located in Istanbul, Turkey, has served as the spiritual head of the second largest Christian Church, Orthodox Christianity, with 250 million adherents worldwide. Radical nationalists continue to harass and intimidate the Ecumenical Patriarch in the course of fulfilling his religious duties.

The Ecumenical Patriarchate may soon end because Turkey is: (1) requiring the Ecumenical Patriarch to be a Turkish citizen while dramatically diminishing the number of Christian Orthodox bishops who are Turkish citizens; and (2) confiscating their properties, closing their seminary, and refusing to recognize the ecclesiastical, liturgical and administrative position of the Ecumenical Patriarch.

Additionally, recent Turkish law specifies that the Ecumenical Patriarch and other religious leaders must be educated in Turkey. Since the government has closed the only school offering an Orthodox education, it has become literally impossible for a Patriarch to be educated in Turkey, and therefore impossible for any person to legally become the next Patriarch.

Ending the Ecumenical Patriarchate will remove the spiritual leader of the world's Orthodox Christians; end Christian control over the Apostle Andrew's Sacred See, where much of the bible was codified and the Nicene Creed written; and force out of the Muslim world the only major Christian presence and the first peacemaker to move Muslim leaders to condemn the 9/11 attacks as "anti-religious."

On June 27, 2007, the 4th Chamber of Turkey's Supreme Court of Appeals approved the acquittal of Orthodox Patriarch Bartholomew I and other officials who were charged with "barring others from worship" after the Patriarch stripped a Bulgarian Orthodox Church priest, Konstantin Kostoff, of his title. The court rejected the priest's claim that his removal violated his freedom of religion. Of more interest inside Turkey, however, was another comment that the Supreme Court of Appeals made in its opinion. The Patriarch is known by the title "Ecumenical Patriarch". The court said, however, that he has no legal right to use the title "Ecumenical"-- which means universal. Reflecting the long-held



view of the government of Turkey, it said that such title amounts to a special privilege that conflicts with the country's constitutional principle of equality. A Greek Foreign Ministry spokesman disagreed with the court's comments, saying that the title is based on "international treaties, the sacred regulations of Orthodoxy, on history and Church tradition".

The court declared that the Istanbul-based Orthodox Patriarch is only the head of the city's tiny Greek Orthodox community and not the spiritual leader of the world's 300 million Orthodox Christians.

While this has no impact on the status of the Patriarch outside Turkey, it strengthens Turkish internal resistance to acknowledging the greater role of the Patriarch and the Orthodox community in Turkey. The court ruled that "The Patriarchate, which was allowed to remain on Turkish soil [emphasis added], is subject to Turkish laws... There is no legal basis for the claims that the Patriarchate is ecumenical."

The Institute on Religion and Public Policy determines that this decision is yet another indication that Turkey has no interest in advancing a fair and balanced approach to freedom of religion. No government has the right or the authority to determine the ecclesiology of a religious community. Both international and European laws are clear that a state cannot interfere in the organizational structure of a faith. Turkey is once again showing that freedom of religion is not a priority or concern, and that it has no true interest in joining the European system.

After the April 18, 2007, killings in Malatya of three Christians, Turkish victim Ugur Yuksel was denied a Christian burial and given an Islamic/Alevitic burial instead. Turkish victim Necati Aydin was buried in a Protestant churchyard in Izmir. The Governor of Malatya was initially hesitant to permit the burial of the German victim in Malatya. He told the German victim's widow that no Christian should be buried in Turkish soil. However, after negotiations between German Government and Turkish Government officials, the victim was buried in a private Armenian cemetery in Malatya.

In June 2007, the Cem Foundation appealed a refusal by the Prime Minister's Religious Affairs Directorate to recognize [Alevism](#) as a separate religious group. In the case, argued before Ankara's 6th Administrative Court, Alevi leaders want the government to register *cem evleri* as a house of prayer, allocate positions in the Religious Affairs Directorate to Alevi leaders and allocate funds for Alevi religious practices. The Religious Affairs Directorate argues, however, that Alevism is merely a sect within Islam, and is not a separate religious group.

## **United Kingdom**

The Institute on Religion and Public Policy submitted a memorandum to the Charity Commission of the United Kingdom to address the Commission's interpretation of religion in the **Charities Act 2006**.

In its Commentary on the Descriptions of Charitable Purposes in the Charities Act 2006, the Commission notes that "Belief in a Supreme Being is a necessary characteristic of religion in charity law which is why the criteria that we use include reference to a Supreme Being rather than a god". However, the Commission also notes that "in the light of the clarification of the common law definition of religion contained in the Charities Act 2006, these criteria may benefit from further clarification. Following our Consultation on Draft Public Benefit Guidance we will undertake further consultations on the public benefit of particular types of charity, including religious charities. As part of that, we will consider what further guidance on the definition of a religious charity may be required".

The Institute welcomes the Commission's call for further clarification and agrees with the Commission's statement that further guidance is required in light of the Charities Act 2006. The Commission's current interpretation cannot be squared with the language in the Act broadening the definition of religion to accommodate "a religion which does not involve belief in a god". The Charity Commission's current position is also inconsistent with human rights standards. Such an interpretation contravenes the Human Rights Act 1998 (HRA) by allowing for discrimination against minority religious organizations in the application of charity law and must be remedied.

The most important feature of a definition of religion is that it not be discriminatory and that it treat all religions equally. The Charity Commission has an obligation under the HRA to eradicate discrimination between religions. The language in the Charities Act 2006 regarding the definition of religion was designed to remove the anomalies created by the Charity Commission's restrictive and exclusive interpretation of religion. Indeed, in its consultation report, Private Action, Public Benefit, the Strategy Unit proposed that the "current interpretation of religion be widened" through legislation under the new purpose of Advancement of Religion to "clarify that faiths that are multi-deity (such as Hinduism) or non-deity (such as some types of Buddhism) should also qualify". It is vital that the Charity Commission apply the Charities Act 2006 in order to ensure that its interpretation of the term religion under charity law does not offend the principles of non-discrimination and equality, which form the foundation of the European Convention on Human Rights. In light of the HRA and the definition of religion provision in the Charities Act 2006, the Charity Commission must ensure that its interpretation of the term religion under charity law is sufficiently broad to encompass all religions. This will not be accomplished if the Commission were to adhere to a test that requires worship of a Supreme Being.

Consistent with the principles developed by the Human Rights Court in cases concerning freedom of religion and freedom from religious discrimination, it is imperative that the Charity Commission not develop public benefit requirements which vest wide discretion in government officials, are onerous, or discriminate between religions.

It is vital that the spiritual aspect of the activities of religions and religious groups and that spiritual growth and development is recognized by the Charity Commission as

providing an important public benefit, not only to adherents of a particular religion but to society as a whole.

Moreover, while the provision of social services and community outreach efforts by religious organizations should be taken into account as a separate basis to find public benefit, religious groups should not be required to provide social services in order to demonstrate public benefit under the religious head. The systematic nurturing and promotion of constructive spiritual, ethical and moral values should suffice.

The European Court has stressed that even seemingly innocuous administrative action restricting the rights of minority religions operates as a "lethal weapon against the right to freedom of religion." As the Human Rights Court has determined that the government may neither assess the merits of religious practices and beliefs under Article 9, nor favor some religions over others under Article 14, then the government surely may not apply charity law to provide privileges to some religious organizations while imposing hindrances on others based on assessments of the public benefit of such religious practices and beliefs.

## **UZBEKISTAN**

Uzbekistan continues to be harshly restrictive in terms of religious freedom, to both religious minority groups and also the religious majority, Muslims. Uzbek law requires that religious groups register with the government. It is worth noting, however, that in practice it is now almost impossible for a religious community to be registered in Uzbekistan. State officials refuse believers registration on various pretexts. For example, the Jehovah's Witness community in Tashkent has been refused registration eight times, according to the religious news service Forum 18 news. In a recent update from August 2006, the justice department stripped the registration from the Fergana Jehovah's Witness community, leaving only one registered Jehovah's Witness community in the whole of Uzbekistan.

The registration restriction applies to all religious communities in Uzbekistan, and so rural Muslim communities who wish to build a mosque and employ an imam must also register with the government. The fees and the bureaucracy of registering for some small rural communities are prohibitive, which results in these communities being in effect barred from any legal religious practice.

Religious activity by unregistered organizations is punishable by up to 3 years of imprisonment, and also by fines. Uzbek authorities are known to apply very harsh measures to members of unregistered Muslim communities. A highly disturbing outcome of the persecution by the authorities of these Muslim community members is that they are often not formally tried for the charge of being unregistered, but rather on substantially more extreme charges sometimes including those of establishing, leading or participating in religious extremist, separatist, fundamentalist or other banned organizations, or for undermining the constitution of Uzbekistan.

## CONCLUSION

Religious freedom is a priority issue within the human rights basket of the Organization for Security and Cooperation in Europe. Consequently, it is vital that the OSCE continue to dedicate the time, energy, and resources necessary to advance democracy and fundamental rights throughout the Balkans in particular and the OSCE region writ large.

As a mechanism to continue to advance the development of fundamental rights, I would like to encourage a significant increased investment of resources into the Advisory Panel of Experts on Freedom of Religion or Belief of the Office for Democratic Institutions and Human Rights of the OSCE. With a larger staff and further capacity to investigate, review, and recommend actions regarding religious freedom throughout the region, the issues covered in this testimony would be more quickly and effectively managed.

Further, I would like to recommend that the mandate of the Special Representatives of the Chairman in Office be amended slightly. In particular, the mandate of the Personal Representative of the Chairman-in-Office on Combating Racism, Xenophobia, and Discrimination, also focusing on Intolerance against Christians and members of other religions is too broad to be maintained by one office/person. In order to guarantee the greater protection and promotion of fundamental rights, the Institute on Religion and Public Policy encourages that a mandate for Intolerance against Christians and members of other religions be carved out of the current position and established as a separate and independent mandate in the person of another Special Representative.

Finally, the mandates of each of the Special Representatives is extensive and broad and require significant commitments of time, energy, and resources, particularly given that their positions are voluntary. As a result, the Institute on Religion and Public Policy recommends that the Office for Democratic Institutions and Human Rights provide full-time support staff to each of the Special Representatives for the fulfillment of their mandates.