

THE INSTITUTE



Expert Committee on Legislation and Implementation

Analysis of the New Law on the Legal Status of a Church, Religious Community, and a Religious Group Adopted by the Assembly of Macedonia

Introduction

The Institute on Religion and Public Policy Expert Committee serves as a consultative body to the Institute to review, analyze and make suggestions regarding new or amended national legislation affecting freedom of religion and belief and to assist in the implementation of such laws. The Committee reviews legislation in accordance with international conventions, regional commitments, and internationally recognized standards of human rights and religious freedom in formal reviews of proposed legislation or in less formal discussions between Committee members and those working on legislation in various countries.

In September 2007, the Parliament of Macedonia enacted a new law on the Legal Status of a Church, Religious Community and a Religious Group ("Law"). The Law came into force on May 1, 2008.

This document provides an analysis of the Law and a suggested approach to enforcement of the law in order to ensure that its implementation complies with international human rights norms.

Analysis

1. Background

The Law that came into force on May 1st, 2008 is the result of a long drafting process initiated in 2005 by the authorities of "the former Yugoslav Republic of Macedonia".

The Advisory Council of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) has been involved in this process and has provided three sets of comments.

In early 2007, the last draft of the Law was submitted by the Macedonian authorities both to the ODIHR and the Venice Commission of the Council of Europe.¹

On March 6, 2007, a meeting took place in Skopje with the Macedonian authorities, delegates of the ODIHR, the Venice Commission and representatives of the main religious communities.

On March 16-17, 2007, the Venice Commission adopted an official opinion in a plenary session enlightening several important issues that were infringing international human rights standards.

Major modifications were laudably made to the draft Law by the Macedonian authorities in order to comply with the Venice Commission's Opinion and ODIHR's comments, but some issues have not been addressed and remain problematic in the final version of the Law. These issues are addressed below.

2. Scope of the Rights Conferred

a) The Problem of Nationality

First, it should be underlined here that Article 3 of the Law provides for a general:

“right to freedom of belief, thought and conscience” which includes, “the freedom of expression of one’s religion or belief, which every human being has, either alone or in community with others, in public or private.”

This Article conforms with human rights norms by setting broad standards in conformity with Articles 9 (freedom of religion) and 10 (freedom of expression) of the European Convention on Human Rights (ECHR). Article 8 of the Law is subject to the same kind of limitations as those provided in Article 9.2 of the ECHR, which reads:

“Freedom of expression of religion or belief may be restricted by law provided it is indispensable for the interest of public security, the order, health, moral or protection of rights and freedoms of the others.”

However, one issue is of concern here. The Venice Commission, when provided with the previous draft of the Law, had pointed out the non-conformity of a provision which has since been erased in the new Law and which stated *“Citizens can freely establish a church, religious community or a religious group”* (former Article 5.1).

¹ The European Commission for Democracy and Law, better known as the Venice Commission, is the Council of Europe's Advisory Body on Constitutional matters. Founded in 1990, the Commission has evolved into an independent international think tank on matters relating to legislation.

The Commission observed that *“this freedom should not only be limited to citizens but accorded to all persons within the State”* and recommended therefore that *“this requirement be made certain.”*

Article 5.1 has now been deleted; this represents an improvement in the Law. However, no clear provision has replaced it.

On the contrary, the requirements set forth in Article 12 for the registration of a religious group are ambiguous in this respect and could be interpreted in such a way as to maintain the “citizenship” criterion.

Article 12.2 provides that the application for registration shall be accompanied by the *“proof of nationality of the founders and of the person authorized to present or represent a church, religious community and a religious group.”*

In practice, this requirement of the Law should not be interpreted by the Skopje II Basic Court, which is the competent court for entries in the Register, as meaning “proof of Macedonian nationality.”

This was also the concern of Forum 18, which translated Article 12.2 to read *“proof of citizenship of the founders and of the person authorized to present and represent a church, religious community and a religious group.”* Forum 18 concluded that this provision actually forbids non-Macedonian citizens from being involved in the registration or representation of a religious entity. Forum 18 also reported that some religious communities have formally designated a Macedonian as their official representative, but in practice responsibility rests with a non-Macedonian.

There is thus a danger that the new Law will be interpreted as not to guarantee that foreign citizens residing in Macedonia are entitled to the right to freely establish their own religious group or community as required under international human rights norms.

It is important that the Skopje II Court interpret Article 12 in such a way as to ensure that representatives and founders of all nationalities can apply for registration of a church, religious community or religious group, in order to comply with Articles 9 (freedom of religion) and 11 (freedom of association) of the ECHR.

b) The Problem of Unregistered Denominations

The main flaw in the scope of the rights granted is that the new Law seems to make it mandatory for a church, religious community or religious group to register in order to have some rights.

Article 9 is very ambiguous in this respect, stating:

“A church, religious community and a religious group shall be entered in the Single Court Register of Churches, Religious Communities and Religious Groups (hereinafter referred to as the competent Register) and whereby they will acquire the status of legal entity.”

And Article 9.3 states:

“A church, religious community and a religious group will be entered in the competent Register, if there is no previous registration done of such church, religious community and religious group.”

The Law does not mention what happens with religious groups which do not register.

According to international standards, the guarantees of freedom of religion are not subordinate to any kind of specific system of registration or religious entities. They must benefit any religious entity without any conditions of affiliation or registration.

The European Court of Human Rights ruled in a landmark decision (*Metropolitan Church of Bessarabia v. Moldova*, Judgment of 13 December 2001):

“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.” (§ 118)

When asked about the rights of unregistered religious groups at the meeting of 6th March 2007 with the delegates of the ODIHR and the Venice Commission, the Macedonian authorities answered that the right to freedom of religion is already guaranteed to all by the Macedonian Constitution which provides (Article 19):

- “(1) The freedom of religious confession is guaranteed.*
- (2) The right to express one's faith freely and publicly, individually or with others is guaranteed.*
- (3) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law.*

(4) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.”

However, under the previous 1997 law on religions and in spite of the constitutional provisions, unregistered religious communities were unable to obtain property, open bank accounts, pay pensions and obtain health insurance according to complaints made by some of these communities.²

In its Opinion on the draft new Law, the Venice Commission considered that:

“passing a law which refers only to religious entities which want to acquire legal personality and consequently benefit from the principles and rights enshrined in the law might be understood as aiming to prevent the religious entities which do not want to be registered, from freely exercising their faiths.

This is a matter of considerable importance that requires clarification, since limitations on the freedoms guaranteed by Articles 9, 10 and 11 ECHR must comply with one of the legitimate purposes set out in those Articles.”

Hence, the Venice Commission strongly recommended specifying the status of religious entities which do not want to register in a non-discriminatory way as required by international standards. This has not been done in the final version of the Law which thus contravenes international human rights standards.

The OSCE, in its *Guidelines for Review of Legislation Pertaining to Religion or Belief*, notes that, notwithstanding the fact that the OSCE Commitments have long recognized the importance of the right to acquire and maintain legal personality:

“because some religious groups object in principle to State chartering requirements, a State should not impose sanctions or limitations on religious groups that elect not to register”.

Yet, all the rights conferred by the new Macedonian Law seem to be vested only in the registered denominations.

Notwithstanding the fact that a new and constructive Article 6 has been added to the last draft of the Law which provides:

“The state shall respect the identity of churches, religious communities, religious groups, and other forms of religious association and shall

² Forum 18 News Service, 31 March 2008

establish a relationship of continuous dialogue and shall develop forms of continuous cooperation”

The Commission’s recommendation that “*the draft law should clearly specify that members of non-registered entities may exercise and practice freely their beliefs*” has not been followed and no provision has been included in the final version of the Law in this regard.

This could represent a serious flaw in the Law since there is a section in the Law regulating the right to practice and perform a religious cult in religious facilities and other private and public places, which apparently applies only to registered religious entities.

In order to satisfy international human rights standards, it will be the responsibility of the Macedonian authorities, in practice, to comply with their own Constitutional provisions and Articles 9, 10 and 11 of the ECHR allowing members of non-registered entities to exercise and practice freely their religion or beliefs.

3. Definition of Religions, Religious Communities and Religious Groups

The original draft of the Law gave different definitions for religions, religious communities and religious groups in order to emphasize distinctions between churches, religious communities and religious groups. The definitions were not very precise and it was unclear what the differences between these concepts were.

The Venice Commission indicated that:

*“Moreover the clarification given at the meeting of 6 March 2007 would tend to explain that in fact only **two distinctions are made: “church” and “community” would be considered as synonyms in order to embrace Christians and Muslims, and “religious groups” would concern smaller communities.** By contrast, the definition of a “religious group” is “a voluntary association of physical beings that have the same religious beliefs that do not coincide with the registered church and religious community.” (emphasis added)*

In its March 16 Opinion, the Commission recommended the draft Law avoid any such distinction. The final Law was laudably modified accordingly. The new Law provides a common definition for a church, religious community and a religious group which:

“represent a voluntary community of natural persons who, by means of their religious conviction and sources of their learning, exercise the freedom of religion and are united by one religion and identity expressed

by same religious service, prayer, rites and other forms of manifestation of one's religion."

This implies that the Law treats equally all religious communities or groups in general without referring to a previous discriminating characterization.

This interpretation is reinforced by the fact that Article 1.2 provides:

"A church, religious community and a religious group shall be separated from the state and equal before the law."

However, this last provision was already stated in the Constitution in the past and it did not prevent in practice a discriminatory differentiation to be made.

Moreover, the new Law maintains the status of groups already registered until 1998 which, according to Forum 18 and some religious groups in Macedonia, used to differentiate between the recognized religious "communities" and the religious "groups" and was thus discriminatory.

Article 35.2 of the Law provides that *"All churches, religious communities and religious groups registered until 1998 by the body competent for relations between the state and religious communities, inclusively, **may maintain their existent legal subjectivity and status**, and their data shall be transferred and entered in the competent Register."* (emphasis added)

Forum 18 posted an article by their Macedonian correspondent on March 31, 2008, which stressed that *"The new Law maintains the existing differential legal status of registered religious entities. This particularly affects three churches – the Macedonian Orthodox, Catholic and Methodist Churches - and two religious communities – the Islamic and Jewish communities - specifically mentioned in the country's Constitution. It also preserves the legal status of other 'religious groups'."*

Even if the new Law gives a common definition of the three terms "church", "religious community" and "religious group", the practice might keep the labeling as before, differentiating between established "churches" or "religious communities" and minority "religious groups".

Special attention should therefore be given to avoiding such discriminatory distinctions. This can be even more problematic in the light of international human rights standards, as there are some flaws in the registration process which might allow discrimination of the so-called "religious groups".

4. Registration

a. Discriminatory Registration

First it should be noted that, according to the European Human Rights Court case law, the need for a church to register in order to be able to operate represents an interference with the right of the applicant Church to freedom of religion, as guaranteed by Article 9.1 of the Convention. (See, e.g., *Metropolitan Church of Bessarabia v. Moldova*),

In that instance, the Court ruled that:

“In the present case the Court observes that, not being recognised, the applicant Church cannot operate. In particular, its priests may not conduct divine service, its members may not meet to practise their religion and, not having legal personality, it is not entitled to judicial protection of its assets.

The Court therefore considers that the government’s refusal to recognise the applicant Church, upheld by the Supreme Court of Justice’s decision of 9 December 1997, constituted interference with the right of the applicant Church and the other applicants to freedom of religion, as guaranteed by Article 9 § 1 of the Convention.” (§ 105)

And any interference with the freedom of religion must satisfy the requirements of Article 9.2 of the ECHR, i.e. it must be prescribed by law, pursue a legitimate aim and be “necessary in a democratic society”.

As concerns the Macedonian Law, the authorities do not appear to have a discretionary power to refuse the registration. On the contrary, the wording of its Article 14 tends to make it clear that, once a religious group has filed a due application, providing all the information and documents requested, the relevant authority has to proceed to registration:

“Provided that the conditions set forth in Articles 12 and 13 of this Law have been fulfilled, the Court competent for registration shall be obliged to enter a church, religious community and a religious group in the competent Register within 8 days from the day the application for entry has been submitted.”

And the conditions set forth in Articles 12 and 13 provide only for a duty of information and communication of documents.

Also, the Law mentions only one case of rejection of the application. Article 16 sets forth:

“1. In case of non-fulfillment of the material conditions set forth in this Law related to the entry of a church, religious community and a religious group in the relevant Registry, the competent court shall reject the application.

2. Only the submitter of the application may file an appeal against the Decision rejecting the application within 15 days from the day of receipt of the Decision.”

The term “material conditions” tends to refer to the formal filing of the required documents and information in the application for registration. If this is the case, the Law would comply with human rights norms forbidding any discretion in this matter.

However, some restrictions can be applied to registration pursuant to the terms of Articles 9 and 10 of the Law.

Article 9.3 provides:

*“A church, religious community and a religious group will be entered in the competent Register, **if there is no previous registration done of such church, religious community and religious group.**”*³

And Article 10.1:

“The name and official insignia of every new church, religious community and a religious group should be different from the names and official insignia of already registered churches, religious communities and religious groups.”

A controversy arose when the Law was under discussion as to whether more than one denomination of any one faith could obtain legal registration.

It should be acknowledged here that, in this regard, a former Article 8 has been deleted which used to read:

“For one confession only one church, religious community or religious group can be registered.”

Article 9.4 has also been deleted in the final version of the Law, which provided:

“A church, religious community and a religious group that does not have the same identity or that does not use the same or a name similar to an

³ The translation used by the Commission on this point is slightly different: “will be entered ... if the church etc. has not been already registered, within the context of this Law”.

already registered church, religious community or religious group will be entered in the competent Register."

And finally Article 10.4 has been deleted, which was especially designed at the Serbian Orthodox Church:

"The name and insignia of a church, religious community and a religious group cannot contain official names and insignia of other states."

Notwithstanding the deletion of these provisions, the wording of Articles 9.3 and 10.1 has remained the same in the new Law and it remains unclear as to how the conditions set for registration will apply, i.e. *"no previous registration"* and *"different from the names and official insignia."*

This is particularly true in the light of the comments made by the drafters of the Law to the Venice Commission when they considered that the registration of the so called "Orthodox Ohrid Archbishopry" would conflict with the already existing "Orthodox Church of Macedonia".⁴

The Venice Commission expressed in its Opinion that it was not clear whether the wording of Articles 9 and 10 meant that the same religious entity could not register more than once or whether the phrase *"has not been already registered"* meant that the Single Register Court (which is the registering body) had to assess the individuality of each church, religious community or religious group and exercise its discretion by registering only one "denomination" of this religious entity.

Also, imprisoned Archbishop Jovan, who heads the Ohrid Archdiocese of the Serbian Orthodox Church in Macedonia which has been denied legal status, insisted the new Law must allow all faiths to register *"not only when they result from differences between religions, but also from possible conflicts with leaderships of already recognized religious communities."*

The Venice Commission noted that this particular issue entailed both historical groundings and political aspects in Macedonia, since relations between the State and the Church have always been very close. And referring implicitly to the conflict between the Macedonian Orthodox Church and the Serbian Orthodox Church, it added:

"It would therefore constitute a danger for the State, its integrity, and the interest of its citizens to see a religious entity which might support foreign interests having a legal personality in the country."

⁴ The Orthodox Church of Macedonia gained autonomy from the Serbian Orthodox Church in 1959 and declared the restoration of the historic Archbishopric of Ohrid. On July 19, 1967, the Macedonian Orthodox Church declared autocephaly from the Serbian church.

In this regard, the European Court of Human Rights has constantly ruled that the State, in exercising its regulatory power, must remain neutral and impartial. In the above mentioned case *Metropolitan Church of Bessarabia v. Moldova*, the Court described a similar situation where the refusal of registration of the Metropolitan Church of Bessarabia, an Orthodox Church of the Republic of Moldova autonomous from the Moldovan Orthodox Church, was based on political issues:

“under cover of the applicant Church, which was subordinate to the patriarchate of Bucharest, political forces were at work, acting hand-in-glove with Romanian interests favourable to reunification between Bessarabia and Romania. Recognition of the applicant Church would therefore revive old Russo-Romanian rivalries within the population, thus endangering social stability and even Moldova’s territorial integrity.”

In that instance, the Court found that, even though the interference with the freedom of religion of the applicant might have been prescribed by law and pursued a legitimate aim of protection of public order, it was not “necessary in a democratic society”:

*“However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial (...). What is at stake here is the preservation of pluralism and the proper functioning of democracy, one of the principle characteristics of which is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome (...). **Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.**” (§ 116) (emphasis added)*

As the Office for Democratic Institutions and Human Rights stated in its comments on the draft Law on 3rd May 2006:

“This has been decided taking into mind that the divide between two rivaling churches of the same confession or denomination could even endanger the very existence of the State. In such a case, however, the State must find other ways than non registration of a religious entity to ensure its own existence.”

The Court restated these findings in a 16 December 2004 decision about the measures adopted by the Bulgarian authorities to favor a particular leader of the Muslim community (*Case of Supreme Holy Council of the Muslim Community v. Bulgaria*):

“The Court reiterates, however, that in democratic societies the State does not need in principle to take measures to ensure that religious

*communities remain or are brought under a unified leadership. (...) **State measures favouring a particular leader of a divided religious community or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of the freedom of religion.*** ” (§ 96) (emphasis added)

As concerns the Macedonian Law, the Venice Commission stated that *“each part of the same religion should be entitled to register and to acquire legal personality, quite apart from other rights. If registering would not be possible, it would be a serious breach of the international requirements regarding freedom of religion.”*

It concluded that the Macedonian draft Law represented an unnecessary interference of state bodies into the freedom of religion or belief as the Law appeared to provide discretionary power to a public authority - the Court in charge of the Register - to assess and compare similarities or differences between religious entities and consequently enter into theological questions in contravention of international standards.

The new Law that has been enacted left exactly the same wording of Articles 9.3 and 10.1 that the Commission criticized. It therefore could lead to a violation of international human rights standards.

It will be up to the Skopje II Court now to construe Articles 9 and 10 so that no arbitrary or discriminating denials of registration occur. In particular, the registration of more than one religious community or group of the same faith should be allowed. This could be achieved in compliance with the new Law if the notions of *“no previous registration done of such church, religious community and religious group”* and *“different from the names and official insignia of already registered churches, religious communities and religious groups”* are not construed in a discriminatory manner. In addition, local parishes of an existing religious community should be allowed to register as new religious entities.

The European Commission against Racism and Intolerance of the Council of Europe (ECRI) has previously expressed its concern regarding such situations where local parishes were not allowed to do so. In its third report on Moldova, published on April 29, 2008, it stated that although the Metropolitan Church of Bessarabia was finally registered as a Church at the national level in 2002 following the judgment of the European Court of Human Rights (see *Metropolitan Church of Bessarabia v. Moldova* above), *“it still experiences difficulties in registering individual parishes at local level, even though the overall situation has gradually improved over the years”*.

This kind of situation infringing on international human rights standards should be avoided in Macedonia and the Skopje II Court will be responsible for making sure that no discriminatory denials of registration occur.

Some other provisions of the new Law are of similar concern.

b. Protection of already registered communities

First, the prohibition of the use of the name Macedonia or derivative words in the name used for registration without written permission from the Justice Ministry seems excessive and might not be considered to be a legitimate restriction to the right of freedom of religion pursuant to Article 9.2 of the ECHR.

Also, notwithstanding the favorable provisions of Article 5:

“A church, religious community and a religious group shall have the right, internally, to be organized freely with their own bodies of management, hierarchy, and competence, and to designate persons to represent and present them, and to adopt their own acts on the aforementioned.”

Article 18.3 of the Law seems to regulate the internal functioning of churches, which is beyond the State’s legitimate powers:

“Religious rites, prayer and other forms of worship in a religious building or in places mentioned in paragraphs 1 and 2 of this article may be performed and organized only by a religious servant of a church, religious community and religious group in the Republic of Macedonia or upon their authorization.”

Additionally, Article 18.5 introduces a prohibition:

“Any false representation as a religious official person and any abuse of religious clothing and insignia of a registered church, religious community and a religious group shall be prohibited.”

This Article as originally drafted made it a criminal offence as it read:

“Any false presentation as an official person and abuse of religious clothing and insignia is a criminal offence.”

It has been laudably modified pursuant to the Venice Commission’s comment that it was unclear what was involved in “false presentation” and “abuse of religious clothing and insignia”. As they were prescribing a criminal offence, the terms of this Article had to be clear to allow people to regulate their conduct appropriately.

In spite of this amendment, the prohibition of Article 18.5 remains unclear as to the meaning of “false representation” and “abuse of religious clothing and insignia”. Moreover, the adding “of a registered church, religious community and

a religious group” indicates a willingness to protect communities which have been granted registration.

All these provisions, as Forum 18 underlines, could represent an attempt to ban worship by unregistered entities and as such would contravene international human rights standards.⁵

A last point should be addressed concerning registration.

c. Potential intrusion in the “forum internum”

Among the information requested for registration by Article 13, there is the *"Manner of expression of the religious affiliation and performance of the cult."*

The delegates of the Venice Commission expressed some concern about this requirement which existed already in the previous draft of the Law. They stressed that if this information was required so that the registration Court could assess the validity of the beliefs or activities of the church, this was not permissible.

Both the International Covenant on Civil and Political Rights (ICCPR) (Article 18) and the ECHR (Article 9) on freedom of religion imply that legal requirements mandating involuntary disclosure of religious beliefs are impermissible. Also the OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief provide, on the basis of ECHR case law on States' neutrality on religious matters:

"In general, the neutrality requirement means that registration requirements that call for substantive as opposed to formal review of the statute or charter of a religious organization are impermissible."

However, the wording of Article 13 of the new Law does not necessarily imply an assessment of religious rites. We understand to the contrary that a general description of the kind of religious activities performed (such as prayers, rites, conferences, education) could respond to the legal requirement set forth in Article 13.

Also, as previously mentioned, the wording of Article 16.1 providing rejection of the application *"In case of non-fulfillment of the material conditions set forth in this Law"* tends to mean that the authorities will review that the information on the *"Manner of expression of the religious affiliation and performance of the cult"* are provided, but will not assess them.

⁵ Forum 18 News Service, <http://wwwforum18.org>, 31 March 2008. Religious denominations other than the Serbian Orthodox Church could also suffer from such provisions. Ivan Grozdanov, pastor of Skopje Baptist Church, stated that various Baptist and Seventh-day Adventist churches may be affected by them.

In this regard, the construction of these provisions by the Skopje II Court, responsible of the process of the applications, will be definitive. The Court should enforce such a restrictive interpretation in order to comply with international human rights norms.

Also, the necessity to indicate the *“description of the sources of learning”* provided at Article 12 does not appear to us as something that would be disproportionate to the aim pursued. Although a State is prohibited from investigating the *“forum internum”* of the individual, the sources of the teachings in one’s denomination can be, to our view, indicated without requiring great detail or allowing for improper evaluation of religious teachings or beliefs.

It must be acknowledged here that the former draft of the Law has been modified following the comments of the Commission. Initially, the religious entity was required by Article 12 to present a *“program of exertion.”* Even though the delegation of the Commission and the ODIHR was told that this requirement was of a formal nature and that the court would not look into the components of this program, the Commission recommended its deletion. It estimated that it was likely to be seen as an unlawful infringement of freedom of religion, all the more so since the formal nature of this requirement or all procedures were not clearly specified in the draft Law.

The new wording of Article 12 is more satisfactory. However, much will depend in practice on the interpretation by the Skopje II Court of the terms of the Law.

As the European Court of Human Rights ruled in its decision *Metropolitan Church of Bessarabia v. Moldova*:

“in principle the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.”

Therefore, it is necessary to underline that only a restrictive construction of Articles 12 and 13 of the new Law by the Macedonian Court would comply with these human rights standards, meaning that only a formal review of the statute or charter of the applicant religious organization will be permissible.

5. Construction of religious facilities

Article 18.1 of the new Law provides that *“Religious cult shall be performed in religious facilities such as temple, mosque, house of prayer, synagogue and cemetery, and in other premises of a church, religious community and a religious group.”*

And Article 18.2 *“The religious cult may be performed and practiced also in other premises and public places.”*

These provisions seem to ensure a large freedom to practice religion or belief. All the more since Article 18.2 has been modified; it used to read in the previous draft of the Law:

“The religious cult may be performed in other public and private places provided that this does not violate the religious sentiments of other citizens and does not violate the public peace and order.”

If States can set limitations in their law to the right to freedom to manifest one's religion if they are necessary in the interests of public safety, the violation of “*the religious sentiments of other citizens*” was certainly not an acceptable reason for prohibiting a religious cult.⁶

The wording of the final draft of the Law is therefore much more satisfactory.

However, while Article 19.1 of the Law reads “A religious facility shall be constructed upon a submitted application for the issuance of a construction permit,” Article 19.2 sets forth:

*“Bodies of Municipalities and of the City of Skopje competent for town planning and adopting town plans **may request opinion, in the procedure before granting the permit for construction of a religious facility, from the existing church, religious community and religious group, which is not binding for the aforementioned bodies.**”*

The European Court of Human Rights has a constant case law ruling that this kind of provision contravenes international human rights standards. In the above-mentioned case of *Metropolitan Church of Bessarabia v. Moldova* it found:

*“Similarly, where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, **involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9** (see, mutatis mutandis, *Pentidis and Others v. Greece*, judgment of 9 June 1997, Reports 1997-III, p. 995, § 46).”* (emphasis added)

The terms of Article 13.2 are therefore a blunt violation of the ECHR requirements on freedom of religion and conscience and the right to practice freely one's religion.

⁶ See above cited case law *Metropolitan Church of Bessarabia v. Moldova*: “Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.” (§ 116)

Baptists, Serbian Orthodox, Adventists, Muslims and Jehovah's Witnesses in Macedonia all stated that the major problems in practicing their faith have involved buildings, such as long-running denials of permission to build or the inability to extend or to establish legal ownership over places of worship. The authorities have also demolished Serbian Orthodox places of worship which they deemed to be illegal.

The new Law on the Legal Status of a Church, Religious Community and a Religious Group unfortunately is not likely to solve this problem. Indeed, there is a distinct danger that the Law might encourage religious discrimination by allowing existing religious communities, particularly the state-favored Macedonian Orthodox Church, to effectively veto the construction of places of worship of other faiths. This would be particularly the case for the Serbian Orthodox Church, if it were ever to be permitted to have state registration.

The views of the state-favored Islamic Community of Macedonia may also be sought in areas dominated by Macedonia's large Albanian minority.⁷

Therefore, it is advised that, in practice, the authorities shall not require opinions from the existing churches or religious communities for the granting of building permits in order to comply with international human rights standards articulated by the European Human Rights Court.

Also, the building permits should be granted on a non-discriminatory basis to all faiths, in conformity with Article 9 of the ECHR and freedom to practice religion.⁸

In summary, the whole practice of granting building permits or allocating the use of existing buildings to religious communities should be modified in Macedonia, in order to allow a true freedom of worship and practice of religion or belief.

And Article 18.2 of the new Law "*the religious cult may be performed and practiced also in other premises and public places*" should be interpreted in a liberal way by the Macedonian authorities.

⁷ Fatmir Kadriju from the Bektashi Islamic community told Forum 18 that the Bektashi religious community is treated as a religious group, even though they have existed in Macedonia since the 16th century. He also complained about the community's continuing lack of success in legal attempts to recover two places of worship, forcibly seized in 2002 by the state-favored Islamic Community of Macedonia.

⁸ Ivan Grozdanov, pastor of Skopje Baptist Church, told Forum 18: "*The biggest problem is that when the authorities draw up detailed urban plans, they only allow for building plots for the Macedonian Orthodox Church*". "*They do not consult with other churches and religious communities about their building needs. So when we Baptists request building permission, the authorities reply that there are no plots allocated for churches*" he added.

6. Religious education

The relevant provisions in the new Law aim at providing for two main issues: to allow any religious entity to conduct its own religious teachings, and, secondly, to provide for religious instruction as an optional subject in public educational institutions.

Article 21.1 of the Law sets forth:

“A church, religious community and a religious group may conduct religious teaching.”

And Article 21.2 provides:

“Religious teachings shall take place at the premises where religious rites and other forms of public manifestation of religion are performed, as well as at other public and private premises and places, provided that the conduct of religious teachings does not violate the public peace and order.”

In our view, these provisions are very positive. They are submitted however to the same kind of reserve as we have already expressed concerning registration. The rights so conferred should not be limited to registered denominations only.

The freedom of religion or belief for everyone which encompasses the right to follow a religious teaching is enshrined both in Article 9 of the ECHR and in Article 18 of the ICCPR. The unregistered denominations should therefore be allowed to conduct religious teachings in the same way as they should be allowed to practice and express their faith freely.

Therefore, these provisions of the Law should be construed by the Macedonian authorities accordingly.

Conclusion

Major improvements have been made to the Law in its final version that has come into force on 1st May 2008 in order to make it conform to international human rights instruments and case law.

However, some of its provisions remain unclear and could open the door to the denial of the right to religious freedom to a number of denominations.

The first main concern is that the new Law seems to grant rights only to registered denominations and the registration process has some flaws that could make it discriminatory in the light of international human rights standards.

The second main concern is that building permits can be granted on a discriminatory basis pursuant to the Law. Various religious groups in Macedonia have experienced problems practicing their faith because they are constantly denied the ability to build premises or to use existent ones as places of worship. The new Law provision ensuring "*the religious cult may be performed and practiced also in other premises and public places*" should be interpreted largely by the Macedonian authorities.

It will be up to the Skopje II Court in charge of the entries of new religious entities in the Register and to the Macedonian authorities to interpret the Law in a way that complies with international human rights requirements.