

Religion and the Secular State in Bulgaria

The present report explores the current legal framework which has an impact on the relationship between law and religion with reference to constitutional provisions, secondary legislation, and case law. Where relevant I also refer to earlier legislation which defined the current legal framework and landmark jurisprudence.

Because the focus is on laws relating to religion and relevant adjudication my report has explored to a limited extent the question of hate speech and religious defamation because, while there are reported incidents, there do not appear to be pending or decided cases in this area.

The overall analysis suggests that the 2002 legislation affecting religion made drastic changes and yet did not change the way journalists, judges and magistrates think about religion. The cases emerging in the light of DA2002 suggest that more is needed to educate and change the culture in the way religion is viewed.

Bulgaria is predominantly an Eastern Orthodox country with a significant Roman Catholic minority and a significant Muslim population consisting of Ethnic Turks, Pomaks, and Muslim Roma¹ In addition, there are a number of fluctuating Protestant communities and new religious movements, some of which were founded in the nineteenth century by missionaries in the Ottoman Empire while others were founded after the fall of the Berlin Wall.

The predominant Orthodox population is measured by the reference to the respondents' statement about their religious background and is not linked to adherence to religious practices. The Bulgarian Orthodox Church is an autocephalous Patriarchate in communion with the family of the Eastern Orthodox Churches.

I. THEORETICAL AND SCHOLARLY CONTEXT

Law, Society and Religion in Bulgaria have been studied through the lens of several disciplines. Their premises have an impact on the formative framing of law and religion within the intellectual discourse of legislature, executive and judiciary. A detailed account of these intellectual trends can be found in several recent publications of law and religion in Bulgaria.² Due to the limited space here I have only outlined those trends.

PETER PETKOFF, LL.M., MA Theol., PhD, is a Barrister before the Sofia Bar and a Registered European Lawyer for England and Wales. He is an honorary fellow of the Centre for the Study of Law and Religion at the University of Bristol, a Fellow of the Centre for Christianity and Culture at Regent's Park College, Oxford, a Secretary of the Oxford Society for Law and Religion and a convener of the Oxford Colloquium for Law and Religion. He is a board member of the research network "Church, Law and Society of the Middle Ages" and a convener of Eastern Canon Law panels at the International Medieval Congress at Leeds.

1. According to the census of 1992 and 2001 Christians are 86 percent (over 100,000 belong to Protestant churches, 80,000 are Roman Catholics, 20,000 belong to the Armenian Apostolic Church, the rest are counted as Orthodox. 13 percent of the population have identified themselves as Muslim in the above mentioned surveys. The ethnic makeup of the Muslim community is Turks, Pomaks, Muslim Roma, Tatars and Circassians and 4500 Jews. These figures only represent the Abrahamic religions and do not take into account the presence of the new religious movements which are below the numbers of the above mentioned religious groups.

2. Petkoff, P. (2005). "Church-State Relations under the Bulgarian Denominations Act 2002: Religious Pluralism and Established Church" *Religion, State and Society* Vol. 33, No. 4, December 2005, Petkoff, P. (2007). "Legal Perspectives and Religious Perspectives of Religious Rights under International Law in the Vatican Concordats (1963-2004) - " *Law and Justice Journal* 158: 30. *Freedom of Religion or Belief in the Jurisprudence of the Bulgarian Constitutional Court* (Religion, State and Society, Volume 36, Issue 3 September 2008, pages 205-223) See also forthcoming volume on Law and Religion in Bulgaria which is due to be published in the IIL Series of Kluwer Law International (2011); *Neutrality in the Jurisprudence of the European Court of Human Rights* – co-authored with Malcolm Evans (Religion, State and Society, Volume 36, Issue 3, September 2008, 225-250).

A. Historical Approach

There is a strong sense of associating Church and state relations as a symbol of the struggle for political, cultural, and national emancipation.³ This is the predominant focus of Bulgarian historiography and theology since the first issue of the Slav-Bulgarian History of Paisii of Hilendar in the 18th century.⁴

Julia Kristeva, the famous French-Bulgarian literary critic, developed this theme, drawing great conclusions as to the nature of “Orthodox theology” and the roots of the conflict in Yugoslavia. Julia Kristeva bewails the mishaps of post-Communist Bulgarian history as an effect of an implicit nihilism of the Orthodox character.⁵ Kristeva’s view is representative of a whole school of thought which is prepared to explain the different dynamics of Church and state in the East, and even its very civilization foundations, through an old fashioned and exaggerated contrast between the intensive West and static East.

A school of Christian philosophers from Sofia University (G. Kapriev⁶, T. Bojadjiev⁷, K. Yanakiev⁸) have offered a more concrete approach towards the relationship between Orthodox Christianity, freedom and Bulgarian culture. Kapriev has noted some culturally important features of this form of Christianity. One of them is the greater autonomy and responsibility of individuals.⁹ S. Ramet¹⁰ has also written, edited, or contributed to

3. Below is a non-exhaustive bibliography illustrating the areas of theological research of the period in question. Снегаров, И. (1924) *История на Охридската Архиепископия*. София; Снегаров, И. (1927) *Св. Климент Охридски*. София; Снегаров, И. (1937) *Солун и българската духовна култура - исторически очерк и документи*. София: Придворна печатница; Снегаров, И. (1944) *Кратка история на съвременните православни църкви*. София; Снегаров, И. (1950) *Духовно-културни връзки между България и Русия*. София; Снегаров, И. (1958) *Документи за историята на Българското книжовно дружество в Браила*. София; Снегаров, И. (1958) *Турското владичество-пречка за културното развитие на българския народ*. София; Снегаров, И. (1995) *История на Охридската Архиепископия*. София; Снегаров, И. (1997) *Българските земи през погледа на чужди пътешественици 1828-1853*. София; Събев, Т. (1968) *Църковно-календарният въпрос*. София: Синодално Издателство; Събев, Т. (1973) *Учредяване и диоцез на Българската екзархия до 1878*. София: Синодално Издателство; Събев, Т. (1977) *Априлското въстание и Българската православна църква*. София: Синодално Издателство; Събев, Т. (1981) *Църквата и съпротивата на българския народ срещу османското иго*. София: Синодално Издателство; Събев, Т. (1987) *Самостойна Народостна Църква в Средновековна България*. София: Синодално Издателство; Кирил Патриарх Български (1956) *Екзарх Антим, 1816-1888*. София; Кирил Патриарх Български (1958) *Граф Игнатиев и Българският църковен въпрос*. София: Синодално Издателство; Кирил Патриарх Български (1960) *Българо-мохамедански селища в южните Родопи*. София: Синодално Издателство; Кирил Патриарх Български (1961) *Принос към Българския църковен въпрос - документи от австрийското консулство в Солун*. София: Синодално Издателство; Кирил Патриарх Български (1962) *Католическата пропаганда сред българите*. София: Синодално Издателство; Кирил Патриарх Български (1968) *Принос към униатството в Македония*. София: Синодално Издателство; Кирил Патриарх Български (1969) *Българската Екзархия а Македония и Одринско*. София: Синодално Издателство.

4. Хилендарски, П. (1981) *Славянобългарска История*. София.

5. Kristeva, J. (2000) “Bulgaria My Suffering” in *Crisis of the European Subject*. New York: Other Press 163-183.

6. Каприев, Г. (1991) *История и метафизика: очерци по историческото мислене на Западно-европейското средновековие*. София; Каприев, Г. (1993) *Механика срещу символика*. София; Каприев, Г. (1995) “Православие и празноглавие.” *Литературен Вестник*, бр. 8-14/03/1995: 5-6; Kapriev, G. (1998) *Ipsa Vita Et Veritas: Der “Ontologische Gottesbeweis” Und Die Ideenwelt Anselms Von Canterbury*. Leiden: Brill.

7. Бояджиев, Ц. and Г. Каприев et al. (2000) *Die Dionysius-Rezeption Im Mittelalter: Internationales Kolloquium In Sofia Vom 8. Bis 11. April 1999 Under Der Schirmherrschaft Der Soci t  Internationale Pour L’ tude De La Philosophie M di vale*. Turnhout: Brepols.

8. Янакиев, К. (2002) “Глобализация на света. Глобализация на душата. Глобализация на делниците.” *Християнство и Култура* януари-март: 6-21; Янакиев, К. (2002) “Каноничност, неканоничност; достойнство и недостойнство (две проясняващи метафори).” *Християнство и Култура* брой 3: 68-82; Янакиев, К. (2002) “Православната Църква и нейните базисни изкушения.” *Християнство и Култура* брой 2: 66-76.

9. Kapriev, G. (1999) “Christian Values and Modern Bulgarian Culture” in Makariev, P., A.M. Blasko, et al. (eds) *Creating Democratic Societies: Values and Norms. The Cultural Heritage and Contemporary Change. Series Iva, Eastern and Central Europe: V. 12*. Washington, DC: Council for Research in Values and Philosophy: 229-239.

10. Ramet, S.P. (1984) *Religion and Nationalism in Soviet and East European Politics*. Durham, N.C.: Duke

numerous volumes which give a broad picture of the complicated relations between Church and state during Communism.

In the field of modern history, the most significant work on Church-state relations in Bulgaria during the Communist period is Daniela Kalkandjieva's book *The Bulgarian Orthodox Church and the State: 1949-58*.¹¹ This book uses extensive primary sources and provides the most detailed research in the field of Church-state relations which has been produced since the end of Communism.¹² Janice Broun's work on the schism in the Bulgarian Orthodox Church¹³ also gives some helpful insight into the problems Bulgarian Church-state relations have faced following the collapse of Communism, though she relied on Bulgarian sources which were not always accurately translated. In the area of intellectual history the book of Maria Todorova *Imagining the Balkans*¹⁴ is the most up-to-date attempt to produce an intellectual history of the region and to map the directions of the exchange of ideas and cultural influences.

For an understanding of religion and politics in Bulgaria, Sugar's studies on the interaction between religion and nationalism in Eastern Europe are a valuable resource.¹⁵

Again in the area of sociology of religion, Ina Merdjanova discusses religion in Post-communist society, nationalism in Eastern Europe and civil society and Post-Communism.¹⁶ John Anderson's book¹⁷ on the law on religion in Poland, Spain, Greece, and Bulgaria¹⁸ deals specifically with minority religions' legislation in both these countries. A recent volume edited by J. T. S. Madeley and Z. Enyedi presents a general study of Church and state in contemporary Europe and provides significant new data analysis and methodology.¹⁹ *Politics and religion in Central and Eastern Europe: Traditions And Transitions* is a collection of essays which use both quantitative and qualitative research methodology in examining the continuing changes in fundamental values in countries of Central and Eastern Europe and addresses a variety of aspects of

University Press; Ramet, S.P. (1987) *Cross and Commissar: The Politics of Religion in Eastern Europe and the USSR*. Bloomington: Indiana University Press; Ramet, S.P. (ed) (1988) *Eastern Christianity and Politics in the Twentieth Century*. Durham, N.C.: Duke University Press; Ramet, S.P. (ed) (1989) *Religion and Nationalism in Soviet and East European Politics*. Durham: Duke University Press; Ramet, S.P. (ed) (1990) *Catholicism and Politics in Communist Societies*. Durham, N.C.: Duke University Press; Ramet, S.P. (ed) (1992) *Protestantism and Politics in Eastern Europe and Russia: The Communist and Post-communist Eras*. Durham, N.C.: Duke University Press; Ramet, S.P. (1993) *Religious Policy in the Soviet Union*. Cambridge: Cambridge University Press; Ramet, S.P. (1997) *Whose Democracy?: Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe*. Lanham, M.D.: Rowman & Littlefield Publishers; Ramet, S.P. (1998) *Nihil Obstat: Religion, Politics, and Social Change in East-Central Europe and Russia*. Durham: Duke University Press;

11. Daniela Kalkandjieva, *The Bulgarian Orthodox Church and the State: 1949-58* (1997). Калканджиева, Д. (1997) *Българската Православна Църква и Държавата 1944 -1953*. София: Албатрос.

12. For helpful information in this area, see Marie Todorova, *The Effect of Communism on the Pastoral Work of the Protestant Churches in Bulgaria* (Cambridge: Anglia Polytechnic University 1997).

13. J. Broun, "The Schism in the Bulgarian Orthodox Church, Part 2: Under the Socialist Government: 1993-97," *R.S.S.* September, vol. 28, iss. 3: 263-289 (2000); J. Broun, "The Schism in the Bulgarian Orthodox Church, Part 3: Under the Second Union of Democratic Forces Government; 1997-2001," *R.S.S.* vol. 30 no. 4: 365-394 (2002); J. Broun & G. Sikorska, *Conscience and Captivity: Religion in Eastern Europe* (Washington, D.C.: University Press of America, 1988).

14. Maria Todorova, *Imagining the Balkans* (New York: Oxford University Press, 1997).

15. P.F. Sugar, *Southeastern Europe under Ottoman Rule, 1354-1804*, (Seattle: University of Washington Press 1977); P.F. Sugar, *Nationality and Society in Habsburg and Ottoman Europe*, (Brookfield, V.T.: Variorum 1997); P.F. Sugar, *East European Nationalism, Politics and Religion*, (Brookfield, V.T.: Ashgate 1999); Sugar, P.F., and I.J. Lederer (eds) (1969) *Nationalism in Eastern Europe*. Seattle: University of Washington Press; Sugar, P.F., S.P. Ramet, et al. (eds) (2002) *Nations and Nationalisms in East-Central Europe, 1806-1948: A Festschrift for Peter F. Sugar*. Bloomington, Ind.: Slavica.

16. Merdjanova, I. (2002) *Religion, Nationalism, and Civil Society in Eastern Europe-the Post-communist Palimpsest*. Lewiston, N.Y.: Edwin Mellen Press.

17. Anderson, J. (1994) *Religion, State, and Politics in the Soviet Union and Successor States*. Cambridge ; New York: Cambridge University Press; Anderson, J. (2002) "The Treatment of Religious Minorities in South-Eastern Europe: Greece and Bulgaria Compared" *R.S.S.* 30:1: 9-31.

18. Anderson, J. (2003) *Religious Liberty in Transitional Societies: The Politics of Religion*. Cambridge: Cambridge University Press. Unfortunately the book came out only just before the submission of the present thesis and it has not been possible to take its findings fully into account.

19. Madeley, J.T.S. and Z. Enyedi (eds) (2003) *Church and State in Contemporary Europe: The Chimera of Neutrality*. London: Frank Cass.

political/religious interaction in the former Eastern Bloc as well as the question of different approaches to the topic.²⁰

B. Law and Religion

A very significant contribution in the field of law on religion in Eastern Europe is the study edited by Silvio Ferrari, Cole Durham, and Elizabeth Sewell, *Law and Religion in Post-Communist Europe*.²¹ The stated aim of this publication is to be the first comprehensive comparative analysis of the legal framework of Church-state relations in Central and Eastern Europe. Along similar lines, although now slightly out of date, is the study edited by Kevin Boyle and Juliet Sheen *Freedom of Religion and Belief: A World Report*.²² Malcolm Evans provides a general overview of the international legal instruments relating to freedom of religion or belief and their impact on the OSCE and CE member states.²³

My study of the legal framework of law and religion identifies key aspects of the provisions of the *Denominations Act, 1949* and in those of the recent *Denominations Act, 2002*, which has now replaced the Communist statute of 1949; it follows the development of the jurisprudence on religious freedom and takes into account historical influences, specifically the impact of concepts from Orthodox theology and canon law, as well as Ottoman jurisprudence and the influence of particular civil law families before and after World War II. Further, it shows to what extent and in what way the legal framework of Church-state relations and laws on religion have been influenced by the jurisprudence of the European Court of Human Rights.

II. GENERAL BACKGROUND

Until 2002, the *Denominations Act 1949* was the main legal framework protecting, or rather regulating, religious freedom in Bulgaria.²⁴ In the 1990s, the continued use of the statute resulted in tension between the two rival Synods of the Bulgarian Orthodox Church, between two rival Supreme Muslim Councils, and between the executive and various minority religions.

Church-state relations in Bulgaria illustrate this dramatic transformation, starting from the separation of powers evident in the early nineties.

For societies undergoing transition from an authoritarian to a more liberal political order, the consequences of pluralism are often hard to cope with. Under the old system political repression may have been the norm, but at least the previous regime offered some form of protection against the waves of pornography, violence and social collapse which often appear to accompany liberalization. Such problems are even more acute for religious organizations, any of whose leaders may have played a role in bringing down the old authoritarian regime but now find themselves wondering about the democratic beast they have unleashed. In the changing political system they have to compete with new ideologies and faiths, but also with the more colorful pleasures of the flesh now available to the average citizen.²⁵

20. Swatos, W.H. (ed) (1994) *Politics and Religion in Central and Eastern Europe: Traditions and Transitions*. Westport, Conn.: Praeger.

21. Ferrari, S., Durham, W.C., Jr. and Sewell, E. (eds) (2003) *Law and Religion in Post-Communist Europe*. Leuven: Peeters.

22. Boyle, K. and J. Sheen (1997) *Freedom of Religion and Belief: A World Report*. London: Routledge.

23. Evans, M. D. (1997). *Religious Liberty and International Law In Europe*. Cambridge, Cambridge University Press. *Freedom of Religion or Belief in the Jurisprudence of the Bulgarian Constitutional Court* (Religion, State and Society 36, 3 September 2008, 205-223).

24. *Закон за вероизповеданията 1949*. <http://www.daxy.com/cgi-bin/norm/search.exe?m=0&n=2573&tmpl=daxystandard> (09/09/03).

25. Anderson, J. (2002) "The Treatment of Religious Minorities in South-Eastern Europe: Greece and

In such context it is quite difficult to imagine the existence of religion without it being administered by the state. With a complex framework, largely dependent on the concepts of civil law, the law on religion serves the purpose of creating religious entities within the terms of an existing statute, rather than allowing a completely unregulated scheme. There is also a tendency to use civil law models to make clear guidelines and definitions at a statutory level,²⁶ which theoretically will allow the judiciary to intervene more actively in situations when the executive takes over the legislator's functions. A civil servant is needed to administer the *dispositive* of the legal norm of the civil law.

Freedom of religion is defined in Article 13 (1) of the Constitution of the Republic of Bulgaria.²⁷ Article 13 (2) states that religious institutions are separated from the state. Article 37 (1) proclaims freedom of conscience, thought, and religion; as well as freedom of religious and atheistic convictions. It also stipulates the state's duty to maintain tolerance and respect among all religious communities, as well as among all believers and atheists. Under Article 5 (3) this freedom is non-derogable during war or states of emergency. The Constitution also introduces certain controversial ideas in connection with freedom of religious belief, some of which were the topic of public discussion at the time of their adoption. Thus, Article 1 (3) defines Eastern Orthodox Christianity as "the traditional religion of the Republic of Bulgaria." This status differed from the legal and constitutional "recognition" that the Bulgarian Orthodox Church had under the *Turnovo Constitution*, which recognized Orthodoxy as the "prevailing religion."²⁸ "When the ruling Bulgarian Socialist Party set about adopting a Post-communist constitution in early 1991, the Church was struggling to heal its own divisions and made little contribution to the brief debate."²⁹

Initially, this provision, describing Eastern Orthodox Christianity as the traditional religion of the Republic of Bulgaria, was interpreted not to provide any legal preference for the Orthodox Church over other religious denominations, although there were several draft laws in the 36th Parliament that attempted to provide such privileged status for the Orthodox Church. The Constitution also prohibits use of religious communities, institutions and beliefs for political purposes,³⁰ as well as the formation of political parties along religious lines.³¹ Article 37 (2) of the Constitution introduces special restrictions on freedom of conscience on five grounds: national security, public order, public health, good morals, and the rights and freedoms of others.

The provision for the Orthodox Church in the Constitution might suggest that the Orthodox Church had been given something of the status of an established Church, in the sense that it was the only religion which had its existence recognized and therefore guaranteed by the Constitution. However, if this was intended, it has been presented in very obscure legal terms: Article 13 (3) says "The traditional religion of Bulgaria is

Bulgaria Compared" *R.S.S.* (2002) 30:1: 9.

26. In contrast to the judge in the Anglo-American legal system, the judge in France, for example, can hardly ever make a name for himself during his professional career Judges in France do not like to put themselves forward as creating rules of law. In practice, of course, they have to do so; it is not, and could not be, the function of a judge mechanically to apply well known and predetermined rules. But judges in France make every effort to give the impression that this is how it is: in their decisions they keep claiming to be applying a statute; only rarely, if ever, do they put forward unwritten general principles or maxims of equity which might suggest to observers that judges were creative or subjective." David, R. and P. Ardant (1960) *Le Droit Français*. Paris: Librairie generale de droit et de jurisprudence: 119

27. *Конституция на Република България 1991* <http://www.daxy.com/cgi-bin/dv/search.exe?m=0&n=5810&tmpl=daxystandard> (09/09/03)

28. *Търновска Конституция на Българското Княжество 1879*.

29. Anderson, J. (2002) "The Treatment of Religious Minorities in South-Eastern Europe: Greece and Bulgaria Compared" *R.S.S.* (2002) 30:1: 16.

30. *Конституция на Република България 1991* <http://www.daxy.com/cgi-bin/dv/search.exe?m=0&n=5810&tmpl=daxystandard> (09/09/03)13(4).

31. *Id.* at 11(4).

Eastern Orthodox Christianity.” This formula throws up the question of what is meant by traditional and what is meant by religion. Does it mean majority religion, a term used by the Turnovo Constitution (prevailing religion)? Does it mean established religion in a broad sense or established religion in a narrow sense (as an alternative to separation between religion and the state)?

The constitutional debates in the early 1990s in relation to law on religion lacked specific purpose and were reduced to such issues as how far religious freedom could and should go as well as merging together ideas such as national culture, national religion and national identity into a new ideological device.³² The discussions surrounding the constitutional text regarding the status of the majority religion took place within the context of a very dramatic work of the House of the Parliament. It was “a compromise between the country’s former Communist rulers, who had won the first free elections in 1990, and the democratic forces, which were then poorly organized.”³³ This situation of compromise led to some of the texts being badly drafted. Professor Todor Tchipev, a Constitutional Judge, describes the Bulgarian law-making technique as “poor.”

Some important laws are passed very quickly. Inconsistencies between laws are found in every country, but they are a serious problem in Bulgaria. One of the reasons for this is probably the small number of legal specialists in parliament - less than twenty of its 240 members. The number of legal experts in the civil service is also insufficient. The non-specialists learn, and are more or less familiar with, the laws that govern their own sectors.³⁴

Legislative intervention relating to law on religion was not a priority in the nineties. A central statute regulating religious communities, therefore, was not adopted. There were, however, a number of provisions in other statutes that enable us to identify the general approach of the legislator as far as law on religion is concerned. Article 73 of the new Law on Radio and Television,³⁵ for example, prohibits the spreading of information about religious beliefs and their being promoted in radio and TV broadcasts and forbids religious organizations to spread their beliefs through or to fund radio and TV broadcasting. The Bulgarian Constitutional Court, by Decision No. 21 of 14 November 1996 on Constitutional Case No. 19,³⁶ abolished this article of the Radio and Television Act. However, other provisions of the statute have remained that restrict the freedom of religious communities to spread their messages through electronic media. Article 29 prohibits a number of religious groups from having any access to radio and TV broadcasting for the purpose of disseminating their beliefs and ideas. On the other hand, Article 67 (6) of the statute establishes a privileged position for the Bulgarian Orthodox Church; besides the right to statements on great religious feasts, a right given by the Council of Ministers to several other religious communities as well (in accordance with Article 173 (3) of the *Employment Code 1986*), the Bulgarian Orthodox Church also has the right to demand direct media broadcasting of its religious services.

Another significant exception was the special clause in the new Community Clubs Act,³⁷ which forbids gatherings of religious communities in their premises. The statute gave far too much discretion to local authorities, enabling them effectively to ban a

32. A very interesting account of the impact of the media in interpreting religious freedom and of the political debate about the limits of religious freedom is the report by Bulgarian Helsinki Committee “Changing the Symbols: Media and Religions in Bulgaria” (1996) <http://www.bghelsinki.org/special/en/mr.pdf> (09/09/03).

33. Tchipev, T. (2000) “Bulgarian Democracy in Transition” *R.C.E.E.L. No. 3 (2000)*. 343; See also Tanchev, E. (1998) “The Constitution and the Rule of Law” in J.D. Bell (ed) *Bulgaria in Transition. Politics, Economy, Society and Culture after Communism*. Oxford: Westview Press: 65-93.

34. Tchipev, T. (2000) “Bulgarian Democracy in Transition” *R.C.E.E.L. No. 3 (2000)*:345.

35. Закон за радиото и телевизията 1996
[http://www.bild.net/temida/index.html\(03/09/03\)](http://www.bild.net/temida/index.html(03/09/03))

36. Решение N: 21 по конституционно дело N: 19 от 1996 г (Обн., ДВ, бр. 102 от 29.11.1996 г.) [http://www.constcourt.bg/\(12/09/03\)](http://www.constcourt.bg/(12/09/03)).

37. Закон за народните читалища 1996 <http://www.daxy.com/cgi-bin/dv/search.exe?m=0&n=49026&tmpl=daxystandard> (08/09/03).

religious assembly. According to Article 3 (2/6), community clubs perform basic activities, including additional activities assisting the performance of their main functions, with the exception of the use of the community club buildings for clubs with political purposes, for their becoming possessed by religious sects, as well as other activities contradicting good morals, the national security, and national traditions.

There are three articles in the Criminal Code³⁸ which deal with “crimes against religious denominations.” Article 164 forbids “instigation” of “religious hatred through speech, press, action or in some other way.” Article 165 criminalizes individuals for disturbing religious rituals and masses, while Article 166 prohibits the establishing of religion-based political parties and the use of religion as propaganda against the state.

III. LEGAL CONTEXT

The new Bulgarian law on religion, the Denominations Act promulgated on 29 December 2002 represents a particular school of jurisprudence and political philosophy which advocates that liberal values in a society can be introduced and achieved through a program which has as its logical aim a particular communitarian model of society as the initial stage of a community and character-building process. The preeminent status of the majority religion, for example, has been reaffirmed together with a non-discrimination clause attached.

The registration of religious faiths has been simplified, and refusal of registration is allowed only in very specific circumstances, and the state is viewed as an observer rather than an administrator implementing a particular religious policy. The first steps are being made towards resolving the difficulties of restitution of property previously belonging to religious communities. A procedure is being introduced for establishing succession of legal personality for the minority faiths which were banned after 1945. One of the best features of the present legislation is that all religious communities (save the Bulgarian Orthodox Church (BOC)) follow the same procedure to become legal persons and that this procedure is administered without prejudice by the independent judiciary rather than by the executive. At the same time, this religious pluralism is outlined alongside the concept of a quasi-established church,³⁹ the restriction of separatist movements within religious organizations, and the right of the government to give expert opinions in connection with individual religious organizations in court proceedings.

A. *The Bulgarian Orthodox Church: an “Established Church”?*

Religious pluralism in Bulgaria is defined alongside the concept of a “quasi-established church” in the case of the majority religion represented by the BOC (BOC). On the one hand, religion and state are separated and the general terminology establishing religious freedom is essentially liberal.⁴⁰ On the other hand, both the Constitution and the relevant legislation suggest a special role and often a special place for the BOC within what is effectively a social and political context.⁴¹ This eclectic scheme does not seem to be a result of ill-defined lawmaking. It seems that the legal framework of law on religion aims at cultivating religious pluralism and mutual tolerance and yet to center this pluralism and tolerance on a particular ethical paradigm, which in this case is represented by the BOC. The BOC is therefore seen as a factor in the polity (and community) building of the country without forming a theocratic institution. Orthodoxy seems to offer minimum standards for community-building based on ethical and historical roots.

38. *Наказателен кодекс 1968* <http://www.daxy.com/cgibin/norm/search.exe?m=0&n=5849&tmpl=daxystandard> (08/09/03).

39. I.e., via the establishment clause defining the BOC as a traditional religion with a political significance alongside the constitutional principle of separation of religion from the state.

40. Чл. 13 и 37, ал.1, *Конституция 1991*, Преамбул, *Закон за вероизповеданията 2002* (Обн., ДВ, бр. 120 от 29.12.2002 г.), *Становище от Министерския съвет на Република България по конституционно дело No 3 за 2003*, *Решение на конституционния съд No 12/5 юли 2003 по конституционно дело 3/2003*.

41. Id.

Opposed to communism, it was its antithesis (although it was often found collaborating with it), and the escape to freedom became inevitably and commonly an escape from a communist paradigm by seeking refuge in a religious paradigm.

In its preamble, the present act acknowledges the special and traditional role of the BOC in Bulgarian history and the formation and development of its spiritual and intellectual history (*dukhovna kul'tura*). Then it declares its respect for the three Abrahamic monotheistic religions in particular and also for any other form of religion.⁴² It also reaffirms a commitment to individual freedom of religious and secular convictions, as well as a commitment to promoting mutual tolerance and understanding on matters of religious and nonreligious conviction.⁴³ In the light of the turbulent post-communist years of church-state relations, it seems that the legislators felt the new law should reaffirm the general constitutional principles of freedom and equality before the law of different denominations by zero tolerance of any form of discrimination or privilege on religious grounds, including the refusal to hold religious beliefs,⁴⁴ except under specific circumstances provided by the law and the Constitution.⁴⁵ From the background of the painful clash of religion and state in the schism of the BOC, the in-fighting within the Supreme Muslim Council during the 1990s, and in recent European Court of Human Rights cases,⁴⁶ Article 4 establishes the central principle that state institutions must not interfere in the internal affairs of religious communities and their institutional structure. This principle emerged from the concept of separation between religion and the state affirmed by the Constitutional Court⁴⁷ and the subsequent cases at the European Court of Human Rights.

After it has set the general framework for defining religion, the statute provides a whole article (Article 10) on the status of the BOC. The BOC is defined as a traditional denomination. An attempt has been made to resolve the obscurity of the term "traditional" by adding to it that the majority church has a historical role for the Bulgarian state and has relevance to its political life.⁴⁸ I do not think that the legislators could have got any closer to a clear concept of established church in a parliamentary democracy. Although explicit establishment on a constitutional level or a statutory level is lacking, the above text suggests several important things. First, that there is some kind of a relationship between the BOC and the state on the level of polity. Although the law does not suggest what kind of relationship this is, one could imagine that the law will have an Eastern Orthodox framework and will be performed by clergy from the BOC.⁴⁹ At the same time, the legislators felt that they should go a step further by legislating on the legitimacy of the BOC, which is to perform functions such as state ceremonies. In the light of the troublesome decade of schism within the BOC, the legislators made a desperate attempt to define what "BOC" means by a combination of theological and jurisdictional criteria, perhaps hoping that such definitions would assist the judiciary to resolve disputes between rival factions by giving more transparent criteria.

In defining the identity of the BOC, the legislators use theological terms as well as terms taken from canon law and administrative law. It is described as "One, Holy,

42. Преамбул. *Закон за вероизповеданията*, (Обн., ДВ, бр. 120 от 29.12.2002 г.).

43. Id.

44. Чл. 3 (1).

45. Чл. 3 (2).

46. *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, European Court of Human Rights 2000 and *Metropolitan Church Of Bessarabia And Others v. Moldova*, (Application no. 45701/99) European Court of Human Rights 2001.

47. See *Решение на конституционния съд No 12/5 юли 2003 по конституционно дело 3/2003*.

Решение N: 5 от 11 юни 1992 г. по конституционно дело N: 11 от 1992 г., докладчици съдиите

Цанко Хаджистойчев и Пенчо Пенев (Обн., ДВ, бр. 49 от 16.06.1992 г.); *Решение N: 21 от 14*

ноември 1996 г. по конституционно дело N: 19 от 1996 г., докладчик съдията Тодор Тодоров

(Обн., ДВ, бр. 102 от 29.11.1996 г.).

48. Art. 10 (1).

49. In fact this kind of clarification was included in the second Denominations Bill by Kiril Milchev MP and Rupen Krikorian MP. See *Законопроект за вероизповеданията*, No. 248, 26/04/02/254-01-32., <http://www.parliament.bg/appropriations.php?id=6> (03/09/03).

Catholic and Apostolic,” thus adopting Article 9 of the Creed.⁵⁰ Second, the BOC is described in canon law terms: it is autocephalous,⁵¹ having the status of a Patriarchate; it is the legal successor of the Bulgarian Exarchate;⁵² and, its governing body is described as a Holy Synod, chaired by the patriarch, who is also metropolitan of Sofia. The texts which deal with the organization of the BOC employ and repeat the texts from the church’s ecclesiastical Constitution.⁵³ The above arrangement clearly follows the example of the Hellenic Constitution.⁵⁴

Such wording generates a number of problems. First, in effect it promotes interference by the state legislature in the internal affairs of the BOC. Should the BOC decide to change the way its church government operates, it has to do so by an act of Parliament. One might consider it preferable for an organization such as the BOC to be able to do this according to the procedure prescribed by its own by-laws. With the present wording of the statute, it seems that the BOC would not be able to do so without parliamentary support. It seems that this text was a way of making a point that the BOC is in some sense an established religion, but it also creates a danger of further tension should a political grouping decide to use the lacunae within a badly written statute in order to manipulate the governing body of the BOC.

Another specific characteristic of the BOC is that it is a legal person *ex lege*.⁵⁵ This is the only religion of the land which has its legal status *ex lege*. The above text is immediately linked with a kind of a disclaimer clause providing that the texts relating to the status of the BOC should not be interpreted in such a way as to result in discrimination in relation to other religions.⁵⁶ Such a disclaimer is very important in the assistance it gives to the courts in interpreting Article 10, with its theological and canonical allusions. Another text which adds to the impression that a primary purpose of the present legislation was to end the organizational crisis within the ranks of the BOC is Paragraph 3 of the concluding chapters, which provides that persons who have split from a registered religious institution in violation of its Constitution may not use its name or its property.⁵⁷

In view of the mainly descriptive nature of Article 10, one might wonder what the point is of having it in the statute at all. My personal opinion is that Article 10 is a result of the inability of civil law courts to establish the above descriptions as a point of fact, the corollary of which is that the civil law legislator tends to feel obliged to draft such descriptions for the interpretation of the law, and this transforms a mere principle into a point of law. Second, Bulgarian judges demonstrated a concerning inadequacy to deal with law on religion in the 1990s, which seems to have prompted the legislators to make the status of the BOC, as the majority religion in the country, a point of law.⁵⁸

50. Вярвам в Една Свята, Съборна и Апостолска Църква (I believe in One, Holy, Catholic and Apostolic Church). *Служебник* (1959). София: Синодално издателство стр. 88, corresponding to the English version of the *Divine Liturgy of St John Chrysostom* (1995). Oxford: Oxford University Press.

51. From Greek αὐτοκέφαλος, literally “himself the head.” According to the *Oxford Dictionary of the Christian Church* this is a term used in the early Church to describe bishops who were under no superior authority and thus independent both of Patriarch and Metropolitan. In principle later and current use, however, is for the modern national Churches that make up the Eastern Orthodox Church which though normally in communion with Constantinople, are governed by their own national synods.

52. The Bulgarian Exarchate was created as a result of Sultan Ferman granting in 1870 permission for the foundation of an autonomous Bulgarian Church. Text of the Ferman is to be found in G. Noradounghian, G. (1902) *Recueil d’actes internationaux de l’ Empire Ottoman*. Paris, III: 293-95. In Bulgarian historiography this act is treated as an effective recognition of the existence of a Bulgarian nation on the territory of the Bulgarian Empire.

53. *Устав на Българската Православна Църква*, <http://www.pravoslaviето.com/> (06/09/03).

54. See *infra*, n. 73.

55. Art. 10 (2).

56. Art. 10 (3).

57. § 3. Преходни и заключителни разпоредби, *Законопроект за вероизповеданията 2002*.

58. See, for example, a Decision of the Supreme Administrative court which concludes that the fairness and the fundamental principles of religious freedom could lead to the conclusion that there could be two religious institutions under the name BOC, with two separate governing bodies, under essentially the same constitution. See Върховният административен съд на Република България – Трето отделение, Определение по адм. дело № 5748 / 2000. See also the earlier case of a Jehovah’s witness being refused parental rights on account of her “membership of a dangerous sect” quoted in an earlier chapter.

The above considerations might generate several problems. First, the statute purports to endorse the principle of separation between religion and the state and yet sets up a relationship between the majority religion and the state. Second, by defining what the BOC is, by using theological, canon law and administrative law terminology, the statute essentially declares what the elements are that make the BOC “legal.” However, this has further consequences inasmuch as it makes the BOC Church, as well as its internal affairs and its governing structure, dependent on a statute which essentially overwrites its existing ecclesiastical Constitution and the canon law taken into account by the BOC in its internal affairs. If, therefore, the BOC wished to amend its Constitution and to change the structure of its church government for reasons of theology or canon law, it would not be able to do so without a change in the Denominations Act of 2002.

This notion of a religious community whose existence and foundations are based on Episcopal succession rather than coming to existence by law is problematic because becoming a legal person is not the same as becoming a religious institution in a temporal sense (the actual *terminus a quo* being the foundation of a particular church by an apostolic successor, while its Constitution as a legal person is in a way secondary and does not substantially affect the fact that a church has come into life before the law which has legitimized it as a legal person). The text of the Act is somewhat ambiguous on this point. In an interview, Professor Ivan Zhelev, the head of the Denominations Directorate, implied that the BOC is an entity which existed before the state, and therefore should not be subject to the state’s administrative law.⁵⁹

A similar view was expressed by the prime minister, Simeon Saksoburggotsky, in connection with Constitutional Case No 3/2003.⁶⁰ The ambiguity is further illustrated by the stand taken by the minority religions which opposed the Denominations Act, partly because it does not sufficiently emphasize the nonconformist character of the religious communities which their denominations represent. The idea of a free church as opposed to an established church was argued to be central to the concept of religious freedom.⁶¹

Anderson rightly acknowledges that the traditionally dominant religious institutions will generally argue that what they seek is not privilege but “recognition” of a historical, cultural, and religious reality; and that a formal acceptance of their status does not amount to their being given any inappropriate advantages in relation to other religious communities. Equally, in most of the countries within the European and Slavic context such arguments will be buttressed by a more nationalistic approach that would question the appropriateness of the U.S. model of church-state separation, for example, with its liberal, if not secularist, intellectual underpinnings.

BOC was never established as a state religion, but as a religious entity which has had the most significant historical influence on the formation of the Bulgarian identity. This was a concept very similar to the concept adopted in the Hellenic Constitution,⁶² but

59. Димитров, И. Ж. (2003) “Законът за вероизповеданията - признание за историческата и настояща роля на БПЦ” *Църковен Вестник*, Година 103, брой 3 София, 1-15 февруари. <http://cv.dir.bg/03-2003.htm> (06/09/03)

60. *Становище от Министерския съвет на Република България по конституционно дело № 3 за 2003г*, <http://www.constcourt.bg> (02/09/03).

61. See reports by the Bulgarian Helsinki Committee, Tolerance Foundation, http://www.hrwf.net/html/bulgaria_2003.html#Religiousfreedompractice, The Rule of Law Institute, <http://www.hrwf.net/html/bulgaria2002.HTM#OpinionbytheRuleofLawInstitut>, and the assessment of the Council of Europe, New Bulgarian law on religion known as the Confessions Act 2002, Motion for an order presented by M. Atkinson and others Parliamentary Assembly, Assemblée parlementaire Doc. 970313 February 2003.

62. According to the *Hellenic Constitution* Greece is the only Orthodox state in the world. Art. 3.1 of the constitution states that the Eastern Orthodox Church is the “prevailing” religion: The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod. The constitution sets up a regime where there is neither an established Church nor complete Church-state separation. However, the European Court of Human Rights noted in 1993 that “according to Greek conceptions, it [the Church] represents *de jure* and *de facto* the religion of the state itself, a good number of whose administrative functions it carries out”. The involvement of the Greek Orthodox Church in areas of public life,

without the specific doctrinal and anthropological statements that the Hellenic Constitution makes. Many political events are also religious feasts and the rituals performed during these events are exclusively Orthodox in Bulgaria. All the state holidays are Orthodox Christian feasts. What does that tell us? Is a *de jure* non-established religion *de facto* established? Could we think of St George's Day, which is also the day of the armed forces, without a political presence and without the Great Blessing of the Waters being performed by Orthodox clergy?⁶³ And what about the feasts of St Cyril and Methodius⁶⁴ and Epiphany?

The designation of religious feasts to replace secular communist cults has its reverse precedent in the communist period. In 1970 the Central Committee of the Communist Party appointed a civil servant to design a strategy for replacement of traditional religious feasts with communist ones.⁶⁵ The restitution of religious feasts in the post-communist period was no doubt treated by some Orthodox triumphalists as the instating of established religion. In other words, although relations between religion and the state were, in theory, shaped by a disestablishment clause in the 1991 Constitution, the symbolic place of the majority religion in the public celebrations following the end of communism, and its historical significance, made it possible for it often to influence modern Bulgarian politics as some kind of a quasi-established religion.

These debates about the balance between a disestablishment clause and *de facto* established religion took place during the late 1990s, and in 1999 four draft laws were circulating, of which three proposed the granting of special status to the Orthodox Church and one obliged "state institutions to support and pay special attention to Eastern Orthodoxy as the traditional religious denomination of the Bulgarian nation."⁶⁶

Here the wording did not of itself do more than recognize the traditional place of these Churches in the culture and history of the country, but in each draft there were clauses that suggested that something more was on offer, whilst other aspects of the laws appeared likely to have detrimental consequences for minority religious communities.⁶⁷

which come under state regulation, has been institutionalised by means of the provision of art. 2 of the Charter of the Church of Greece, which constitutes a law of the state. Its integrative function has been constitutionalised through the Ministry of Education and Religion, by which it exercises administrative control over all religious affairs in Greece. The state also pays the salaries of Orthodox clergy and for the functions which other ministers of religion perform as public officials in civil matters, such as marriages (for which there also exist civil ceremonies). However, the prerogatives of the "prevailing religion" with respect to other "known" religions have been tempered by other provisions of the Constitution. Thus everyone can enjoy their individual and political rights, irrespective of their religious convictions.

63. Four main holidays of the BOC are also official holidays in Bulgaria. They are non-working days and workers have the right, in addition to them, to have several weeks of paid holidays.

64. During the Communist period this Church feast remained a national day of celebration of the Slavic Script and Culture and a corporate feast of the cultural and educational sector.

65. Decision of the Politburo of The Central Committee of the Bulgarian Communist Party of 26.5.1970 and a report concerning an additional paid officer in the Propaganda Department of the Central Committee who should be responsible for the development and introduction of the new civil and socialist rituals and traditions. A86 Ф1 ОП36 АЕ975. Information concerning the increased number of people wearing crosses, 12.10.1967. A95 Ф1 ОП40 АЕ122. Information from the First Secretary of the Bulgarian Embassy in the USSR concerning the development and introduction of new rituals and holidays in the USSR and the participation of the Soviet Trade Unions in all this. 25.2.1969-3.3.1969. A101 Ф1 ОП40 АЕ206. Information concerning the Easter festivities. 29.4.1970. A108 Ф1 ОП40 АЕ284; Minutes of the managers' meeting of the Propaganda Department, 8.2.1971. Reports concerning the introduction of civil rituals, the improving of lecture propaganda; basic trends in Party education etc. A108 Ф1 ОП40 АЕ339; information from workers in the Propaganda Department, the Regional Committees, the Central Committee of the Komsomol, the Trade Unions and the State Council of the People's Republic of Bulgaria, concerning the implementation of the decision of the Secretariate of The Bulgarian Constitutional Court of BCP from 11 March 1971 for the introduction of the new civil rituals in the life of the working people. 13 June 1972-28 July 1972. Some of the above sources have already been discussed in Todorova, M. (1997) *The Effect of Communism on the Pastoral Work of the Protestant Churches in Bulgaria*. Cambridge: Anglia Polytechnic University.

66. *Паметна бележка от традиционния консултативен съвет на политически съюз "Тергьовден – ВМРО"*. София, 11 юли 2001 г. *Законопроект за изменение и допълнение на Закона за вероизповеданията*, внесен на 31.07.1997 г. от Б. Великов, В. Вълканов, П. Славов и А. Данаилов; *Законопроект за вероизповеданията*, внесен на 10.12.1998 г. от Пл. Славов.

<http://www.bsp.bg/polit/zakon.html> (07/09/03).

67. Anderson, J. (2000) "Justifying Religious *Privilege*" (Transitional Societies, Paper delivered at ECPR

B. Registration, Property Issues and Restriction of Religious Activities and the Role of the Executive

The dynamics of Church-state relations under the Denominations Act 2002 involved a substantial transformation of the administration of religious affairs in two directions. On the one hand, it promoted greater independence of religious communities, administration of their affairs being moved from the executive to the judiciary and the judiciary being given more transparent guidelines in the application of substantive law. On the other hand, the administration of religious communities remained centralized, this time partly in the hands of the judiciary, partly in the hands of the executive. The concept of the majority religion as a quasi-established religion was also reinforced, and it was reaffirmed that on a legislative level the country was undergoing a process of redefining cultural legitimacy and community-building along the boundaries of established religion. The above tendencies, however, should not be overemphasized as extreme polarities of the current statute. The overall balance in the new Denominations Act 2002 works towards a greater transparency in the administration of religious communities, prevents arbitrary involvement of the executive and, most of all, provides a very broad framework for the judiciary in interpreting the law. In the overall picture, the potentially problematic texts suggesting religious establishment could be considered more as a curiosity rather than a worry. The new Denominations Act 2002 was passed by the Parliament in desperation because of the escalation of the conflict between the two rival synods of the Bulgarian Orthodox Church.

C. General Framework Freedom of Religion in DA002

In Denominations Act 2002 the right of belief is considered to be formed in the following ways:

- formation and expression of religious belief
- formation and participation in a religious community
- organizing religious institutions
- providing religious training and education through disseminating of the religious beliefs in question verbally, through publications, through electronic media in the form of courses, seminars, programs.

The present law has made a step forward in defining in legal terms in what a religious community consists. Article 9 specifically recognizes as relevant distinctive elements such as its name as well as its doctrinal statement.

For the purposes of the Denominations Act 2002 the term “religious denomination” designates the sum of religious beliefs and principles, the religious community itself and its religious institutions. This has not been distinguished clearly from the term “person’s rights” included in the Denominations Act 2002, or at least a clear balance between the two rights, has not been drawn. Although according to Article 1, the aims of the statute are to protect the personal right of freedom of religion, one of its main faults according to Evans, is amalgamating different emanations of religious freedom, which does not allow us to reach a definite conclusion about the presence or lack of an appropriate protection, even on the level of personal freedom of religion.⁶⁸ Special attention has been focused on the area of personal rights, proclaimed in the preamble of the law, on the detailed regulation of religious life and on the balance between personal and religious rights. And while the introduction creates the impression that the defects of the earlier drafts have been overcome, it still remains unclear whether, after the overall reading of the statute and its application, the individual rights and, respectively, their corporate rights have been fully and truly protected.⁶⁹

Workshops: 6.

68. Id.

69. Id.

1. Registration of Religion of Religious Denominations

Bulgarian political and legal theory presents two distinctive views on the question of registration of religious communities. The first view represented in the bill of the Movement of Rights and Freedoms advocates a complete deregulation of religious establishments as an extension of the principle of separation of religion from the state.⁷⁰ The second approach, adopted by the present the Denominations Act 2002, presents the view that in order for a religious community to have the status of a legal person, it has to be registered accordingly. This is an approach that somewhat resembles the provisions of the Denominations Act 1949 with its agenda to exercise control over the activities of religious communities.

On the other hand, this seems to be in accord with the general approach taken by Bulgarian law - a civil law system which administers legal persons, companies and property issues via a very complex system of registration. From this point of view the registration regime could also be viewed as a way of introducing a similar regime to the one adopted for other corporations and yet tailored for the specific activities and needs of religious communities. I am even prepared to speculate that the regime has been developed *per analogiam* and many elements of it have found their place in the statute incidentally rather than because of a particular teleology behind the Denominations Act 2002.

As far as specific Church-state relations are concerned, the state is seen as primarily having a duty of care in relation to the religions of the land, which involves maintaining tolerance and respect between the members of different denominations.⁷¹ Denominations are declared to be free and equal.⁷² Religion is considered incompatible with political activities, with endangering the national security, and with health and rights and freedoms of other citizens.⁷³ The statute also states that religious convictions do not constitute a defence for not performing duties imposed by the Constitution or other statutes.⁷⁴ The Denominations Act 2002 then makes a distinction between a religious community and a religious institution (a religious community with a status of a legal person).

The novel approach of the Denominations Act 2002 is that registration of a religious institution is transferred from the Denominations Directorate to the judiciary (Sofia City Court). The judiciary could decline registration of a religious community if its doctrinal statement, liturgical practices and services are considered to be a danger to national security; public order; health, rights and freedoms of other citizens; used for achieving political aims; and for promoting racial, ethnic, or religious hostility.⁷⁵ The decision of the court could be appealed before the Supreme Administrative Court. On a regional level the religious institution can be registered by the County Courts, and the denomination then has only a declarative duty to inform the mayor of the district about its activities.⁷⁶ According to the current legislation, a religious community could come into existence in two ways: *ex lege*, and by virtue of registration before the Sofia City Court. While the *ex lege* regime is provided for the Bulgarian Orthodox Church only,⁷⁷ all other religious communities have to register in order to be able to function as religious bodies.⁷⁸ The subject of the present section is the application of the statutory recommendations in connection with activities for which the registration requirement is in principle justified. The report about the previous draft highlights the excessive burden of information required by the state administration and second the very broad discretionary power of the executive in assessing the applications for registration. Denominations Act 2002 resolves

70. Preamble. *Законопроект за религиозните права и религиозното сдружаване*, 1/05/07/01/154-01-1 No 247.26/04/02/254-01-31. <http://www.parliament.bg/appropriations.php?id=4> (09/09/03).

71. § 4(3).

72. § 4(1).

73. § 3(1).

74. § 2(4).

75. Art. 7.

76. Art. 19 (2).

77. Art. 10.

78. Art. 14.

a number of issues in connection with the first problem, but not with the latter.⁷⁹

First, it is unclear whether an expert opinion by the Denominations Directorate would be required in all cases and, if not, what criteria exist for assessing whether one is needed. Second, it is not clear what the legal consequences are. Must the courts take these criteria into account or could they be ignored? Third, it is not clear what criteria, guidelines or code of conduct the Directorate uses, and this makes their discretionary power quite broad. It is also very important that the expert opinions provided by the courts should be made available for inspection by the applicant and that they should have their motives outlined.

The question of registration of religious communities was a major issue in the nineties. The regime of registration operated by a civil servant at the Council of Ministers proved to be biased both in relation to the majority religion and the minority religions. The subsequent legislative amendments deepened the problem rather than resolving it. The present statute is a radical change of this regime by setting up a registration procedure before the Sofia City Court following standard civil litigation proceedings and avoiding political interference in the registration of the individual communities. Second, the law establishes that each religious community will obtain the status of a legal person by virtue of registration. This is a shift from the previous approach which had established an arbitrary procedure for granting the status of a legal person to minority Churches in order to prevent their activities.⁸⁰ Article 15 (2) then introduces the approach of company law and trade mark law that there cannot be more than one denomination with the same name and business address. Evans and Lawson are rather skeptical about the practical application of such a text.⁸¹ Indeed, the reason for this section can only be seen in the light of a series of disputes between the rival Muslim Supreme Councils and rival Synods of the Bulgarian Orthodox Church. These disputes, subsequent jurisprudence of the European Court of Human Rights,⁸² and a highly controversial decision of the Supreme Administrative Court,⁸³ had all contemplated the possibility of the existence of two organizations with the same name.

The statute also introduces minimum standards for what should be included in the statutes of a denomination⁸⁴. This text was very much determined by the vagueness of statutes of religious communities in the 1990s, which made it very difficult for the courts to litigate in specific circumstances. The minimum information in a statute regulating a religious community should include name and business address, doctrinal statement, and description of the rituals, structure and governing body, the procedure for appointing governing bodies, their jurisdiction and the duration of their appointment, representatives and the procedure for their appointment, decision-making procedure as well as procedure for calling meetings of the governing bodies, financing routes and property and liquidation procedures.⁸⁵ The Central Register of Religious Communities contains the following data:

- Registration court order
- Name and address for business
- Governing body and representatives
- Names of the physical persons representing the religion

A similar procedure applies for the local branches, which have to be registered at the Local Government Authority.⁸⁶

79. Евънс, М. "Доклад относно закона за вероизповеданията, приет през декември 2002." http://bcf.tripod.com/_Toc50626644 (09/09/03).

80. Without the status of a legal person a religious organization cannot operate effectively.

81. See Evans, M., Lawson, R. *Op.cit.*

82. *Hasan and Chaush v. Bulgaria* (2000) Reports of Judgments and Decisions 2000-XI (2002) 34 E.H.R.R. 55 (E.C.H.R. Grand Chamber) [http://hudoc.echr.coe.int/hudoc\(10/03/03\)](http://hudoc.echr.coe.int/hudoc(10/03/03))

83. *Определение, No 6300 по адм. дело No 5748 / 2000., София, 18.10.2000*, Върховният административен съд на Република България - Трето отделение.

84. Art. 17.

85. Id.

86. Art. 18.

Denominations' registration proceedings take effect in accordance with Chapter 46 of the Civil Procedure Code.⁸⁷ In this case, the Court shall pronounce its judgment at a closed session, save when the court itself shall rule otherwise.⁸⁸ L. Popov of the Rule of Law Institute⁸⁹ suggested that "In view of the fact that a wide range of people are interested in the registration of a denomination, it is advisable that a possibility for greater transparency of proceedings be envisaged, as provided by Article 7 (3) of the *Political Parties Act*, i.e. the application should be considered at an open session. This would provide publicity of the registration process."⁹⁰

It is worth mentioning that, according to Article 8 (3), appeal is allowed via the standard route of civil litigation. This, however, seems to be a remedy against cancellation of registration and does not seem to be available for the initial refusal of registration.

The overall format of the statute creates the impression that registration is a precondition for the exercising of the rights protected by the Convention. Moreover, registration is a condition for obtaining the status of a legal person. Even the term "exercising" of religions relates to the condition that the faithful should have access to such status in order to exercise the right of religious belief.⁹¹ Moreover, it is not entirely clear whether the profession of any form of different religious beliefs ought to be exercised according to Article 5 (1) within the framework of "religious community" or "institution of religious community."⁹² This is because a major part of the personal and collective rights of believers necessary for the effective exercise of the right to express religious belief is exercised in accordance with the statute via religious institutions, namely religious communities with the status of a legal person.

According to Article 21 (1) only registered communities have the right to own property and probably even to sign binding contracts to rent property. This could possibly suggest that in practice, only a registered religious community could organize public worship in designated ritual places. According to Article 27 only registered religious communities are entitled to set up separate non-profit legal persons to assist their activities. The statute remains vague in many of its provisions regarding whether religious communities or believers have the right to manifest their belief if they are not registered. The transitional provisions (Section 5) repeal a provision under the Denominations Act 1949 which prevented religious groups from registering as non-profit organizations. Article 29 (2) provides that non-profit organizations do not have "the right to accomplish activities which represent the practice of religion in public." The precise interaction of these provisions is unclear, but the intent appears to be to say that only registered religious organizations have the right to engage in the public manifestation of religion. The criticisms connected with the present statute on religion appear to be based on the assumption that there is an international standard that the new law has failed to meet.⁹³

Article 7 contains restrictions which could be considered incompatible with Article 9 (2) of the Convention, which stipulates that only the grounds provided in § 2 could justify state interference in the internal affairs of religious communities and could also justify the state taking a view on matters relating to freedom of religion and religious beliefs.⁹⁴ Article 7 of the Denominations Act 2002 has also included "national security" and "use of religion for political ends" which extends the terms of the Convention.

In a democratic society, founded on the principle of the rule of law, political ideas which question the political status quo and whose accomplishment could be achieved by

87. *Граждански процесуален кодекс 1952* .

[http://www.daxy.com/cgi-bin/norm/search.exe?m=0&n=29&tmpl=daxystandard\(08/09/03\)](http://www.daxy.com/cgi-bin/norm/search.exe?m=0&n=29&tmpl=daxystandard(08/09/03)).

88. Art. 17.

89. Part of Advocates International and Advocates Europe, a Christian lawyers organization with strong links with the US and European Evangelical Alliance.

90. See L. Popov "Report of the Rule of Law Institute," [http://www.hrwf.net/html/bulgaria2002.htm#Newlaw\(14/08/03\)](http://www.hrwf.net/html/bulgaria2002.htm#Newlaw(14/08/03)).

91. Evans. Id.

92. Evans, Id.

93. Id.

94. See *Sunday Times v. The United Kingdom* Series A No 30 (1979) (E.C.H.R. Plenary) [http://hudoc.echr.coe.int/hudoc\(09/09/03\), § 45 and § 70](http://hudoc.echr.coe.int/hudoc(09/09/03)_§45and§70).

peaceful means should have the opportunity to be expressed through the exercise of the right of association and other lawful means. There is no reason why those principles should not be applied in relation to religious communities. It is natural that the state should be able to defend itself from campaigns which advocate violence and the overthrowing of democratic principles. At the same time it is doubtful that the exclusion *per se* of the religious communities from the political debate could really be a policy justification.⁹⁵

The above concern is particularly reinforced by the fact that the breaches of Article 7 are to be determined by the executive (Denominations Directorate). It is very interesting that the above texts taken in isolation were considered to be a violation of the principles of the Convention. Principles of national security and religion for political aims were understood in the 1990s as an extension of the principle of separation of religion from the state on the one hand and as a means of preventing regional tensions on the other. The collapse of the former Yugoslavia, the tensions between ethnic Turks and the enforcement agencies during Zhivkov's "revival process in the 1980s, and the link between religion and nationalism on the Balkans all made the very idea of the active participation of religion in the political life of the country a very sensitive issue. This was apparent in the development of the image of the Movement of Rights and Freedoms as representative of the ethnic Turks, but not as a Muslim party.⁹⁶ The restriction found its place in the Constitution⁹⁷ and is very much seen as a means of preventing regional conflicts based on religious affiliation. The overcoming of such texts will therefore involve both a new approach to Balkan history and also address the issue of balance in the separation of religion from the state. Lawson's comments are therefore a good starting point.

It is not very clear what the shortcomings are if a registration has been refused. On the one hand, Article 6 contains a number of rights originating from the right of conscience which could be exercised without the context of a registered religious community. On the other hand, *per argumentum a contrario*, unregistered religious communities would not be able to have all the rights which registered communities would have,⁹⁸ including right to own property,⁹⁹ to receive state subsidies,¹⁰⁰ and to open religious schools.¹⁰¹ At the same time, one wonders whether in practice there is always a policy restriction and whether registration in the Denominations Act 2002 is seen as such a floodgate.

Article 15 does not specify the criteria on which registration is based. Since Article 17 specifies a number of elements which have to be included in the statute of a denomination, this implies that Sofia City Court would take these into account in issuing a court order for registration. At the same time it is clear that such assessment, going beyond consideration of completed formalities, would probably be treated as an unjustified encroachment into the affairs of religious communities. *Hassan and Chauch v Bulgaria* highlights the point that the executive and judiciary have to remain neutral in making decisions involving interference in the internal affairs of religious communities, although the very procedure of registration has not been specifically considered as creating such a possibility.¹⁰² If all the other conditions of Article 9 (2) are satisfied, the Sofia City Court would have to assess for each case whether the refusal is "necessary for

95. See an account of a similar debate about the extending of anti-terrorist legislation in the UK to religious activities: Edge, P.W. (1996) "The Holy War on the Doorstep" *N.L.J.* 146 (6730): 190; Edge, P.W. (1999) "Religious Organizations and the Prevention of Terrorism Legislation: A Comment in Response to the Consultation Paper" *J. Civ. Lib.*, 4 (2): 194-205; Idriss, M.M. (2002) "Religion and the Anti-Terrorism, Crime and Security Act 2001" *Crim. L.R.* Nov: 890-911; Towler, A. (2001) "Emergency Powers Bill Receives Mixed Response: Anti-Terrorism: Measures under 2000 Act Extended" *L.S.G.*, 98 (44): 5.

96. *Устав на Движение за права и свободи*, <http://www.dps.bg/ustav.html>. (09/09/03).

97. Art. 11 (4) and art. 13 (4).

98. Ch. 4.

99. Art. 21.

100. Art. 22 and 25.

101. Art. 33.

102. *Hasan and Chaush v. Bulgaria* (2000) Reports of Judgments and Decisions 2000-XI (2002) 34 E.H.R.R. 55 (E.C.H.R. Grand Chamber) <http://hudoc.echr.coe.int/hudoc> (09/09/03) § 77.

democratic society” within the terms of Article 9 of the Convention. Each refusal would therefore have to be justified on the basis of “pressing social need” and to be “proportionate with the aims of the law.”

2. The Role of the Executive

The role of the executive in the new legislation is reduced to being a consultative organ which provides expert information about religious communities and also acts as some kind of a religious ombudsman in observing activities of religious communities empowered to initiate proceedings for breach of the Denominations Act 2002 by religious organizations.

The new Denominations Act 2002 retained the role of the executive in the relations between religion and the state. In the new statute, the Denominations Directorate coordinates the relationship between the executive and the religions, assists the government in implementing its policy to maintain religious tolerance and mutual respect, coordinates and chairs an expert commission dealing with religious communities, provides expert advice and opinions according to the provisions of the Denominations Act 2002, gives expert opinions on proposed visits of foreign religious figures, reviews petitions and signals violations of religious freedom, observes respect for religious freedom, makes proposals before the government for state subsidies, and provides accountability for the way that subsidy is spent. One could even see an attempt of reconstruction of the Denominations Directorate from the pre-communist period. Compared to the Denominations Act 1949 the new act reduces the functions of the Head of the Directorate to those of a religious ombudsman, who coordinates the relationship between the executive and the religious institutions, assists the Council of Ministers in the implementation of the state’s policy for maintaining tolerance and respect among religions, organizes and chairs a commission of experts dealing with problems relating to religious communities, provides expert opinions when this is provided by a statute, makes proposals before the Council of Ministers about the distribution of state subsidies to religious institutions.¹⁰³

Another concern is the way the new statute incorporates from the old statute the obligation of the religious communities to declare their local branches before the mayors of the municipalities (Article 19 (2)). It should be noted that any of the non-religious organizations are obliged to do the same. By its very nature the law creates a dual regime for sanctioning statutory violations: on the one hand, the Sofia City Court can restrict an organization’s activities (e.g. banning publications, restricting public appearances, revoking the registration of educational, health, or social institutions, revoking legal entity status for up to 6 months, permanently revoking the status of a legal religious entity). On the other hand, prosecuting believers on account of statutory violations may be pursued by the Denominations Directorate via the route of administrative sanctions.¹⁰⁴ Consequently, denominations and religious leaders are subject to double jeopardy: they may be prosecuted twice for one and the same violation.

The Directorate is also the organ that can persuade the courts to initiate cases to enforce the sanctions stipulated in Article 8. Moreover, this organ oversees the registration of religious groups by providing expert opinions to the Sofia City Court¹⁰⁵. Another even more problematic function of the Directorate is its task of “investigating citizens” signals and complaints alleging that their rights and freedoms or the rights and freedoms of their friends or relatives have been violated as a result of a third persons “abuse of the right to religious freedom.”¹⁰⁶ According to the new law, parents have a right to provide religious education for their children in accordance with their own convictions. Surprisingly, this paragraph faced the most detailed criticism.¹⁰⁷

103. § 30

104. Arts 36-40.

105. Art. 35 (4).

106. Art. 35 (6).

107. See the comments of the Rule of Law Institute, <http://www.hrwf.net/html/bulgaria2002.htm> (30/08/09).

3. Restriction of Religious Activities

Religious communities, institutions, and beliefs cannot be used for political goals.¹⁰⁸ This is an interesting passage which replicates a similar passage in the Constitution. The activities of a religious organization could be restricted only in the cases specifically provided by law. These conditions are listed in Article 7 and include activities directed against the national security, *bona fides*, civil order, violation of rights and freedoms, using religion as a political agenda.¹⁰⁹

The forms which restrictions of rights and freedoms could take are also specified in the law: they are publication ban, public activities' ban, closure of educational, health or social institutions, suspending the legal person's status for up to six months, or withdrawal of registration. The proceedings could be initiated by the plaintiff or the prosecutor and the competent court is the Sofia City Court. The decision of the Sofia City Court could be appealed against through the general route provided by the Civil Procedure Code.

A very interesting text is aimed at resolving the schism in the Bulgarian Orthodox Church and to prevent such a crisis in the future: "Persons who have split from the Bulgarian Orthodox Church in breach of its Regulations, cannot use the name Bulgarian Orthodox Church and use or manage its property."¹¹⁰

The most detailed criticism of the Denominations Act 2002 by the Rule of Law Institute is directed towards Article 7 (4), which states the parents' right to choose their children's religion and religious education.¹¹¹

An important way of assessing legislation is by determining whether it will be discriminative and also whether it is likely to resolve problems earlier legislation has created. The present law, by its very nature, is an attempt to resolve a whole set of real problems resulting from the Denominations Act 1949, instead of addressing hypothetical issues. It should therefore be seen as a desperate—and perhaps a bit rough—way of moving in the right direction, rather than coming up with a fine theoretical view on the pressing issues. It is far too descriptive; maybe it is far too specific in many ways. By all means, this is a very eclectic law, taking into account very complex issues, which will inevitably be controversial and can be addressed and amended only at a level where legal theory meets practical application.

4. Property Rights

Finally, the present statute addresses the issue of restitution of property of religious institutions on the right footing. The question of the restitution of Church property has also been raised.¹¹² The regime of hiring and building properties for the needs of religious communities is substantially relaxed. At the same time the statute does not set transparent criteria for state subsidies. "It is arguable whether the states party to the *Convention* are obliged, or not, to subsidize religious organizations. Once a decision for support has been made, this must be done in a non-discriminative way."¹¹³

The European Court of Human Rights has recently pointed out that "there is a lack of common European standard about the financing of religious communities because these issues are closely linked with the history of individual countries."¹¹⁴ However, if the state decides to provide subsidies for religious communities, this should not be done in a discriminative manner.¹¹⁵

108. Art. 7 (2).

109. Art. 8.

110. § 5 Преходни и заключителни разпоредби, *Законопроект за вероизповеданията 2002*.

111. <http://www.hrwf.net/html/bulgaria2002.HTM> (03/05/03)

112. "Religious Freedom and Church-State Relations" (1999) *B.H.C.R* <http://www.bghelsinki.org/frames-stan-bg.html> (10/05/03).

113. § 82 and § 37.

114. *Id.*

115. *Id.* In *Fernandez and Caballero* the plea was challenging tax privileges provided for the Catholic Church as a part of the concordat between Spain and the Vatican. The court has decided that treaties between the state and a religious institution which provide a special regime for tax collection in favor of that particular religion are not in principle a violation of arts. 9 and 14 of the Convention if there is an objective and reasoned

Although a religious denomination is not a company, having obtained a legal person's status, it could join partnerships and it could also create non-profit legal persons to facilitate its activities. Production and sale of religious items is not treated as a commercial transaction and therefore is tax exempt.

Another innovation of the law is that it provides a framework for religious communities to create and run health care, social care, and educational establishments. Article 4 (1) introduces criteria for establishing the succession rights for legal persons representing religions which existed before 1949. It also introduces a new limitation period for properties which belonged to religious communities, starting from the implementation of the Denominations Act 2002¹¹⁶. These were important devices aimed at resolving numerous disputes claiming titles for property of religious organizations banned after 1949.

Denominations Act 2002, for its part dealing with the registration of religious communities, the role of the executive, and the restriction of religious freedom, is a step away from the executive control of Denominations Act 1949. The new statute entertains the idea of a public register of religious communities administered by the judiciary, a flexible way of obtaining the status of a legal person and a new role for the executive as an observer rather than a "procurator." At the same time, it remains noticeable that the new statute, in its aim to address specific problems within a tight time-scale, has provided a statutory framework with far too specific and detailed regulations relating to very broad and quite general affairs. The sharp contrast between specific means and general aims has made the otherwise modern legislation vague and confusing in parts. The main framework, however, seems to provide enough safeguards for religious freedom and could be considered as a promising beginning rather than as a well achieved end.

The above examples present a scenario where a particular religious community is considered to be instrumental for the achieving of a political community. At the same time, many of these countries embrace the ideals of liberal democracy and their communitarian commitment does not affect the protection of liberal values in society.¹¹⁷ Going back to the Bulgarian case, one can observe an attempt to make Eastern Orthodoxy an established religion in the sense that it is part of the legal status quo in the land. This is implied by the way it is defined by the Constitution.¹¹⁸ This is also the way it is described in stronger terms in the Denominations Act of 2002.¹¹⁹

So far, restitution of nationalized ecclesiastical property has not always been easy, partly due to the technical nature of the administrative process and partly due to unclear title deeds and lack of clear evidence of the full range of property rights at the time of nationalization and inability to retrace the original plan of the property through several stages of restructuring of the town planning.¹²⁰

IV. FREEDOM OF RELIGION OR BELIEF IN THE JURISPRUDENCE OF THE BULGARIAN CONSTITUTIONAL COURT

Religious freedom concerns in the jurisprudence of the Bulgarian Constitutional Court (BCC) are marked by the contrast between the reluctance of the court to articulate

justification of such special treatment and if other Churches could join such a treaty should they desire to do so.

116. § 5(4) Преходни и заключителни разпоредби, *Законопроект за вероизповеданията 2002*.

117. Robertson, D. (1998) "The Legal Protection of Religious Values in Europe" in Rodriguez, J. (ed) *Religious Liberty and Secularism*. Vatican City: Libreria Editrice Vaticana: 187-88.

118. Art. 1.

119. Art. 10.

120. Some of the following cases illustrate how difficult it could be to establish succession as a result of a restitution of ecclesiastical property which has been nationalized by the Communist government without a clear succession path documents prior to the nationalization - Определение № 3570 от 27.03.2008 г. на ВАС по адм. д. № 12239/2007 г., II о., докладчик съдията Захаринка Тодорова Определение № 6114 от 18.11.1999 г. на ВАС по адм. д. № 2646/99 г., III о., докладчик съдията Боян Магдалинчев Решение № 5542 от 16.06.2004 г. на ВАС по адм. д. № 11187/2003 г., III о., докладчик съдията Йовка Дражева Определение № 7707 от 28.09.2004 г. на ВАС по адм. д. № 7460/2004 г., III о., докладчик председателят Пенка Гетова

detailed legal reasoning on questions of freedom of religion and belief in 1992, and its willingness to engage head-on with freedom of religion or belief in its Decision No 12/2003 (BCC, 2003, 6) by taking on board a large volume of ECTHR jurisprudence and complex theoretical constructions relating indirectly to some trends of contemporary Anglo-American analytical legal theory discourses. By connecting the levels of a literal approach in the area of human rights with a more analytical approach about the boundaries of law and religion in this particular case, the BCC emerged able to resolve ambiguities of legal discourse where they could be resolved and to leave the vagueness of law where this might be prudent. It suggested that freedom of religion or belief is something courts should take on even when such engagement is not necessarily able to deliver clear-cut decisions.

With this most recent decision on the constitutionality of the existence of religion *ex lege* established by the Denominations Act 2002, the court was split 6:5, which resulted in a non-decision. At the same time the divided court showed maturity in being able to deal creatively with difficult questions, in not being embarrassed to be divided on complex issues, and in being prepared to admit that there are difficult issues on which it is perhaps better to remain unresolved.

The fact that the BCC remained divided highlighted an important point, that competing debates in relation to freedom of religion and belief cannot be resolved by simple elimination of one of these claims, but by a dynamic approach which views such competing claims through the lens of human rights as legal tools and resolves them through such a lens in each particular case. In this respect the BCC decision was a “successful failure.” As we shall see in this article, the divided court was divided along fundamental questions about the relationship between law and religion which dominate such discourse in almost every modern jurisdiction. By remaining divided the court also highlighted the division within constitutional debates about law and religion and effectively proposed solutions in this area flagged by the perspectives of each group of constitutional judges. This decision marked a departure from “even-handed,” politically correct and often politically biased BCC approaches in relation to religious freedom and the emergence of a critical and creative jurisprudence prepared to tackle difficult questions through the lens of human rights. On this occasion the judges showed reluctance to go in one radical direction or the other (with an over-simplified or over-complicated substantive law).

The Bulgarian Denominations Act 1949 (DA, 1949) was not replaced until 2002. Despite its reputation as a piece of communist legislation *par excellence* designed and used for decades to make religion subordinate and dependent on the state the 1949 law was not abolished or declared unconstitutional (an initiative pioneered by President Zhelyu Zhelev (1990-97)¹²¹, and ironically was used by the Denominations Directorate under the Filip Dimitrov government (1991-92) to suspend Patriarch Maksim of the Bulgarian Orthodox Church, to appoint an alternative synod and to commence the ongoing saga of the so-called schism of the Bulgarian Orthodox Church.

Leaders of the Bulgarian Orthodox Church and the Supreme Muslim Council challenged some of the acts of the administration before the Supreme Court. Muslim leaders filed a case against the dismissal of the chief mufti. The Supreme Court disallowed the claim, stating that the director of religious affairs had acted “according to his competence under the law,” that is, under Article 12 of the Denominations Act 1949. In the case of the Bulgarian Orthodox Church the Supreme Court disallowed the claim of Patriarch Maksim by a decision of 2 July 1992, declaring him “illegitimate” and acknowledging the right of free discretion of the executive branch in legitimizing church leaderships.

Decision No.5/1992 of the BCC blocked to a certain extent the efforts of the government to interfere in the internal affairs of the churches in that it explicitly declared such interference unwarranted and in pointing out the unconstitutionality of Article 12 of

121. In 1992 the Constitutional Court had to address for the first time the question of the legality of the Denominations Act 1949 (BCC, 1992).

the Denominations Act 1949¹²² which has not been applied subsequently. At the same time, the cautious approach of the BCC prevented it from declaring the entire Denominations Act 1949 unconstitutional, as had been proposed by President Zhelev. By declaring the act unconstitutional the BCC could have solved the problem of a decade of unsettled church-state relations and, at the same time, would have initiated the drafting of a new denominations bill as a matter of urgency. For some time, the lack of legislative input in this sphere was caused both by the triumphalist nature of some of the drafts as well as by other legislative initiatives which took priority. By declaring the entire Denominations Act 1949 unconstitutional (and it had a number of possible grounds to do so) the BCC would have been able to put a hermeneutic tool in the hands of the judiciary, establishing clear criteria of how to deal with cases relating to religious freedom, religious discrimination and church-state relations. Such clarity would then have helped the work of the prosecution service as well as the work of the executive.

The Denominations Act 2002 (DA, 2002) could be seen as a frustrated attempt to abolish its communist predecessor. There is plenty in it that can be understood only in the light of the schism and as an attempt to provide substantive legal guarantees against the judicial inadequacy and state interference of the 1990s by providing a very detailed, sometimes perhaps too detailed, substantive framework.

One of the most controversial issues in the law appears to be a provision to “establish”¹²³ *ex lege* the Bulgarian Orthodox Church (the majority religion in the country),¹²⁴ while all other religions were to acquire legal personality status through a complex and potentially arbitrary process of registration.

The court could not reach the necessary decisive majority of seven votes on the question of the constitutionality of the above texts or on whether they violated the international treaties Bulgaria had signed, and the application was therefore denied. Because of the lack of a collegial decision the elaborations of the two groups of judges were outlined and presented some unusual trends in relation to the ways courts should tackle freedom of religion or belief.

The way the constitutional judges addressed the “religion *ex lege*” clause, while showing how far the debate still has to go, also showed a balanced and sufficiently flexible approach to accommodate the seriousness and complexity of both points of view, which, though different, are not irreconcilable. What the decision shows is that no matter what model is adopted, the dissenting voices will continue to express valid viewpoints and will have to be taken very seriously.

It is interesting to note that in connection with the Bulgarian Orthodox Church the judges in favor of establishment *ex lege* adopted a “sequential” approach, similar to the rule of recognition adopted by H. L. A. Hart, as a relevant criterion for establishing the moment at which it became a legal entity. This approach involves evoking rules which pre-date or pre-exist the state. On the face of it, rule of recognition in Hart’s sense is a meta-principle or criterion (secondary rule) for assessing what is law and what is not in society as a whole. In practice recognition of churches is something that is done by laws

122. This was also the view taken by the European Court of Human Rights in both *Hasan & Chaush v Bulgaria* and *Metropolitan Church of Bessarabia v Moldova*.

123. In this article “establishment” does not refer to a constitutional provision for non-separation between church and state. I have previously argued (Petkoff, 2005) that the status of the Bulgarian Orthodox Church could be described as a quasi-establishment or hidden establishment which does not have the effect of abolishing the constitutional separation between religion and the state. The Bulgarian Orthodox Church nevertheless has as a consequence an implied establishment through the notion of the pre-existence of a particular religion in relation to a particular political community and the relevance of such pre-existence for this political community articulated in positive legal norms. In the present context establishment and establishment *ex lege* refer to the direct creation of legal entities by virtue of primary legislation.

124. Art. 13 of the 1991 Constitution of Bulgaria provides that:

- (1) The practicing of any religion shall be unrestricted.
- (2) Religious institutions shall be separate from the State.
- (3) Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria.
- (4) Religious institutions and communities, and religious beliefs shall not be used to political ends. (Constitution, 1991).

(primary rules). In the present case, however, the “establishment *ex lege*” judges invoked legal sequences or secondary rules of recognition (Ottoman law, recognition by other churches, canon law predating the state, none of which are directly transportable into Bulgarian law) as legally relevant for the subsequent construction of what is effectively a statutory justification of establishment *ex lege* in Article 10. The foundation of the Bulgarian Orthodox Church as a legal person with international recognition in 1870¹²⁵ was considered to precede the formation of the modern independent Bulgarian state. The doctrinal content of the dogmas of the church and its “societal connecting factor” were well known in Bulgarian society and the international community (BCC, 2003, 6).¹²⁶

The dissenting judges – those in favor of establishment *ex lege* – pointed out that the *status quo* inherited by the Bulgarian Orthodox Church from earlier denominations laws, and its historical significance, was effectively based on something similar but not necessarily identical to the Hartian “rule of recognition” which preceded the existence of the Bulgarian state, and that such a rule of recognition was affirmed by the Denominations Act 2002 by establishing the church *ex lege*, only to declare this earlier rule of recognition. In other words the establishment *ex lege* judges may be seen to conclude that the (primary) rule enacted by the Denominations Act 2002, under which the Bulgarian Church is recognized as a legal entity *ex lege*, was a legislative step taken to clarify that according to the post-transition (secondary, Hartian) rule of recognition, primary rules recognizing the Bulgarian Orthodox Church under prior regimes are recognized under the (secondary, Hartian) rule of recognition that is now in place. Stated more straightforwardly, the current (Hartian) rule of recognition acknowledges the validity of (primary) recognition under the rules of former regimes that conferred legal entity.

In other words the dissenting judges in favor of *ex lege* status have proposed what might be considered an extended understanding of the Hartian rule of recognition: that it be extended to considerations of canon law (intercommunion) which are presented here as analogical to recognition in international law. The church(es) preexist the state because their normative existence is based as much on revelation, on interchurch relations, and on mutual recognition as it is on successive legal norms.

It seems that the dissenting judges in favor of establishment *ex lege* have developed a twofold interpretation of the “rule of recognition.” First, interpreting its impact on the *ex lege* status, they have invoked the Hartian rule of recognition in arguing that this status is based on secondary rules of recognition through constitutive norms preceding the existence of the Bulgarian state. Second, the dissenting judges seem to argue that the status *ex lege* is also based on something which could be described as a recognition by a parallel legal order (canon law) through the relationship between the Bulgarian Orthodox Church and other Orthodox and non-Orthodox churches. This seems a rather complicated argument to follow. If international ecclesiastical recognition were relevant for the acquisition of status *ex lege*, an act equivalent to international law recognition of secession or self-determination which is then accounted for in municipal law, it raises the question why the *ex lege* status is not applied via the route of international recognition to other religious organizations.

The Bulgarian Constitutional Court thus emphasized a very important point: as far as religious institutions are concerned, the law has to take into account earlier rules of recognition. When a state recognizes a religious community, it is very likely going to be the case that it will be recognizing a community that has been recognized by someone else. Of course, the fact of that other recognition does not force the state in question to grant the same recognition, except in the sense that religious freedom will be likely to require this. At the same time, the state cannot be bound by religious rules of recognition,

125. In 1870 an independent Bulgarian Exarchate was established by a decree (*firman*) issued by the Ottoman sultan. This act of independence was not recognized by the Ecumenical Patriarchate and the Bulgarian Church remained excommunicate until 1949.

126. The constitutional court judges illustrated this point with the example of the role the Orthodox Church played in rescuing Bulgarian Jews from Nazi concentration camps. See Bar-Zohar, 1998; Crampton, 1997.

because that might force it into contradiction (in a case, for example, of mutual excommunication by two recognized churches). In this particular case, the judges in favor of establishment *ex lege* seem to suggest that the state could choose to accept such forms of recognition. The examples of the recognition of the Bulgarian Orthodox Church which they cite in their elaborations seem to have two distinct aspects. In the first example (from the nineteenth century) the Bulgarian church is recognized by a political community, but not by the Ecumenical Patriarchate (which excommunicates the Bulgarian exarchate in 1870); and the Bulgarian political community chooses to ignore the lack of “international” ecclesiastical recognition.

In the second example the church (under the synod of Patriarch Maksim) is not recognized by the political community (which favors an alternative synod), but is recognized by the “international” ecclesiastical community (including the See of Rome and the See of Constantinople), and the BCC chooses to consider this a relevant factor when the political community effectively triggers ecclesiastical divisions within the same religious community. The “establishment *ex lege*” judges came up with a surprising phrase: “The new statute does not in any way change the existing *status quo* of the Bulgarian Orthodox Church as a matter of fact or of law.” The constitutional judges considered that discussing the argument about the proviso in Article 8.1 para. 6 of the Denominations Act 2002—suspending the status of a legal person—could only be qualified as “ridiculous.” “Waiving the status of legal person from the Bulgarian Orthodox Church would be an act which, in its cultural and historical significance for Bulgaria, would have the opposite effect to the Sultan’s firman 127 of 1870” (BCC, 2003, 6).

As noted above, the majority of the judges (six out of eleven) were against “establishment *ex lege*,” but although they were in the majority the balance between their opinion and the opinion of the “establishment *ex lege*,” judges could not produce a decisive opinion on behalf of the court as a whole.

The majority of the judges formed an opinion that was articulated by reference to the existing human rights mechanisms (with unusually well articulated familiarity with European Court of Human Rights case law) relevant to the case and, the judges were reluctant to take into consideration issues such as autonomy or group rights.

They formed their opinion in accordance with a basic, more literal understanding of legal principles in the light of the jurisprudence of the European Court of Human Rights. In their opinion the “establishment *ex lege*” clause “contradicts the principles of freedom of religion and its separation of the religious institutions from the state, which are protected by Article 13.1 and 13.2 of the constitution.”¹²⁸

The two groups of judges also added an additional interpretation of the debate on whether splinter groups are entitled to property which belonged to their original religious community. In their opinion this text does not necessarily exclude the possibility of the denominations in question making an independent decision to provide property to those who have split from the religious institution, and the text provides a guarantee against malpractices relating to the name and the property of religions.¹²⁹

The Bulgarian Constitutional Court also found that the petition about the illegality of the legal ban on more than one religious organization registering under the same name lacked *locus standi*. In its opinion the name is an individualizing element of every legal person. In the present case the name also serves the purpose of distinguishing a religious institution from other religious institutions.

127. This refers to the Ottoman statute which established an independent Bulgarian Church. On 28 February 1870 in response to petitions from the Bulgarian lobby in Constantinople the grand visier Ali Pasha granted the Bulgarian Constantinopolitan dignitaries a firman which resolved the longstanding dispute with the Patriarchate of Constantinople over church autonomy. By virtue of this firman the Bulgarian Church (Exarchate) had its independent right of existence restored. In its jurisdiction (15 dioceses) were included all territories inhabited by the Bulgarian population. A referendum was to be held in regions, towns and villages with mixed population in order to determine their choice of jurisdiction.

128. BCC, 2003, 6.

129. *Решение No 12 от 15 юли 2003 г. по конституционно дело No 3 от 2003 г.* (Обн., ДВ, бр. 66 от 25.07.2003 г.) [http://www.constcourt.bg/\(12/09/03\)](http://www.constcourt.bg/(12/09/03))

As far as the provision regarding the ban on religious groups which have left a particular religious group to use their previous denomination's property, the court has taken a rather conservative stance. According to the dissenting judges, the ban on using a religious institution's property by persons who have split from it in violation of its internal rules is a "specific manifestation of the constitutional protection of the property right according to Article 17 of the Constitution." It is a fundamental civil law principle, no matter whether it has been mentioned in the Constitution or not, that whoever holds a property title can primarily hold and manage that property. There is a lack of legal and moral grounds for a person who has separated from a legal person in violation of this legal person's rules to be allowed to continue to use this legal person's property.

When a property belongs to a particular legal person, no matter whether such a legal person is a religious institution or not, all the matters regarding its property should be decided only by the legal person itself. Persons who have separated from the legal person do not have the right to its property. They could claim such rights only if they have added their own property to the *patrimonium* of the legal person insofar as there are legal grounds to claim such property back.¹³⁰ It is an absurd statement to claim that the ban of § 3 of the intermediary and concluding texts of the Denominations Act 2002 violates the autonomy of the religious institutions and prevents the possibility of the legal person on its own accord providing property for the use and/or management by the splinter group. The ban of § 3 reflects only on the hypothesis where the persons who have separated from the religious institution claim rights over property which does not belong to them, but to the institution they have left.

This becomes very clear from the context of the provision - it relates to persons who have split from the institution in violation of its statutes. If a religious institution (legal person) is willing to offer to a person who has split (legally or illegally) from it, to use and to manage its property, this could be done using the general rules of civil law. In this case the relationship between the legal person and the splinter group is one of third party. They are not internal affairs.¹³¹ Property disputes are always between specific persons and for a specific matter. The provision of § 3 is general *erga omnes* and regulates property matters in a general manner in relation to all religions. The principle of a ban on use and management of property belonging to someone else is based on the constitutional right of property and extends to religious institutions as well.¹³² The assenting judges found the claim in connection with § 3 of the intermediary and conclusive provisions of the Denominations Act 2002 admissible only in connection with the wording "to use and to hold its property."¹³³ Apart from the ban on using an identical name, the contested text also introduces another ban in connection with the persons who at the time of implementation of the statute have split from a religious institution in violation of its internal rules. Such ban excludes the use and holding of property belonging to the religious institution by such persons. This ban contradicts Article 13 (1 and 2) and Article 37 (1) of the Constitution. The autonomy of religious communities is affected by such a prohibition. The same prohibition, while excluding the possibility of independently resolving property disputes between religious institutions and persons who have split from them, does not help either party, and it even restricts the creation and maintaining of tolerance among different religious groups. It is another matter that resolving a property issue *ex lege* in fact takes over the function of the courts.¹³⁴

The dissenting judges have decided that on the same grounds that the provision does not accord with Article 9 of the Convention and Article 18 of the Covenant. It only reflects on a property dispute, which has occurred before the new law was implemented, and is a dispute between the religious institution and a group which has split from it in violation of its ecclesiastical constitution. The statutory solution which is to be applied

130. *Id.* at 10.

131. *Id.* at 10.

132. *Id.* at 10.

133. *Id.* at 11.

134. *Id.* at 11.

when a split has occurred protects the interests of only one group and does not help in maintaining mutual respect, tolerance between these communities and contradicts the above provisions, which oblige the state to guarantee tolerance between such communities.¹³⁵

V. EUROPEAN COURT OF HUMAN RIGHTS JURISPRUDENCE

A number of Article 9 cases were appealed in Strasbourg. The present section presents a mere summary of all settled, pending, and decided cases.

1. *Pantusheva and Others v. Bulgaria (32 Applications) - Facts and Questions to the Parties*

All applicants supported the “alternative leadership” of the Orthodox Church, presided over by Patriarch Pimen until his death in 1999, and thereafter by Metropolitan Inokentiy. The applicants did not accept the leadership of Patriarch Maxim.

Following the adoption of the Religious Denominations Act 2002, which entered into force on 1 January 2003, the activities of the “alternative leadership” chaired by Metropolitan Inokentiy were suppressed and the Church was forcibly united under the control of Patriarch Maxim. In a massive police operation ordered by the Chief Public Prosecutor and carried out on 21 July 2004, the representatives and supporters of the alternative leaders were evicted from all churches, monasteries, and administrative premises they controlled. Some of the applicants were present and were physically evicted.

These events are described in detail in the Court’s decision on admissibility in the case of *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria* ((dec.)), nos. 412/03 and 35677/04, 22 May 2007). The case is filed in connection with the case of *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria* (cited above). The applicants complain, relying on Articles 9 and 13 of the Convention and Article 1 of Protocol No. 1, that they had been the victims of an unlawful and arbitrary State interference in internal affairs of the Church, that they had been deprived of property, and that they did not have effective remedies. Some of the applicants also complained under Article 6 of the Convention that they had been deprived of access to court in relation to the actions of the prosecuting authorities.

2. *Hasan and Chaush Ivanova v. Bulgaria*¹³⁶

The applicant alleged that her right to freedom of religion had been violated because her employment had been terminated on account of her religious beliefs (Article 9), which had amounted to discrimination on religious grounds (Article 14, in conjunction with Article 9).

By a decision of 14 February 2006 the Court declared the application partly admissible. Considering the above facts and the sequence of events, the Court finds that the termination of the applicant’s employment was not simply the result of a justified amendment of the requirements for her post, but in fact took place on account of her religious beliefs and affiliation with Word of Life, thus constituting an interference with her right to freedom of religion at variance with Article 9 of the Convention. The fact that the applicant’s employment was terminated in accordance with the applicable labor legislation – by introducing new requirements for her post which she did not meet – fails to eliminate the substantive motive for her dismissal. Most telling in this respect is the meeting of 2 November 1995 at which the applicant was pressured by two Government officials to renounce her religious beliefs in order to keep her job (see paragraphs 31 and 42-43 above). The Court considered this to be a flagrant violation of her right to freedom of religion guaranteed under Article 9 of the Convention (see the general principles and case-law references in paragraphs 77-80 above).

In view of the above, the Court found that the applicant’s right to freedom of religion was violated because her employment had been terminated on as a result of her religious beliefs. There has therefore been a violation of Article 9 of the Convention on that account.

3. *Ivanova v. Bulgaria*¹³⁷

The applicant alleged that her right to freedom of religion had been violated because her employment had been terminated on account of her religious beliefs (Article 9), which had amounted to discrimination on religious grounds (Article 14, in conjunction with Article 9).

135. Id. at 11.

136. *Hasan v Bulgaria* (30985/96). (2002) 34 E.H.R.R. 55. (ECHR) European Court of Human Rights.

137. *Ivanova v Bulgaria*. (2008) 47 E.H.R.R. 54; 23 B.H.R.C. 208; [2007] E.L.R. 612 (52435/99) European Court of Human Rights, 12 April 2007.

By a decision of 14 February 2006 the Court declared the application partly admissible. Considering the above facts and the sequence of events, the Court finds that the termination of the applicant's employment was not simply the result of a justified amendment of the requirements for her post, but in fact took place on account of her religious beliefs and affiliation with Word of Life, thus constituting an interference with her right to freedom of religion at variance with Article 9 of the Convention. The fact that the applicant's employment was terminated in accordance with the applicable labor legislation – by introducing new requirements for her post which she did not meet – fails to eliminate the substantive motive for her dismissal. Most telling in this respect is the meeting of 2 November 1995 at which the applicant was pressured by two Government officials to renounce her religious beliefs in order to keep her job (see paragraphs 31 and 42-43 above). The Court considered this to be a flagrant violation of her right to freedom of religion guaranteed under Article 9 of the Convention (see the general principles and case-law references in paragraphs 77-80 above).

In view of the above, the Court found that the applicant's right to freedom of religion was violated because her employment had been terminated on as a result of her religious beliefs. There has therefore been a violation of Article 9 of the Convention on that account.

4. Khristiansko Sdruzhenie¹³⁸

Involved registration of Jehovah's Witnesses in Bulgaria, and parties reached a settlement.

5. Lotter and Lotter v. Bulgaria

Bulgarian authorities acted arbitrarily and unlawfully and in ordering applicants to leave Bulgaria for the sole reason that they were Jehovah's Witnesses. Parties reached a friendly settlement.

6. Glas Nadezhda EOOD and Elenkov v. Bulgaria

Applicants complained that refusal of a competent body to grant Glas Nadezhda EOOD a radio broadcasting license and of the Supreme Administrative Court to review the merits of the decision made by this body had breached their rights under Articles 9, 10 and 13 of the Convention. The Court concludes that, as in the cases just cited, the approach taken by the Supreme Administrative Court – refusing to interfere with the exercise of NRTC's discretion on substantive grounds – fell short of the requirements of Article 13 of the Convention. ECtHR held that there has been a violation of Article 10 of the Convention; that there is no need to examine separately the complaint under Article 9 of the Convention; that there has been a violation of Article 13 of the Convention in conjunction with Article 10.

6. Supreme Holy Council of the Muslim Community v. Bulgaria¹³⁹

The applicant organization alleged, in particular, that it had been the victim of arbitrary and discriminatory State interference in the organization of the Muslim community in Bulgaria, that it did not have an effective remedy in this respect and that the requirements of impartiality and fairness had been breached in the ensuing judicial proceedings.

The applicant, the Supreme Holy Council (Висш духовен съвет) of the Muslim Community, headed by Mr Nedim Gendzhev, was the officially recognized leadership of Muslims in Bulgaria, at least between 1995 and 1997. In reality, at the relevant time it was one of the two rival Muslim religious leaderships in Bulgaria. Mr Nedim Gendzhev, a Bulgarian citizen born in 1945 and residing in Sofia, was its leader. He was the Chief Mufti at least between 1988 and 1992 and the President of the Supreme Holy Council at least between 1995 and 1997.

It follows that the applicant organization's complaints fall within the ambit of Article 9 of the Convention, which is applicable.

ECtHR decided that the interference with the applicant organization's rights under Article 9 of the Convention in 1997 was not necessary in a democratic society for the protection of public order or the rights and freedoms of others, and it was therefore contrary to that provision.

7. Holy Synod of the Bulgarian Orthodox Church v. Bulgaria¹⁴⁰

The court established that there has been a violation of Article 9 of the Convention in respect of all applicants but held that the question of the application of Article 41 is not ready for decision in so far as pecuniary and non-pecuniary damage is concerned.

138. Christian Association of Jehovah's Witnesses v Bulgaria. (1997) 24 E.H.R.R.

139. Supreme Holy Council of the Muslim Community v Bulgaria

. (2005) 41 E.H.R.R. 3 (39023/97) European Court of Human Rights, 16 December 2004

140. Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) v Bulgaria (2010) 50 E.H.R.R. 3 (412/03) European Court of Human Rights, 22 January 2009

Accordingly, reserved the said question and invited the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach. It also reserved the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

In this way the Court established that there has been an Article 9 (state interference) violation and encouraged the parties to reach a settlement for the damages which under the circumstances implied a further state interference by way of “helping” the divided groups within the BOC to reach a settlement.

8. H. M v. Bulgaria¹⁴¹

The applicant was denied her parental rights because she is a Jehovah Witness. The parties reached a settlement.

VI. DOMESTIC JURISPRUDENCE RELATING TO LAW AND RELIGION

A. *State Interference*

The issue of state interference dominated the relationship between law and religion throughout the post-communist period. The democratic changes were marked by divisions within the governing bodies of the Bulgarian Orthodox Church and the Supreme Muslim Council. Those divisions were part of the painful process of purging Communist collaborators from all strata of public life and the reformers perceived a radical makeover of the major religious institutions to be part of this process. In both cases, the divisions were viewed as a Government-backed renewal of the religious institutions in Bulgaria by creating a Government backed parallel structure and by sacking the incumbent religious leadership. DA2002 was aimed at resolving this trend of religious interference and putting an end of the schism within the Bulgarian Orthodox. Subsequent jurisprudence suggests that DA2002 did not change the way executive and judiciary in Bulgaria dealt with questions relating to freedom of religion or belief.

The most peculiar example was the question which the status *ex lege* designed to protect the Bulgarian Orthodox Church from state interference raised subsequent to the passing of DA2002. The existence of a registration procedure for all other religions and the maintaining of a register of all religions in the land prompted a query – should the Bulgarian Orthodox Church be entered in this register or not? From the point of view of the constituting of the Bulgarian Orthodox Church the answer to this question would have probably been negative. From the point of view of administrative law however there appeared to be a loophole in DA2002 which stipulates that on the one hand all registered religious denominations could register local branches on the basis of their prior registration in the SCC register. The statute was tacit whether or not and on what basis should BOC register its local branches.

How do the BOC branches come into being if BOC does not have to be constituted like all other religious organizations? The Supreme Court of cassation had to look into the issue and came up with the view that BOC would have to request a declarative, rather than a constitutive recordal in the Register which will create a record of the consequences of the statutory *establishment ex lege*.¹⁴² The Holy Synod of BOC did not accept this interpretation and declined to register a recordal of its hierarchy and branches.

This case flagged an interesting question of religious autonomy but the discourse was not pushed further the implications of the interpretation of both sides – an argument for legal certainty v an argument for religious autonomy from possible state interference. In 2003 two Muslim conferences split in two fractions and by the end of 2003 two separate Muslim forums elected two Supreme Muslim Spiritual Councils and two Chief Muftis – Fikri Hasan and Ali Hadjisaduk. Both leadership structures applied for registration with

141. M v. Bulgaria (1996) 22 E.H.R.R.

142. Решение № 120 от 11.03.2005 г. на ВКС по гр. д. № 496/2004 г., ТК, I о., докладчик съдията Караколева.

the Sofia City Court. Meanwhile, Nedim Gendzhev, elected as the leader of the Muslim faith at the 1996 conference, challenged the legality of the conferences of 1997 and 2000 before the Bulgarian courts, and subsequently - before the European Court in Strasbourg. In 2004, the Supreme Appellate Court ruled on Nedim Gendzhev's complaints that those forums had been illegitimate and their decisions invalid.¹⁴³ This interrupted the registration procedures regarding the decisions that resulted from the two conferences held at the end of 2003.

In July 2004, the Chairman of the Sofia City Court "referred the matter to himself" and appointed a temporary official leadership of the Muslim religion, headed by Fikri Hasan, who had been chosen at one of the two conferences and whose choice had the approval of the MRF.¹⁴⁴ Later both the Appellate Court and the Supreme Court of Cassation (on January 20, 2005) ruled that the decision by the Chairman of the Sofia City Court had been *ultra vires*.¹⁴⁵ Thus, only Nedim Gendzhev, as the chairman of the Supreme Muslim Council elected in 1996, and the Chief Mufti, Ali Uzunov, were ruled legitimate. The Sofia City Court despite the above judgment issued in January 2005 a certificate of Current Legal Status to Fikri Hasan. According to that document, he and his council constitute the leadership of the Muslim faith. The prosecution required and held the original incorporation documents thus preventing further the registration of Gendzhev and Uzunov. On 16 December 2004, the European Court of Human Rights delivered its judgment establishing a state interference in the internal affairs of a religious community in the case of the *Supreme Holy Council of the Muslim Community v. Bulgaria*.¹⁴⁶ On 20-21 July, 2004 in an attempt to resolve the internal dispute within the Bulgarian Orthodox Church, the police ceased 94 churches and other buildings all over the country, evicted the priests serving in them, sealed the churches restituted all the property to the Synod of Patriarch Maxim. The ECtHR considered this to be another case of state interference in the internal affairs of a religious community.¹⁴⁷

B. Registration

Under the new Denominations Act 2002, the other recognized religious denominations had their registration renewed by the Sofia City Court without major obstacles by early 2003. Despite the establishment *ex lege* of the BOC, the courts were rather confused over the question whether BOC should record its governing structures like the other religions but as an overseeing procedure rather than as a constitutive procedure.¹⁴⁸ Registration of local branches remained a problem. Local ordinances

143. Определение № 1237 от 8.02.2005 г. на ВАС по адм. д. № 9756/2004 г., III о., докладчик съдията Галина Христова; Определение № 5068 от 26.05.2003 г. на ВАС по адм. д. № 577/2003 г., III о., докладчик председателят Бисерка Коцева; Определение № 811 от 31.01.2003 г. на ВАС по адм. д. № 11053/2002 г., 5-членен с-в, докладчик съдията Ангел Калинов.

144. On 28.May 2004 CCC with Decision №3/08.03.2004 of company case № 1659/2003, removed from the company register of religious denominations Selim MEhmed and Mustapha Hadji who in the view of the court were elected in a Muslim conference which was summoned in 2000 not in violation of the existing statute of the Muslim community in Bulgaria. Having declared the Muslim conferences of 1997 and 2000 as void in Decision № 3/28.05.2004 CCC with Ruling of 19.07.2004 to company case №1659/2003 appointed an interim governing council (Firi Sali, Ridvan Mustapha and Oslam Ismailov) who are to represent and govern the Muslim community until a judgment establishing the legitimate representative of the Muslim faith. This is an unprecedented development – DA2002 introduces only declaratory and not constitutive powers of the court which registers a religious organization, the court could enter facts into the register but has no authority to appoint governing bodies.

145. On 29 October 2004. SApC with Ruling № 648 on priv.civ.case.№1816/2004. /Appendix №7/ of the Supreme Muslim Council annulled as inadmissible the Ruling of 19 July 2004 regarding comp.case. №1659/2003 of CCC which appointed a governing body to the Muslim council, On 20 January 2005 SCasC issued Ruling № 46 /Appendix №8/confirmed Ruling №648/29.10.2004. на SApC, which abolishes the appointed interim body. Together with Ruling № 46/20.01.2005 BCasC with Ruling №45/20.01.2005/Appendix №9/and returned the case to CCC with instructions to record N Gendzhev's governing body § 2 in accordance with the Transitional and concluding rules of DA2002.

146. See id.

147. See id.

148. Решение от 20.10.2003 г. на ВгАС по в.ф.д. № 258/2003 г., ГК, докладчик съдията Минов

adopted prior to DA2002 were and are still in force. Article 19(2) of DA2002 calls for a “notice requirement” for the purposes of local branch registration. Yet, the Act itself provides a number of formal requirements, which, if not met, may result in a registration refusal. At present, almost none of the major denominations have completed the process, which severely hinders their local activities.

The above-discussed issue of state interference within the internal affairs of the Bulgarian Orthodox Church and of the Supreme Muslim Council emerges initially as a registration matter.¹⁴⁹ In April 2008, an NGO was closed based on accusations that it was involved in activities that are only allowed to communities registered under the DA2002. This was the case with the so-called Ahmadii in Blagoevgrad. The group had obtained registration as an NGO because in 2005 it was denied registration as a religion. In April 2008, the Blagoevgrad County Court revoked its NGO status following two registration refusals in 2005 and 2007 under the name of Religious Community of the Ahmadis.¹⁵⁰ The Sofia Court of Appeal (SApC) upheld the above judgments and while the concerns that the Ahmadis as a heretical Muslim sect may “cause dissent in the Muslim religious circles” and that their interpretation of the Islam is “not traditional” for our country maintained that the religious community cannot exist as a religious organization by bypassing the legal framework of the DA2002.¹⁵¹

On 28 December 2009, the Smolyan County court decided to terminate the activities of the Union for Islamic Religion and Culture, an NGO. The organization became known by helping high school students from Devin file a failed complaint with the Commission for Protection against Discrimination because the Smolyan school authorities had banned them from wearing Muslim headgear in school.¹⁵²

The Bulgarian Helsinki Committee reported that in 2007, the Sofia City Court (SCC) reined the registration of the Eastern Orthodox Apostolic Church.¹⁵³ The Plovdiv-based organization filed for registration on the 22 December 2006. Among its founders was Hristofor Sabev, well-known political dissident, who was in the centre of the initial schism of the Bulgarian Orthodox Church and was subsequently excommunicated by the Bulgarian Orthodox Church. The new denomination is Orthodox; two new characteristics have been added to its name, in order to avoid duplication of names, which the law prohibits. It is not just “Orthodox,” but also “Eastern” and “Apostolic.” The court denied registration and found that the by-laws of the new church make it evident “that this is a group of Christians who have left the Bulgarian Orthodox Church (a legal entity under Article 10, para 2 of the Denominations Act).” The court went on to conclude: “It is evident that this group of Christians does not recognize the governing powers of the supreme bodies of the Bulgarian Orthodox Church, which is why it does not seek registration as a local division at the respective district court (Article 20 of the Denominations Act), but is trying to obtain registration at the SCC.”

In the court’s opinion, a group that identifies itself as Orthodox may only exist as a local division of the Bulgarian Orthodox Church. Therefore, the court stated: “This group is trying to use the registration procedure to solve an internal organizational issue that the

Решение № 120 от 11.03.2005 г. на ВКС по гр. д. № 496/2004 г., ТК, I о., докладчик съдията Каракочева

149. The Bulgarian Denominations Act 1949 (DA, 1949) was used by the Denominations Directorate under the Filip Dimitrov government (1991–92) to suspend Patriarch Maksim of the Bulgarian Orthodox Church, to appoint an alternative synod and to commence the ongoing saga of the so-called schism of the Bulgarian Orthodox Church. Leaders of the Bulgarian Orthodox Church and the Supreme Muslim Council challenged some of the acts of the administration before the Supreme Court. Muslim leaders filed a case against the dismissal of the chief mufti. The Supreme Court disallowed the claim, stating that the director of religious affairs had acted “according to his competence under the law,” that is, under Article 12 of the Denominations Act 1949. In the case of the Bulgarian Orthodox Church the Supreme Court disallowed the claim of Patriarch Maksim by a decision of 2 July 1992, declaring him “illegitimate” and acknowledging the right of free discretion of the executive branch in legitimizing church leaderships.

150. Decision № 51 of 13.03.2008 civ.case 171/2006 Blagoevgrad County Court.

151. Решение № Т-106 гр.София, 19.02.2010 год Софийски Апелативен Съд, търговско отделение,6с-в

152. Решение 37 постановено от Трети специализиран постоянен състав на Комисията за защита от дискриминацията, <http://kzd-nondiscrimination.com> (11/07/10)

153. BHC Report <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=reports> (11/07/10)

court is really able to solve, but following another procedure.” For the SCC, however, “not only its name, but the description of its religious beliefs defines it as Orthodox, and Article 10, para. 1 of the Denominations Act explicitly stipulates that the self-governing Bulgarian Orthodox Church – a legal entity by law (Article 10, para. 2) and thus excluded from the scope of Article 15 of the Denominations Act – is the expression and the representative of the Eastern Orthodox Christianity.”

There cannot be an alternative Orthodox canonical order of presbyters and bishops, given the fact that this religious community does not recognize the canonical leadership of the Bulgarian Orthodox Church, which is recognized by the local churches.”¹⁵⁴ The Eastern Orthodox Apostolic Church eliminated the word “Orthodox” in its name and submitted another registration application in August 2007. Registration was again denied, on the grounds that, according to the Religions Directorate, the principles of the faith were described “too generally”. The organization was thus forced to submit a third registration application in January of 2008 and was finally registered in February of 2008. In March 2007, the SCC denied registration to the International Community for Krishna Conscience – Sofia, Nadezhda. In 2008, the Supreme Court of Cassation, ruled in favor of denial of registration because there is no difference between the organization applying for registration and the registered International Community for Krishna Conscience in Bulgaria and is therefore subject to the limitations under Article 15, para. 2 DA2002, which stipulates that “the existence of more than one legal entity as a religion with the same name and headquarters shall not be allowed.”¹⁵⁵

VII. SECURITY AND COUNTER-TERRORISM

In March 2003, two members of the Caliphate Muslim Society were arrested in the Roma quarter of Pazardzhik on allegations of Islamic fundamentalism. No formal criminal charges were pressed. In May 2003, press reports and police sources claimed that the authorities prevented an “unauthorized gathering of Muslims who had come under the influence of a Lebanese Islamic movement” in South Bulgaria. At the beginning of November 2004, the Pazardzhik County Court sentenced Muslim cleric Ahmed Musa Ahmed to three years imprisonment and a 1,000-lev (500 Euro) fine, for his preaching of “radical Islam.”¹⁵⁶

On 20 February 2007 the National Security Service (NSS) announced the discovery of a criminal group of four “Islamists” under the leadership of the former mufti of Sofia, Ali Hayredin. The group was preaching “radical Islam, the ideology of Jihad and Wahhabism” and maintained “relations with banned Islamic organizations and mostly with Ahmad Musa, a Jordanian expelled from the country six years ago.” According to the security services, these people “have conducted their intelligence activities” via the Internet by maintaining websites containing information on Islamic teachings. Four people were arrested and released on bail.¹⁵⁷

VIII. TAX

Representatives of several Protestant bodies complained about discrimination in local tax assessments. Their properties were treated for tax purposes as industrial estates, while Christian Orthodox churches paid token amounts or were exempt altogether. Non-Orthodox denominations are required to pay taxes on foreign donations, even when these are in the form of humanitarian aid or literature.¹⁵⁸

154. BHC Report 2006 <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=reports> (11/07/10).

155. *Id.*

156. В Пазарджик гледат дело за проповядване на ислямски фундаментализъм 01.11.2004, news.bg [http://news.ibox.bg/news/id_1593234747\(11/07/10\)](http://news.ibox.bg/news/id_1593234747(11/07/10)); supra n. 154.

157. Supra n. 154.

158. *Id.*

IX. CONSCIENTIOUS OBJECTION

In May 2003, Parliament adopted amendments to the Alternative National Service Act¹⁵⁹ whereby the term of peacetime alternative service was reduced from double to one and a half times the duration of conscription military service; and the provision was repealed under which alternative service could be extended by way of a disciplinary sanction. However, certain additional restrictions were introduced by the same amending legislation. Decisions to grant exemption from military service or impose disciplinary sanctions were excluded from judicial review. Moreover, the amendments did not go as far as to repeal altogether the unreasonable and discriminatory restrictions imposed on alternative servicemen, such as the inadmissibility of civil work in non-profit organizations; the ban on religious or atheistic propaganda; the ban on alternative servicemen's membership in trades unions or participation in trades union activities; the ban on alternative servicemen's running for elected office.

In 2010 Bulgarian Army became professional and the issue of conscientious objection in the context of military service became redundant.¹⁶⁰

X. FAMILY LAW

Veliko Tarnovo Appellate Court found admissible a case filed by the relatives of a female member of the Jehovah's Witnesses.¹⁶¹ She was to be stripped of legal powers and placed under guardianship on the grounds of having a "mental disorder" because she was a member of the Jehovah's Witnesses.

According to the Bulgarian Helsinki Committee in December 2003, the Turgovishte County Court upheld the District Court decision in the divorce case of Violeta Tacheva Tsvetkova, who was deprived of custody over her children, aged 9 and 12, and her former husband given full custody.¹⁶² The grounds for this were that the mother, due to her membership in the Jehovah's Witnesses, could not raise her children properly, because "she, as a parent, has to a large extent violated the rights of her children, as well as other constitutional principles." In addition, the court considered that "with regard to this indicator [ability to raise one's own children], the father has an exceptionally large advantage, because he is capable of giving the children the opportunity both to be informed, and to develop their own abilities in a different direction," while the mother had "restricted [their] rights." That restriction consisted of her strong desire for the children to receive a religious upbringing, in the spirit of the teachings of the religion to which she belongs. In December 2004, the Supreme Administrative Court upheld the ruling of the Turgovishte County Court.¹⁶³

XI. RELIGIOUS DISCRIMINATION IN THE WORKPLACE

In October 2005, a company in Veliko Turnovo refused to accept German intern Kristina Engel, because she had stated that she was a Jehovah's Witness. The victim filed a complaint with the Anti-Discrimination Commission.¹⁶⁴

In 2007, the ECtHR ruled in favor of Ivanova who was dismissed from her teaching position for belonging to "a dangerous cult" (see the case comment above).

159. Id.

160. ЗАКОН за отбраната и въоръжените сили на Република България Обн., ДВ, бр. 35 от 12.05.2009 г. в сила от 12.05.2009 г.

161. Пращат свидетелка на Йехова на психиатър Монитор, Четвъртък 15 Октомври, 2009 <http://www.monitor.bg/> (10/07/10); supra n. 154.

162. Supra n. 154.

163. At the time of completion of this report the author has been unable to gain access to the judgments of this case and relies entirely on the accuracy of the BHC Report, supra n. 154.

164. For further details see: Rositsa Stoykova, "Jehovah's Witnesses File Complaint with Anti-Discrimination Commission," *Obektiv* magazine, issue 126, November 2005. See also Определение № 8308 от 25.07.2006 г. на ВАС по адм. д. № 6444/2006 г., V о., докладчик съдията Захаринка Тодорова. Определение № 11479 от 21.11.2006 г. на ВАС по адм. д. № 10270/2006 г., 5-членен с-в, докладчик съдията Джузепе Роджери.

XII. MEDIA ACCESS RESTRICTIONS

Major nationwide TV networks only broadcast programs geared towards Orthodox Christians (the exception is one Sunday-morning program on the Bulgarian National Radio station Hristo Botev, which discusses other religions in addition to Orthodox Christianity, but in a purely informational tone).

The United Church of God's application to receive a radio-station license was been denied in five consecutive years by the Council on Electronic Media (CEM), due to a "lack of technical feasibility."¹⁶⁵ Similarly, while Voice of Peace, an evangelical radio station in Sliven, does have a programming license issued by the CEM, but it does not have a technical license and cannot operate.¹⁶⁶ There are other radio stations operating in the same city without a technical license.

XIII. LEAVE TO ENTER

The practice of preventing foreign missionaries attempting to work in Bulgaria by delaying or denying the granting of leave to enter continues. In December 2004 two German missionaries were denied entry into Bulgaria, with no explanation given.¹⁶⁷

On 26 October, 2005, the Interior Ministry did not grant leave to enter to famous Korean preacher, Dr. Sun Myung Moon who was due to open the Bulgarian branch of his new organization, The Federation of Universal Peace. The reason given for the ban on his entry was the "complex situation in the country" following the unconnected recent murder of the financier Emil Kyulev. Prior to Moon's arrival, extreme nationalist groups lobbied against granting him a leave to enter.

XIV. PLACES OF WORSHIP AND RELIGIOUS SYMBOLS

On 13 June, 2008 the Ruse Municipal Council passed a decision which required mayor Bozhidar Yotov "to initiate the necessary measures to terminate the sound aggression emanating from the sound system of the Sais Pasha mosque."¹⁶⁸ According to the majority in the local council, the sound system on top of the minaret is a "public nuisance" and it is the mayor's duty was measures to eliminate nuisance as required by the legislation on the environmental protection from noise.¹⁶⁹ Decision was adopted on initiative by the councilors of the Ataka Party upon collection of signatures initiated by the same party and after the visit to Ruse of the leader of Ataka, Volen Siderov. Similar attempts were made by the initiative of GERB and Ataka politicians and the them Mayor and now Prime-Minister Brissov met with the Chief Mufti and to discuss allegations of public nuisance in connection with the speakers used to amplify the prayer call from the mosque in the centre of Sofia.¹⁷⁰

XV. ADMINISTRATIVE LAW AND PROSELYTISM

A common way of preventing of proselytizing at a municipal level in Bulgaria involves different forms of administrative action imposed by way of fines, policing, and restrictions on the basis of legal technicalities. Below is a summary of such instances reported by the Bulgarian Helsinki Committee.

On July 12, 2005, the Plovdiv Municipality fined Hans Amon, a Jehovah's Witness, 200 levs (100 Euro), because on March 28, 2005, he had been "distributing brochures

165. Решение № 10683 от 27.11.2002 г. на ВАС по адм. д. № 4247/2002 г., 5-членен с-в, докладчик съдията Ваня Анчева. Решение № 4064 от 23.04.2003 г. на ВАС по адм. д. № 4302/2001 г., V о., докладчик съдията Таня Радкова.

166. Определение № 7283 от 17.06.2008 г. на ВАС по адм. д. № 4073/2008 г., VII о., докладчик съдията Юлия Ковачева.

167. *Supra* n. 154.

168. *Id.*

169. *Id.*

170. Кмет, муфтия и ходжа се събират заради шума от джамията Dnevnik.bg 16 юли 2006.

with religious content in a public place.”¹⁷¹ In December, a Plovdiv court upheld the fine and Regional Court and the SAC upheld the decision.¹⁷²

In April 2005, a group of Mormons from Pleven was forbidden to distribute brochures with religious content on the streets of the city. The case is pending at present.¹⁷³

A number of municipal ordinances restrict the right to public expression of religious beliefs of groups which are not officially recognized under DA2002 or are officially recognized nationally, but have not registered a regional branch in a given city. Under Article 19 of the DA2002, they may have local branches if their by-laws provide for this, and the registration of a local branch is left at the discretion of the religion itself.

In Burgas, the respective municipal ordinance prohibits in Article 1, para. 1 “the public expression of religious beliefs by representatives of religions that have not been registered under the DA2002.”¹⁷⁴

In Plovdiv, the local *Ordinance on the Protection of Public Order* in its Article 7, para. 1 prohibits “demonstrations, religious and other mass and public events without prior notification of the Municipality”. Religions may “organize public activities outside their prayer homes under the terms of this ordinance,” i.e. after they notify the municipality.¹⁷⁵

In 2008, the Varna municipal government continued to do everything to hinder the construction of a Jehovah’s Witnesses prayer home. On July 16 the Supreme Administrative Court confirmed the decision of the Varna Administrative Court rejecting the Jehovah’s Witnesses complaint against the municipal order for the suspension of the construction of their prayer home.¹⁷⁶

On 9 April 2008 the municipality of Burgas sent a circular letter to all schools in the city warning of the danger of religious movements such as Jehovah’s Witnesses, the Church of Jesus Christ of Latter-day Saints, and the Evangelical Pentecostal Churches of Bulgaria.

In a judgment of 3 November 2008, the Burgas Administrative Court denied a motion for defamation filed by the Jehovah’s Witnesses against the above letter, on the grounds of technicality that the evidence submitted does not allow the Court to draw a conclusion regarding the connection between the identity of the Jehovah’s Witnesses described in the information and identity of the plaintiff – the Jehovah’s Witnesses in Bulgaria.¹⁷⁷

XVI. RELIGIOUS HATRED/RELIGIOUS HATE CRIMES

A. *Christianophobia*

The following cases are reported by the Bulgarian Helsinki committee and while there is no ongoing litigation in connection with these cases it is important for those to be mentioned in passim because they highlight an ongoing problem of lack of adequate due process in these categories of cases.

In October 2005, two protestant preachers were attacked by Muslims in the town of Gotse Delchev as they were distributing invitations to an evangelical film.¹⁷⁸ Similar

171. Plovdiv District Court Decision No. 360, on Case No. 1442, 20 December 2005.

172. Решение от 12.11.1999 г. по ах. д. № 1876/99 г. по описа на Пловдивски окръжен съд, трети състав. Решение № 11299 от 5.12.2003 г. на ВАС по адм. д. № 5116/2003 г., III о., докладчик съдията Йорданка Костова

173. *Supra* n. 154.

174. *Supra* n. 154.

175. *Id.*

176. № 1941 от 7.08.2007 г. по частно адм. дело № 1469/2007 г. на Административен съд, Варна, XXXI-състав ; Определение № 8988 от 1.10.2007 г. на ВАС по адм. д. № 8588/2007 г., II о., докладчик председателят Веселина Тенева; Решение № 8791 от 16.07.2008 г. на ВАС по адм. д. № 2518/2008 г., II о., докладчик съдията Захаринка Тодорова

177. *Supra* n. 154.

178. Reported by Pastor Nikolai Nedelchev, president of the *European Evangelical Alliance*, quoted in *Religious Freedom in Bulgaria, Romania and Turkey: In Depth*, a report published in November 2005 by the Dutch organization *Jubilee Campaign NL*, 13.

incident took place on 4 August, 2005, in the village of Grohotno, near the town of Devin, when some evangelical students distributing biblical-themed films were greeted with a protest demonstration led by the local imam and the mayor withdrew the permission for distribute of the above mentioned films.¹⁷⁹

On 24 May 2003, the Evangelical Pentecostal Church in the town of Shoumen was vandalised: unknown perpetrators threw stones and broke 17 windows.

In June 2003, residents of the *Slaveikov* housing estate in Bourgas announced their intention of staging a riot to prevent the construction of a house of prayer by the Jehovah's Witnesses. The protest lasted several days and provoked discriminatory comments against the Jehovah's Witnesses by local politicians and city officials. In the end, Jehovah's Witnesses suspended the project.

In November 2003, an American pastor was assaulted in Varna by young nationalists and suffered grievous bodily injury. The offenders were identified but never prosecuted.

In December 2003, the Mayor of Stamboliiski refused to allow Seventh-day Adventists to hold a religious teaching event in the village of Yoakim Gruevo, and initiated a petition against the "sect" signed by 41 local residents. Local police and city officials in several in several areas continued to issue fines against the Jehovah's Witnesses proselytizing.

As the result of instigation by Skat TV residents of the Burgas neighborhood Meden Rudnik protested the inauguration of a building belonging to the Jehovah's Witnesses on 2 October 2003, on the pretext that it was "a danger" to their children and that the religious organization had lied to them, by failing to inform the population what purpose the building would be used for.

There were also other cases of the flames of religious hatred being fanned by the media: articles in *24 Chassa*, shows on Nova Television, etc.¹⁸⁰

In the spring of 2007, IMRO (Internal Macedonian Revolutionary Organisaition) activists tried to disrupt the organization's regional congresses in Varna, Dobrich and Pernik. In November, the bTV and Nova national television stations launched a campaign against the organization. The occasion was the refusal of blood transfusion by Hristo Hristov, a member of the organization from Dimitrovgrad who was being treated from internal hemorrhage at the Military Medical Academy in Sofia.

In late June 2007, the municipality of Varna initiated a series of inspections of the recently started construction works of the Kingdom Hall. On 4 July 2007, a group of citizens from the Mladost residential area held an IMRO-instigated protest rally against the construction. During the rally, which was covered widely by local and national television stations, they claimed that the "prayer house" will "be a threat to [their] children" and that it constitutes "an attack against Orthodox Christianity". The same day the mayor of Varna fined the technical site manager at the site with BGN 3,000 (1,500 Euro) for alleged failure to comply with some technical requirements at the site. As a result the building works have been suspended for the last nine months and there are pending court cases appealing the administrative act.

B. Islamophobia

The Bulgarian Helsinki Committee registered a series of incidents involving buildings of the Muslim religion in Bulgaria in 2007: insulting graffiti, attempted attacks, broken windows.

According to the Chief Mufti's Office, the mosque in Pleven was desecrated ten times with swastika drawings on its walls.

The mosque in Kyustendil and Silistra, which suffered many attacks in past years, had its windows broken in December 2007.

On 11 September, 2008 against 53-year-old Hasan Salih Tahir, a Bulgarian Muslim

179. Id. at 12.

180. For example, "Dangerous Cult Sows Miracles," *24 Chassa* newspaper, July 16, 2005, as well as the Nova Television morning show on December 5, 2005, on the topic of "Dangerous Cult Discovered in Sofia," et al.

from the village of Bogdanitsa near Plovdiv was attacked and left unconscious on the street close to the mosque where he was later found by other Muslims attending a morning prayer. The night before the incident, a group of half-naked young people gathered in front of the mosque, shouted and cursed the people coming out of the house of prayer, and threw stones at the congregation. Police was present but did not intervene.¹⁸¹

According to Chief Mufti's Office, Husein Hafazov, there were more than 50 cases of desecration of Muslim prayer and administrative buildings in the past 10 years, i.e., between 1997 and 2007¹⁸². There have been only two successful arrests. The press reported the desecration but did not denounce it.¹⁸³

There is no evidence that defamation of religion is at all prominent in the religious freedom discourse in Bulgaria.

Defamation of religion as a specific discourse originating from within the Muslim community and aimed at protecting Islam has not become prominent in Bulgaria. This is partly due to the fact that Bulgarian Muslims have been represented by the MRF a secular political party which is the Kingmaker in the Bulgarian Parliament and relies on the votes of the Bulgarian Ethnic Turks.

On the one hand MRF consider themselves as kingmakers and while they rely on the stable electorate of the Bulgarian ethnic Turks, they cannot and do not wish to present themselves as a religious party. Their Denominations Bill 2002 was the most liberal and they tend to stay out of the debate about religious symbols in the public sphere. On the other Ataka, the far right nationalist party which found its way into the Parliament sides with the populist government in the maintenance of traditional Bulgarian Orthodox culture and is also reported to be involved in most of the acts of religious hatred in relation to alien, non-Bulgarian religions in Bulgaria.

Another reason for the absence of a defamation of religion discourse is the memory of the 500 years of Ottoman rule in the Bulgarian psyche which makes defamatory or hateful views about Islam an integral part of the colloquial political rhetoric in Bulgaria and is very far from not being politically correct. Recently the far right party Ataka praised the stunt organized by SKAT TV backed by them and involving a cameraman and a reported entering the private lodgings of the Plovdiv Metropolitan Nikolai a presenting him with a fez hat which in the eyes of the Nationalists is a symbol of Muslim Turkish allegiances.¹⁸⁴ Metropolitan Nikolai prohibited his priest Boyan Saraev to accept the nomination to become a mayor of Kardzhali, the regional stronghold of the Bulgarian ethnic Turks. He was backed by a group of nationalist-populist parties hoping to reverse the electoral success of RFM in Kutzdzhali. Father Boyan Saraev a former police officer and a Pomak convert to Christianity has acquired notoriety by pursuing a mission among the Pomaks who he viewed as Slavs forcefully converted to Islam during the early days of the Ottoman conquest. This returning home narrative has won admiration amongst the nationalists and has made Father Boyan an iconic figure amongst them. Metropolitan Nikolai banned Father Boyan from accepting the nomination by pointing out that Orthodox clerics are not supposed to take up civic duties and infuriated the nationalists.¹⁸⁵ Metropolitan Nikolai himself was not a stranger to controversies. He himself had a reputation for pronouncing very controversial anti-Catholic and homophobic statements and event to try to ban a concert of Madonna.¹⁸⁶

181. Supra n. 154.

182. For more details, see "On People and Violence", an interview with Hasan Salih, *The Obektiv*, NO. 159 of October, 2008.

183. For more information, see "The institutions remained silent on yet another desecration of a Muslim building," interview with Husein Hafazov, *Obektiv*, no. 152, March 2008. 17 *Sega*, 13 June 2008.

184. Телевизия СКАТ нахлу при митрополит и му връчи фес, *Novinite*.bg 07.08.2007.

185. Боян Саръев вече не иска да е кмет на Кърджали, *Dnevnik*.bg, 5 August 2007 http://www.dnevnik.bg/bulgaria/2007/08/05/365550_boian_saruev_veche_ne_iska_da_e_kmet_na_kurdjali/ (12/07/10).

186. Митрополит Николай: Мадона е скандална и неморална, Монитор Четвъртък 20 Август, 2009; Митрополит Николай: Бог ни наказва заради концерта на Мадона.

Пловдив, 06.09.2009; НовинитеPRO.bg; Пловдивският митрополит Николай: Стига с тази интеграция, дотука! *Vesti*.bg.26.12.2008.

XVII. BILATERAL AGREEMENTS

At present there are no bilateral agreements between the State and religious communities by analogy with the bilateral agreements between the Holy See and particular states or between the State and religious community(ies) by analogy with Slovakia¹⁸⁷ and Georgia.¹⁸⁸

XVIII. STATE FINANCIAL SUPPORT FOR RELIGION

There is no “church tax” as a form of subsidizing religious organizations in Bulgaria. Under Article 21.3 DA2002 the State and the municipalities *may* provide free of charge leaseholds on state and municipal properties and may assist them with subsidies factored in the national and municipal budgets.

Article 22 provides that any property transfer rights are stipulated in the Religions’ Constitutions. Any production and sale of religion-related merchandise are not transactions within the province of State regulation.

There cannot be advertising related to places of worship without an express permission (22.3). Under Article 25 the State *may* assist and encourage the registered denominations for the fulfillment of their religious, social, educational, and health activities through tax breaks, credits, customs and other financial and economic breaks. Ant such allowance is audited under the regime of the non-profit organizations.

Article 28 provides that the distribution of the state subsidy for the registered denominations is done with the annual budget. Article 29 stipulates that employment relations of the members of the clergy are to be negotiated in accordance with the Religion’s constitution, Employment law and Social Welfare legislation.

An example of this is Rila Monastery which is under the jurisdiction of the Holy Synod of the Bulgarian Orthodox Church but also receives subsidies from the state budget as is audited by the Fiscal Chamber.¹⁸⁹

This is not unproblematic – the most recent audit of Rila Monastery was very critical about the internal rules of management in connection with the spending of the subsidy from the state budget. It effectively puts an autonomous monastic community with its own internal discipline under pressure to change its internal management principles in order to comply with state practices.

XIX. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

A. *Religious Acts*

Bulgarian law does not recognize religious acts as legally relevant. Baptismal certificates cannot substitute birth certificates although persons born before the introduction of birth certificates after World War II could exceptionally certify their date of birth with a baptismal certificate. Religious/customary marriage ceremony must be preceded by a legally binding ceremony at the registry office which is the point at which the couple acquires marital legal status. Since this is not a socio-legal paper I will not discuss the proportion of recognized and not recognized marriages by law. I could only say that since civil marriage is the only way to claim social benefits originating from marital status religious/customary marriage or secular cohabitation tends to drift towards a civil marriage when these benefits are to be received.

The only occasion where religious acts are considered legally relevant in the public

187. Martín de Agar y Valverde, J. T. & Pontificia Universitas Sanctae Crucis. 2010. *I concordati dal 2000 al 2009*, Città del Vaticano, Libreria Editrice Vaticana.

188. State of freedom of religion in Georgia since the adoption of Constitutional Agreement between Government and the Orthodox Church of Georgia, HRC 2008, <http://www.humanrights.ge/admin/editor/uploads/pdf/ReligionReport.pdf> (10/07/10).

189. Република България Сметна Палата Одитен доклад № 0100000606, приет с решение на Сметната палата № 251 от 12.10.2006 г. за резултатите от извършен одит на предоставената субсидия по чл. 8, ал. 1 от Закона за държавния бюджет на Република България за 2006 г. на Рилската света обител - Рилски манастир.

sphere is the entry requirement to submit an Eastern Orthodox baptismal certificate when applying to study at the theology faculty of the Sofia University.¹⁹⁰

B. Private education

Secular or religious education is permitted but not necessarily properly integrated within the state system of education. A private prestigious French school which might be recognized in France is not properly integrated within the Bulgarian educational system. If a pupil decides to move to another school he or she will have to sit additional exams in order to be incorporated within the state system.

Religious education in Bulgaria moved through several stages since the early nineties and gravitated between World Religions, Ethics, Orthodox Faith.

Denominations Act 2002 created a legal framework for the creation of religious schools. *National Education Regulations 2009* stipulates the only form in which religion could be taught in state schools. At present this is done as a free or as a compulsory elective from class 1 until 12 (first year in primary school until the last year of high school).¹⁹¹

In some specialized schools as the National College of Classics and Culture religion is also taught as part of the broader *litterae humaniores* syllabus which enables the teachers to do it at a more advanced level as part of the Latin, Classical Greek, History, Literature, Philosophy and Intellectual History syllabi.

C. State Interference and Religious Education

The only case law which refers to state interference in the area of religious education is the dispute between one of the two splinter groups within the Muslim community in connection with the Islamic Institute by the recommendation of the Chief Mufti.¹⁹² Nedim Gendzhev, the leader of one of the two groups, contested the closure by the Council of Ministers and considered this to be an interference with the exercise of religious autonomy. The court offered a literary interpretation of DA2002 and considered that the Council of Ministers does have a power to close Theological educational establishments.

XX. RELIGIOUS SYMBOLS IN PUBLIC PLACES

The only occasion where the issue of religious symbols acquired a normative framework was the proposed bill by the Educational Minister Milen Velchev and the above mentioned headscarf case filed before the Discrimination Commission.¹⁹³ The bill suggested a next which bans public display of religious symbols in schools and also the personal display of religious symbols worn in an aggressive manner.¹⁹⁴ The bill bears the

190. In July 1997 the Sofia City Court declared the *Rules for Accepting Students in Sofia University* to be discriminatory and therefore null and void in their part concerning the requirement of a birth certificate from the Orthodox Church.

191. Particularly Art. 2 and 3, Правилник За Прилагане На Закона За Народната Просвета Издаден от министъра на образованието и науката, обн., ДВ, бр. 68 от 30.07.1999 г., изм., бр. 19 от 10.03.2000 г., изм. и доп., бр. 53 от 12.06.2001 г., в сила от 15.09.2001 г., доп., бр. 7 от 18.01.2002 г., изм. и доп., бр. 68 от 16.07.2002 г., в сила от 16.07.2002 г., бр. 19 от 28.02.2003 г., в сила от 28.02.2003 г., бр. 33 от 11.04.2003 г., в сила от 11.04.2003 г., попр., бр. 48 от 23.05.2003 г., изм. и доп., бр. 65 от 22.07.2003 г., в сила от 22.07.2003 г., бр. 99 от 11.11.2003 г., в сила от 11.11.2003 г., изм., бр. 15 от 24.02.2004 г., в сила от 24.02.2004 г., изм. и доп., бр. 7 от 27.01.2009 г., бр. 51 от 7.07.2009 г., бр. 87 от 3.11.2009 г., в сила от 3.11.2009 г., изм., бр. 94 от 27.11.2009 г., в сила от 27.11.2009 г.

192. Id.

193. Законопроект за училищното образование и предучилищното възпитание и подготовка 30.03.2009 г. Министерски съвет, обсъждане, 902-01-19, [http://www.parliament.bg/?page=app&lng=bg&aid=4 &action=execute \(10/07/10\)](http://www.parliament.bg/?page=app&lng=bg&aid=4 &action=execute (10/07/10)).

194. According to the bill both students and teachers are required not to wear 'religious symbols which demonstrate in an aggressive manner in aggressive manner their religious preferences Art. 168/3/6 and Art. 183/2/13. Законопроект за училищното образование и предучилищното възпитание и подготовка 30.03.2009 г. Министерски съвет, обсъждане, 902-01-19.

footprint of the minister's personal views and was put on hold partly due to the opposition against the bill partly due to the general elections and subsequent change of government with new priorities.

There is no debate of change of policy with respect to religious symbols in public place beyond the schools.

There is no presence of a *laïcité* discourse which drives the question of religious symbols within a framework compatible to the debate in France, Italy, Turkey, Britain or Spain. We could therefore speak of a sociological data of informal bans particularly of headscarves in school but there has not been jurisprudence to test the case. One of the reasons could be a number of non-discrimination provisions in the Denominations Act 2002 and more importantly – in the radical Anti-Discrimination Act ¹⁹⁵ which has provided fairly clear guidelines about the range of the act.

The general overview of cases relating to law and religion in Bulgaria since DA2002 suggests that the new legislation did not make the courts less politicized and less divided on questions relating to religion. The trends of jurisprudence and administrative action range from a very biased and media inspired approach to the questions of fact in such cases to very strict, narrow technical interpretations of the point of law. The new legislation and growing Article 9 ECtHR jurisprudence did not change the way the Bulgarian judiciary and administrative organs think of religion in a legal context. Religion remains a strong factor for asserting political presence and visibility in Bulgaria and the crude rhetoric as part of this process appears to dominate the schisms within the major religious communities, the attitudes in relation to “the Other,” the media narrative as well as the narrative of the legislature, judiciary and the executive. The aftermath of DA2002 demonstrated that there is not much that has changed in terms of attitudes and that a lot more than a legislative intervention needs to happen to change the ways judges, policy makers and journalists think about religion and its place in society.

195. Закон за защита от дискриминация (загл. Изм. - дв, бр. 68 от 2006 г.) Обн. ДВ. бр.86 от 30 Септември 2003г., изм. ДВ. бр.70 от 10 Август 2004г., изм. ДВ. бр.105 от 29 Декември 2005г., изм. ДВ. бр.30 от 11 Април 2006г., изм. ДВ. бр.68 от 22 Август 2006г., изм. ДВ. бр.59 от 20 Юли 2007г., изм. ДВ. бр.100 от 30 Ноември 2007г., изм. ДВ. бр.69 от 5 Август 2008г., изм. ДВ. бр.108 от 19 Декември 2008г.