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IS THE PRINCIPLE OF MAGNA CARTA REGARDING RELIGIOUS LIBERTIES APPLIED IN MACEDONIA?

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ABSTRACT

Human rights were analyzed and described in many writings from older times. If we consider their fame and historical value, most important ones are: Great Charter of Freedoms (Magna Carta Libertatum) of 1215, the Law on Rights (Bill of Rights) of 1689, the Declaration of Independence of the United States of America (1776) and the Declaration of the Rights of Man and Citizen (1789).

In Chapter 1 of Magna Carta was described the freedom of religion – it established the freedom of the English church from state interference.

Today, implementation of this principle, challenges the communities to examine the part they might play in the development of a liberal democracy and to be part of the solution rather than part of the problem in internal and international relations.

The restitution of the expropriated congregational properties – concretely of the Islamic Community of Macedonia remains open and can reflect the level of respect of human rights in general and religious and property rights in particular.

The aim of this paper is to bring some facts on actual situation regarding the implementation of religious and related rights and discuss the way this principle has found its implementation in Macedonian legislations.

Also this paper will seek to identify the problems that occur regarding these rights.

INTRODUCTION

Human rights were analyzed and described in many writings from older times. If we consider their fame and historical value, most important ones are: Great Charter of Freedoms (Magna Carta Libertatum) of 1215, the Law on Rights (Bill of Rights) of 1689, the Declaration of Independence of the United States of America (1776) and the Declaration of the Rights of Man and Citizen (1789).

Today's international standards

International law on Human Rights does not define religion precisely but contains a catalog of rights which protect freedom of thought, conscience, religion and belief.

To better understand the complexity of religious freedom, they are classified on three levels:

- ❖ Freedom of individual practices
- ❖ Freedom of collective practices
- ❖ Freedom of certain objects

1. FREEDOM OF INDIVIDUAL PRACTICES

Article 18 of the Universal declaration on Human Rights identifies religious freedoms as general rights which protects children, older people, domestic as well as foreign peoples. These rights can not be derogated even in exceptional or state of war (Gruda, 2007).

The list of individual practice of religion anticipated with article 18 of the International Covenant on civil and political rights offers detailed list of human rights which are accepted as minimum accepted international standards (Kuptimi i të drejtave të njeriut, 2003):

- ❖ Freedom to manifest individually or collectively the religion and belief
- ❖ Freedom to produce, acquire and use up to a certain extent, items and necessary materials related to the rites or customs of a religion and faith
- ❖ Freedom to seek and receive voluntary financial and other contributions from other individuals and institutions
- ❖ The freedom to train, appoint, elect or designate by succession certain leaders according to the requirements and standards of any religion or belief
- ❖ The freedom of enjoying days of rest and celebrating holy days and ceremonies in accordance with the principles of religion and his/her belief
- ❖ Religious rights at work, including the right to pray, dress and eat according to the principles of religion and certain belief
- ❖ Freedom of gathering and coupling for execution of rituals
- ❖ Freedom of free declaration of religion
- ❖ The right on changing or refusing a religion
- ❖ The right to religious education for the interests of the child

2. FREEDOM OF COLLECTIVE PRACTICES

Religious rights do not allow only freedoms to the individuals mentioned above. A religion or belief can and usually is manifested in community with others, which means practicing it in public places. This implies respect for freedom of gathering and association, as well as the gathering of believers communities.

3. FREEDOM OF CERTAIN OBJECTS

Certain facilities that are based on religious grounds also enjoy full protection through religious freedoms. These objects can be houses of worship or educational institutions dealing with religious matters, or even NGOs.

These rights include:

- ❖ Freedom to establish and keep certain charity or humanitarian institutions
- ❖ Freedom to write, publish and propagate important publications
- ❖ The freedom to teach a religion in the appropriate places

4. THE PRINCIPLE OF NON DISCRIMINATION

Discrimination and intolerance on religious grounds, meaning any distinction, exclusion, restriction or preference based on religion or belief is prohibited. Prohibition of religious discrimination and intolerance is applied not only to public life, but also concerns the private sphere of individuals. This means that neither the state nor the employer or any other individual are not allowed to take any discriminatory action against the believer.

In connection with the freedom of certain objects, today, implementation of this principle, in the Republic of Macedonia, challenges the communities to examine the part they might play in the development of a liberal democracy and to be part of the solution rather than part of the problem in internal and international relations.

The restitution of the expropriated congregational properties – concretely of the Islamic Community of Macedonia can reflect the level of respect of human rights in general and religious and property rights in particular.

In the text below are brought some facts on actual situation regarding the implementation of religious and related rights and discuss the way this principle has found its implementation in Macedonian legislations.

The issue of the restoration of the former property owned by the Islamic Community of Macedonia (ICM) is therefore an interesting case study. In this line, on December 2011, I sent an official request to the Islamic Community of Macedonia, asking for information about the stage of the restoration process of their seized property.

The ICM claims that the courts and the competent authorities for denationalization did not show any improvement in efficiency or quality in their work, surpassing the legal deadlines set for the proceedings and decision making in all stages of the procedures. In addition, ICM in its Report on restoration of deprived property (2011), claims that there is a tendency to apply unfairly the substantive law, in particular the provisions of the Law on Denationalization and the Law on General Administrative Procedure by the first and second instance commissions, the Administrative Court and the Supreme Court. ICM has submitted 350 requests for the restoration of in total 3.869.806,00 m² of land, including meadows, arable, pastures and mountainous land, and a total area of 41,258 m² of buildings including flats, houses and shops. Twelve years after the entrance into force of the Law on Denationalization, only 10 percent of the allegedly deprived property has been restored.

As an illustration of this, ICM presents the following data. In Skopje, out of the 127 requests submitted, only in 10 cases were the claims accepted and led to some form of restitution. In Bitola, of the 56 submitted requests for over 180 cadastral parcels only 15 were effective; in Kumanovo of 10 submitted

requests only 1 was effective; and in Prilep of 4 submitted requests for a dozen of cadastral parcels none was effective. The ICM claims that in the rest of the dioceses such as Debar, Ohrid, Negotino, Shtip, Veles, Kavadarci as well as in the entire Eastern part of Macedonia, the situation is the same. The ICM achieved to restore the ownership of 496.806 m² of meadows, hayland, urban plots and 32 buildings. Ownership was again registered in the names of the appropriate dioceses.

The return of the property appears a problem in all dioceses in Macedonia, but most significantly in Skopje where 127 denationalization requests were submitted, but only a very symbolic part of the expropriated property was returned. In 2010, ICM achieved to restore the ownership of 33.166 m² in the Tetovo diocese, including The Arabati Baba Tekke on a surface of 27 666 m² and other plots totalling in surface 5500 m². It also restored its ownership on a centrally located plot and received compensation bonds in the Gostivar diocese. There were restored 61000 m² in kind in the Bitola diocese, there were returned 14 stores, 2 homes and a plot of 1400 m² in the village of Doblexhik.

The ICM property in the Veles diocese is in a very bad situation since the majority of it is occupied by local Macedonians. The Commission for denationalization was visiting the town of Negotino to identify the property to be restored. Earlier on the mosque was destroyed in Negotino and the ICM's request for compensation was rejected on the ground that it does not exist a decision on its nationalization. In Kicevo, the case of the actual green market's plot is returned for consideration to the first instance committee, following the ICM's complaint. In Kumanovo it is expected that the restoration process is to be completed soon. In Resen 73,712 m² of meadows, 7,814 m² of grassland was returned, in Skopje 10 shops on the outskirts of Kappan Han; 245,716 m² in Studenicani, the parcel near the Clock Tower, home of former Reis in Jelen Kappa, a shop in the Bazaar near Arasta Mosque, a plot with surface of 1679 m² in Sveta Petka and a plot of 1900 m² in Gazi Baba..

In the Stip diocese, some positive results were recorded, like the return of the property of 46,919 m² in the Pehçevo area. Much remains to be returned in Kumanovo, in the Anushevac Otel where in 2010 only 3 plots totalling approximately 24.000 m² were returned. The ICM has received compensation bonds with a total value of 46.601.025,00 MKD or an equivalent of 757.740 euros, which is distributed as it follows according to the dioceses:

Diocese	Value of compensation in MKD
Ohrid	9.023.440,00
Resen	9.957.236,00
Gostivar	16.292.250,00
Tetovo	330.880,00
Skopje	10.997.219,00
In total:	46.601.025,00

The congregational estates' issues were dealt with by two denationalization commissions. The first of these dealt with the plots in western Macedonia and Skopje and the second with those from Eastern Macedonia. In some towns, the restoration process did not even began yet because the dioceses did not made the assessments of the nationalized estates (Debar), or due to lack of expertise (Struga) or due to the destruction of the property documents during the clashes of 2001 (Prilep). In the heart of Skopje's old town, the Bazaar's ownership was not restored since it was considered a main Macedonian cultural heritage site, which according to the ICM is another example of the unfair application of article 7 of the Law on Denationalization. This provision prohibits the return of property which is considered to be of historic and cultural significance and protected as such by law.

The surrounding central plots which have been built later, hosting now many of the Macedonian national institutions, were compensated at a low value of 8euro/m². The plots owned by ICM located in the center of the capital of the Republic of Macedonia were expropriated and some of the main state institutions were built upon them, including the Basic Skopje Court 1 and 2, Appellate court, Supreme

Court, State Archive, Macedonian Television, Academy of Sciences, the Macedonian National Bank, the House of Mother Teresa, the House of the Army, the Komunalec, the Faculty of Architecture, the Library "Miladinov brothers", the Macedonian museums in the Old Bazaar, the St. Cyril and Methodius University, the Opera and Ballet, the Polyclinic of Bit Pazar, the Macedonian Red Cross, primary schools across the municipality of Chair as "Jane Sandanski", "Cvetan Dimov", "Congress of the Monastery", "Freedom", "Tefejuz" and the kindergarden "Bratstvo Edinstvo". They cannot be returned into the ICM's ownership, but compensation was offered starting from approximately 8 euros per m². An example is the case of a plot of 5345 m², which is hosting the building of the Macedonian Red Cross (just 100 meters from the Parliament of Macedonia) where the first instance commission brought a compensation decision for only 500 MKD per m². In other cases 10 denars (0.16 Euro) were offered as compensation for one m², like in the urban areas of Pehcevo, Bitola and Resen.

The ICM complains that in a significant number of cases, the disclosure of the evidence, or actions to determine the type and character of the land and its destination, were made under the influence of political and business interests, who were involved in the illegal privatization of the land that is subject to denationalization. The ICM accepted many decisions for denationalization, but for the majority of them it appealed to the second instance commissions or to the Administrative Courts because they considered the decisions to be discriminatory and unlawful. Furthermore, the ICM claims that it was not able to regain its rightful use of several mosques that the Government has agreed to return. In addition, the ICM supposes that in some cases the Government has delayed the process of restitution by selling or starting new construction on a disputed property and by questioning the historical legal claim of the ICM to its religious properties. The ICM observed greater difficulty in obtaining ownership of the previously owned property if the property was located in a desirable location for investors or business owners, often in urban areas (US Department of State, 2007).

The restoration processes are tedious, the restoration proceedings sometimes obscure and given the lack of judicial experience and the reconsideration of higher decisions, the courts can bring totally opposing decisions in the same case or in similar cases. The existence of the first and second instance commission system is in fact a preliminary court system which makes the timely solution of any restoration case difficult. In this sense, instead of the 3 tier court system (basic court-appellate court-supreme court) Macedonia has a 5 tier court system including the first and second instance commissions from the ministry of finance, and even a six tier system if we include various other bodies, commissions and departments which can have a decisive word in any solution given. The impartiality of these commissions is often questionable. Moreover we do not know whom they were composed of and if they possess the professional qualifications and necessary expertise to decide (Interview, 2007).

CONCLUSIONS

The restitution of the Islamic communities' properties is the most difficult and controversial issue for at least two reasons. First, this is not about individual, but about collective property. Second, its objects are often buildings of national importance and cultural heritage sites, often situated in the central districts of towns. On the background, there remains a Christian-Muslim antagonism that may influence the decision. This antagonism is visible in Macedonian public life in general and there is a general reluctance towards the churches' demands on the part of former communist party members sitting in the commissions, ministries, municipalities and court panels of judges.

The Macedonian state should make bigger efforts to offer an acceptable compensation for these evkavs, while the evkavs should be more moderate in their demands, given the feeble character of the new state and the fragile political balance and ethnic peace installed after 2001. A good solution would be to compensate in kind these evkavs with acceptable plots, forests or other land in state property. In this way, the state budget would not be overburdened and the muslim communities would feel that their ownership is equally important than that of individuals or other congregations.

The restitution of the islam properties in the centre of the capital is in fact impossible; compensation on the level of their market value would considerably weaken the financial position of the state. Given its national yet multi-ethnic character, the payment of rent to ICM by the state institutions present on the land would be unacceptable for the majority of the citizens. They would rightly argue that the state institutions are not supposed to serve the members of the islamic community. This would lead to increased tensions.

The restitution of other estates differing from those mentioned above is possible, but again with the danger of splitting the emerging Macedonian national consciousness. If the bazaar of Skopje, surrounded by Turkish mosques, is returned in kind to the evkavs, this may restrict public access to it and harm the touristic potential of the city. On the other hand, the restitution to the evkavs may signify a de facto “expropriation” of one of the most notable architectural sites of the common heritage. The restitution of other parts of the capital is more plausible.

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