

**DE GRUYTER**
OPEN**ALBANA METAJ-STOJANOVA**

RELIGIOUS FREEDOMS IN REPUBLIC OF MACEDONIA

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ABSTRACT

With the independence of Republic of Macedonia and the adoption of the Constitution of Macedonia, the country went through a substantial socio-political transition. The concept of human rights and freedoms, such as religious freedoms in the Macedonian Constitution is based on liberal democratic values. The Macedonian Constitution connects the fundamental human rights and freedoms with the concept of the individual and citizen, but also with the collective rights of ethnic minorities, respecting the international standards and responsibilities taken under numerous international human rights conventions and treaties, of which the country is a party. Republic of Macedonia has ratified all the so called “core human right treaties” and now the real challenge lies in the implementation of the international standards. Some of these international conventions and treaties of the United Nations and of the Council of Europe are inherited by succession from the former Yugoslavian federation. Religious freedoms are guaranteed by the Universal Declaration of human rights (1948), the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1953), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) (all documents ratified by the Republic of Macedonia). According to the Constitution of the Republic of Macedonia “The freedom of religious confession is guaranteed. The right to express one's faith freely and publicly, individually or with others, is guaranteed,„ After the conflict of 2001 the Ohrid Framework Agreement secured group rights for ethnicities that are not in majority in the Republic of Macedonia. The present Law on the legal status of the church, religious communities and religious groups of 2007, repealed the Law on religion and religious groups of 1997.

RELIGIOUS FREEDOMS IN REPUBLIC OF MACEDONIA

Magna Carta Libertatum “The Great Charter of liberties”, sealed in June 1215 proclaimed that “the English Church shall be free” and today in all democratic countries anyone is allowed to practise their own religion. The freedom of religion is a fundamental human right, linked to other fundamental rights such as the freedom of expression, the freedom of assembly or association and the right to non-discrimination.

With the independence of the Republic of Macedonia and the adoption of the Constitution of Macedonia, the country went through a substantial socio-political transition. The concept of human rights and freedoms, such as religious freedoms in the Macedonian Constitution is based on liberal democratic values. The Macedonian Constitution connects the fundamental human rights and freedoms with the concept of the individual and citizen, but also with the collective rights of ethnical minorities,

respecting the international standards and responsibilities taken under numerous international human rights conventions and treaties, of which the country is a party. Republic of Macedonia has ratified all the so called “core human rights treaties” and now the real challenge lies in the implementation of the international standards. Some of these international conventions and treaties of the United Nations and of the Council of Europe are inherited by succession from the former Yugoslavian federation. In the Republic of Macedonia, the free exercise of religion and freedom of religious expression is a constitutional right, which can be exercised individually or with others.

Religious freedom is guaranteed by the Universal Declaration of human rights (1948), the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1953), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). These documents are ratified by the Republic of Macedonia.

After the conflict of 2001, the Ohrid Framework Agreement secured group rights for ethnicities that are not in majority in the Republic of Macedonia.

The country has a population of 2.1 million. The country's two major religious groups are Orthodox Christianity and Islam. The last national census in 2002 estimated that approximately 65 percent of the population is of Orthodox Christian faith, and 33 percent of Muslim faith. Other religious groups include Roman Catholics, various Protestant denominations, Sufi orders and Jews. There is a general correlation between ethnicity and religious affiliation--the majority of Orthodox believers are ethnic Macedonian, and the majority of Muslim believers are ethnic Albanian.

According to the Constitution of Macedonia all religious communities and groups are separate from the state and equal before the law. A constitutional amendment of 2001 lists five religious groups: the Macedonian Orthodox Church (MOC), the Islamic Religious Community of Macedonia (ICM), the Catholic Church, the Evangelical Methodist Church and the Jewish community. This clearly shows that there is no state religion in Macedonia. According to the data of the Commission for Relationships with Religious Communities and Religious Groups, except for the five aforementioned churches and religious communities, there are 25 other registered religious organizations for a total of 30 registered religious organizations that operate in the country (of which 15 churches, 7 religious communities and 8 religious groups).

According to Benedek (2012), “Faith is a major element to express one’s cultural identity, which is why religious freedom is such a sensitive topic to address and seems to cause more difficulties than other human rights issues. Threats to the freedom of thought, belief and conscience, belief and religion directly affect both individuals and groups in ensuring and developing personal integrity.”

The Macedonian Constitution was amended in 1992 in order to increase protections for religious freedom and to ensure a peaceful co-existence between the country’s major ethnical groups Macedonians, who adhere to Orthodox Christianity, and ethnic Albanians, who follow Islam. The other religious and ethnic minorities that are also guaranteed government protection for their ethnic, cultural, linguistic, and religious identity include Turks, Vlachs, Romanians, and other smaller minority groups. Article 9 of the Chapter on Basic Freedoms and Rights of the Individual and Citizen of the Constitution of RM states that, “Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status.”

Article 19 of the Constitution guarantees “the freedom of religious confession; the right to express one's faith freely and publicly, individually or with others” and that the “Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law”. Macedonian citizens are also guaranteed the “freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions.”

The Law on the legal status of religious communities of the Socialist Republic of Macedonia of 1977 was the first Law to regulate the religious rights in the country, repealed by the Law on religion and religious groups of 1997. This Law established a mandatory registration requirement for religious organizations, specifying that religious organizations must register before they may perform religious ceremonies, obtain building permits for houses of worship, or request visas for foreigners coming to the country to undertake religious work. The previous Law on religion and religious groups also set a limitation according which only one religious community per religion could be registered. This was in clear contradiction with the provisions of ICCPR and ECHR according which the freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Within a year after the law's enactment, the Constitutional Court of the Republic of Macedonia abrogated some of the articles of this law with its decisions, thus creating an obligation for new legal solutions to be offered. In order to resolve these problems, the Parliament proposed a new Law on the Legal Status of Churches, Religious Communities, and Religious Groups, which was approved on September 5, 2007 and went into effect on May 1, 2008. The new law removes some restrictions on religion, including the prohibition against more than one religious group per confession from registering and the requirement for a permit before performing religious rituals outside officially sanctioned houses of worship. Also the new law does not foresee any minimum membership requirement in order for the religious groups to be registered, while the previous law required a minimum of 50 members, citizens of the Republic of Macedonia, per religious group. The fact that these members needed to have citizenship as well as permanent residence in the country was another issue of the former law that needed improvement, having in mind that the freedom of religion or belief is a fundamental human right and should not be restricted only to citizens. The new law has thus enhanced the freedom of religion in Macedonia, but there is still place for improvement.

One issue with the new law is its ambiguity. For example, the law makes a distinction between a church, a religious community and a religious group. However, it is not clear what the difference between these entities is. The term "church", as a genuinely Christian term should represent the Christian community, religious community could stand for those religious entities that form communities but not churches (the Islamic Religious Community in Macedonia, Jewish community), while "religious groups" could stand for religious entities that do not form any communities, but associations, foundations etc.

This distinction could also indicate a difference in size so that religious groups would be smaller than religious communities. The law does not make any distinction in the legal status between a church, a religious community, and a religious group. All three entities are apparently treated alike. The definition given by the law is the following "...a church, religious community or religious group is a voluntary community of physical personalities that exercise the freedom of religion through their religious beliefs and the sources of their teaching, united by religion and identity reflected with equal performance of religious service, prayer, rites and other forms of manifestation of one's religion." It is not clear why such a distinction is introduced.

According to Article 9 of the Law, churches, religious communities and religious groups acquire the status of a legal entity after they are entered on the Single Court Register of Churches, Religious Communities and Religious Groups. This means that a church, a religious community, and a religious group can exist without being registered and without having the status of a legal entity, but the law does not make it clear what the legal consequences would be in this case.

According to Articles 9, 10, 11 of ECHR non-registered religious entities can also freely manifest their religion in community. A law that refers only to religious entities which want to acquire legal personality and as a consequence benefit from the principles and rights enshrined in the law might be

understood as aiming to prevent the religious entities which do not want to be registered, from freely exercising their beliefs.

The status of religious entities which do not want to register should be specified in a non-discriminatory way as required by international standards. The law should also specify that members of non-registered entities may exercise and practice freely their beliefs.

The status of a legal entity is gained with the registration in a competent court. According to Article 11 of the Law on the Legal Status of Churches, Religious Communities, and Religious Groups, the Skopje II Basic Court is competent in maintaining the Single Court Register of churches, religious communities and religious groups. The data recorded in the competent register is public. The Minister of Justice prescribes the form and the content of the application form of the competent register and the way it is kept. With this Law for the first time it was introduced a single court register, while according to the Law of 1997 the status of a legal entity was gained with a registration by a state body competent of issues on relations with religious communities and groups (the State Commission for Relations with the Religious Communities and Groups). Macedonia is a secular state and the religion and all religious groups are separate from the state. This means that the state has no right to interfere in church affairs, nor the church to interfere in state affairs. With this change in the new Law, the registration of a new religious entity as a legal entity is no longer under the competences of the executive power, i.e. it no longer lies with a state administration body, but is transferred to the judiciary. This is another positive aspect of the present situation. The state authority competent for the relationships between the state and religious communities, the Commission for Relationships with Religious Communities and Religious Groups, keeps a file on registered churches, religious communities and religious groups, but has no competence in processing their registration.

According to Article 6 of the UN Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief, the right to freedom of thought, conscience, religion or belief shall include the following freedoms: to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes; to establish and maintain appropriate charitable or humanitarian institutions; to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; to write, issue and disseminate relevant publications in these areas; to teach a religion or belief in places suitable for these purposes; to solicit and receive voluntary financial and other contributions from individuals and institutions; to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels. Within their competences and authorizations, state bodies create conditions for unimpeded performance of the activities of a church, religious community and a religious group according to all international standards.

Members of other religious groups, from those that are not listed in the Constitution, assert that the fact that only five groups are listed, may lead to favourable treatment by the government towards these five groups.

Some groups complain of political influence in the religious registration process, even though as explained, this is not a competence of a state body. The Bektashi Community of Macedonia (Tetovo), an Islamic Sufi order has not been able to register as an official religious organization. Judicial officials stated that the court denied the Bektashi Community of Macedonia's registration application because it was "incomplete". Because of this the Bektashi Community cannot claim the Islamic religious property. The Bektashi filed suit against the Islamic Community of Macedonia in 2007 alleging that armed ICM members seized part of the Arabati Baba Tekke complex in 2002 and have not left since. The ICM

claimed ownership of the property because the Bektashi are a "sect" of Islam. The Bektashi stated that the court denied their application because of political interference from the ICM and the government.

In January 2013, the Bektashi Community of Macedonia submitted an appeal to the European Court of Human Rights, see *Bektashi Community and Others v. The Former Yugoslav Republic of Macedonia* (25 August 2014) to challenge the 2012 Constitutional Court ruling that declared the Bektashi's discrimination-based appeal regarding the denial of their registration "inadmissible for review"

According to Article 9(2) ECHR and Article 8 of the Law on the Legal Status of Churches, Religious Communities, and Religious Groups, limitations on freedom of thought, conscience, religion or belief must be prescribed by law. The European Court of Human Rights has held that this phrase "does not refer only to domestic law but also to the quality of law, requiring it to be compatible with the rule of law.

The second constraint is related with the fact that limitations must be "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

The European Court of Human Rights has found that democratic society necessarily presupposes religious pluralism. In articulating the importance of freedom of religion or belief, the European Court has noted that it is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it", *European Court of Human Rights Kokkinakis v. Greece* (25 May 1993). Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society", *European Court of Human Rights, Manoussakis and Others v. Greece* (26 September 1996)

The appreciation of cultural and religious differences is vital to the gradual process of European Integration of the R. of Macedonia.

The European Court of Human Rights has also said that, in a democratic society, in which several religions coexist within one and the same population (as in the case of Macedonia), it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. (*Kokkinakis v. Greece*)

However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. See *Hasan and Chaush v. Bulgaria* (26 October 2000).

Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. *Serif v. Greece* (26 January 1999).

CONCLUSIONS

Overall the Law on the Legal Status of Churches, Religious Communities, and Religious Groups regulates the freedom of confession and freedom of expression of confession, guaranteed by the Constitution of R. of Macedonia in accordance with the highest international standards on human rights and international declarations and covenants and regulation of mutual cooperation between the state and the churches, religious communities and groups in the spirit of the dialogue and cooperation.

The registration of a new religious entity as a legal entity is no longer under the competences of the executive power, i.e. it no longer lies with a state administration body, but is transferred to the judiciary. This is a positive development in the current situation of religious entities. But non-registered religious entities can also freely manifest their religion in community. The status of religious entities which do not want to register should be specified in a non-discriminatory way as required by international standards.

The possibility of any political influence in the religious registration process should be eliminated so that the members of other religious groups, from those that are not listed in the Constitution, feel treated equally by the government.

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