

5-1-2001

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Recommended Citation

Atanas Krussteff, *An Attempt at Modernization: The New Bulgarian Legislation in the Field of Religious Freedom*, 2001 BYU L. Rev. 575 (2001).

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An Attempt at Modernization: The New Bulgarian Legislation in the Field of Religious Freedom

*Atanas Krussteff**

I. INTRODUCTION

November of 1989 saw the beginning of radical reform in Bulgarian political life as the country began a transformation away from its prior totalitarian government. This reformation led to significantly different legislation from what existed prior to 1989. Although Bulgaria has since made great strides in becoming more democratic, recent draft laws¹ such as the “Consolidated Draft Law on Religious Denominations” (“Consolidated Draft Law” or “Draft Law”) proves that this reformation must continue in order to truly protect the freedoms Bulgaria has enumerated especially in the area of human rights.

With Bulgaria’s adoption of its 1991 Constitution came the guaranteed free practice of religion.² Although this right is explicitly given, we can note with a dose of regret that the legislative process is still experiencing considerable difficulty in protecting this freedom and in modernizing Bulgaria’s church-state system. Ironically, given the centrality of freedom of religion to human rights,³ difficulties in protecting religious freedom are greater than the difficulties

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1. On February 1, 2000, the Bulgarian National Assembly passed three draft laws on religious denominations on first reading. A legislative process of review and consolidation was completed with the issuance of the Consolidated Draft Law in October of 2000. As a result of a variety of political processes, this version was submitted to the Council of Europe for comment. A negative review from that quarter has substantially reduced the risk that this problematic draft will become law. Still, an examination of the law provides a significant vantage point on Bulgarian developments in the field of freedom of religion or belief.

2. Article 13, part 1 of the 1991 Constitution provides: “The practicing of any religion is free.”

3. See, e.g., W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE 1 (Johan D. van der Vyver & John Witte, Jr. eds., 1996).

encountered in protecting most other areas of the society, particularly the fields of property, restitution, commercial law, banking and a number of other areas.⁴

This backward attitude toward human rights appears strange when contrasted to Bulgaria's history of restrictions and abuse of human rights under Communism, which even more than market considerations was the main reason for its radical change toward democracy in the first place. The much anticipated Renaissance of concepts and practices connected with human rights was supplemented and carried out more in the field of economical ideas than in the more critical areas of furthering human rights. Nowadays, questions connected with human rights are considered secondary by almost all the political programs and ideological schemes, as if human rights issues were already completely solved or will naturally be solved by themselves. Instead, priority has been given to projects like restructuring the economy, privatization, increasing income, tax policy, and health and social insurance. Although these issues are extremely important to develop a healthy atmosphere in which to lay the foundation for accepting basic human rights, focusing on these rights alone should not be a substitute for focusing on human rights as well.

Admittedly, during the transformation from Communism, religious rights have not been completely ignored. Laws on religion adopted during the Communist past are still in force today as well as additional laws that have been passed since 1989.⁵ Unfortunately, most of these laws treat religion as a danger that needs to be controlled rather than a right that must be protected. The most recent Bulgarian proposal for a law on religion is the October 2000

4. The new laws in the field of property, restitution, commercial law, and banking were adopted in their entirety from a series of contemporary, even vanguard, legal ideas. These adopted economic laws *are more appropriate* to the synchronizing rules of the European Union than the analogous law in force in a number of member states of the European Union. Examples of this are the commercial law, the banking law, the insurance law, the law of stocks, stock exchanges and investment companies, the laws in the area of the property and a number of other laws.

5. Some of the laws regarding religious freedom include: (1) the 1949 Law on Religions, (2) Article 13 of the 1991 Bulgarian Constitution, (3) Article 133a of the Law on Persons and the Family, (4) Law on Replacement of the Military Obligations with Alternative Service, (5) international obligations such as the United Nation's 1948 Universal Declaration on Human Rights, and (6) various recent drafts of Bulgaria's Law on Religions.

Consolidated Draft Law on Religions.⁶ Three different organizations united to draft this law which, disappointingly, places considerable restrictions on the rights of individuals and groups to practice their religion.⁷ Although critical review of this draft law⁸ by the Council of Europe makes it unlikely that the Consolidated Draft Law will be passed in its current form, it deserves careful review because of what it reveals about the Bulgarian mindset.

II. LAW IN FORCE

The relevant legal norms that address freedom of religion and belief in Bulgaria can be divided into two broad and rather inconsistent bodies of law. The first group consists of legislation which derived to a large extent from internationally adopted standards in the field of human rights. The second group of laws is composed of acts which are inconsistent with the first group and reflect the erosion of fundamental human rights commitments in Bulgaria.

The first group includes the Constitution of the Republic of Bulgaria, in force since 1991.⁹ The Constitution reflects to a great extent contemporary legal understanding of the right to religious freedom, expressly prohibiting religiously grounded discrimination.¹⁰ The Constitution proclaims the principle of freedom of religion, separation of church and state,¹¹ the inviolability of freedom of

6. For the full text of the Consolidated Draft law, see the OSCE online library of laws affecting religion at <<http://www.religlaw.org>>.

7. Each of these three major parliamentary groups—the ruling Union of Democratic Forces party, the Bulgarian Socialist party, and the much smaller splinter party, Internal Macedonian Revolutionary Organization—proposed a draft law on religious rights. All three, despite some tension in their underlying principles, were finally joined together into one consolidated draft in October 2000. As a counterpoint to this consolidated draft, a group of deputies from the liberal circles in Parliament also brought in a draft. The liberal draft represents a law that complies entirely with the 1991 Constitution of the Republic of Bulgaria and the international standards. The draft law was deposited in Parliament in June 2000. The author of this article notes by way of disclosure that he was involved in developing this alternate draft.

8. A copy is on file with the author.

9. BULG. CONST. of 1991, *published in* STATE GAZETTE, No. 56 (July 13, 1991).

10. *See id.* art. 6(2) (“All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, education, opinion, political affiliation, personal or social status, or property status.”).

11. *See id.* art. 13(2) (“The religious institutions shall be separate from the state.”).

conscience, thought and choice of religion.¹² It also proclaims other rights which are naturally interrelated with freedom of religion, such as the prohibition against persecution and limitation of rights because of belief,¹³ the freedom of expression,¹⁴ the right to association,¹⁵ and the right of conscientious objection.¹⁶ The first round of legal activity also included decisions made by the Constitutional Court of the Republic of Bulgaria, which interprets the Constitution as it applies to human rights.¹⁷

Unfortunately, as indicated, the second set of legal norms is composed of a series of laws that fail to measure up to the high expectations established by the first. This set includes the laws which implement constitutional norms and govern the actual status of religious freedom in the country. Foremost is the Law on Denominations.¹⁸ Another important law of this second group is a key provision of the Civil Code, Article 133a of the Law on Persons and the Family.¹⁹ Finally, a long-awaited Law on Replacement of the Military Obligations with Alternative Service²⁰ also falls disappointingly within the second group of legal enactments.

Although long postponed, Bulgaria's Parliament over the past year has unexpectedly shifted into high gear in processing new legislation on religion. Three separate draft laws written by special panels of experts passed the National Assembly on first reading at the beginning of February 1991. A consolidated draft law was hammered out by the National Assembly's Committee for Human

12. *See id.* art. 37(1) ("The freedom of conscience, the freedom of thought, and the choice of religion and of religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers.").

13. *See id.* art. 38 ("No one shall be persecuted or restricted in his views, nor shall be obligated or forced to provide information about his own or another person's views.").

14. *See id.* art. 39. *See generally* KEVIN BOYLE & JULIET SHEEN, FREEDOM OF RELIGION: A WORLD REPORT 282 (1997).

15. *See* BULG. CONST. of 1991, arts. 43, 44.

16. *See id.* art. 59.

17. One key decision in this regard was the Constitutional Court's Decision No. 5 from 1992. *See Decision No. 5* ("Decision No. 5 of the Constitutional Court from June 11, 1992, on Constitutional Case No. 11 from 1992; Interpretation of Article 13, clause 1 and 2 and Article 37 of the Constitution, in connection to the application of the Denominations Act"), STATE GAZETTE, No. 49 (June 16, 1992), available online at <<http://www.religlaw.org>>.

18. *See* STATE GAZETTE, No. 48 (Mar. 1, 1949) [hereinafter 1949 Law on Religions].

19. *See* STATE GAZETTE, No. 182 (Aug. 9, 1949).

20. *See* STATE GAZETTE, No. 131 (Nov. 6, 1998).

Rights and Religions over the spring and summer of 2000, and was approved by that Committee in October 2000. The Consolidated Draft Law is now awaiting final action on the floor of the National Assembly. If this draft is finally passed, it will clearly constitute an addition to the list of laws in the second restrictive group, standing closer in spirit to the Communist Law on Religions than it is supposedly replacing than to the human rights ideals articulated in the first set of legal norms. But it deserves careful review because of what it reveals about the Bulgarian mindset.

III. THE PROBLEMATIC CHARACTER OF PRIOR LAW

A. An Overview

In accordance with legal tradition in Bulgaria and more generally in Europe, the fundamental fields of law, such as those involved in the area of the religious rights, are typically governed by general implementing legislation that is separate from—and provides more detailed regulation than—the abstract norms of the Constitution. Some claim that the necessity for separate implementing legislation is merely an extension of the operating Constitution and of the international legal norms which are understood to have direct applicability and to have priority over other legislation according to the Constitution.²¹ An analysis of the actual character of such implementing laws, however, shows that they are actually a complement to the Constitution and even an amendment in one sense. As such, to a great extent the additional regulations can turn out to be unnecessary, either because they are in unison with the Constitution and not needed, or in contradiction with it, and thus not justified. The opponents of the idea of such basic implementing legislation, who advocate relying solely on the direct operation of the Constitutional provisions and the requirements of international law (apprehended in Bulgaria as an American approach) are a minority. It is highly unlikely as a practical matter that their view will prevail, and therefore the appearance of new general implementing legislation on freedom of religion and religious associations is just a matter of time.²²

21. See BULG. CONST. of 1991, art. 5(4).

22. See *supra* note 4 and accompanying text.

B. The 1949 Law on Religions

Before analyzing in detail the Consolidated Draft Law, it is important to analyze the background of pre-existing legislation, which causes very serious problems in need of correction. The most serious juridical problems are posed by the 1949 Law on Religions (“Law on Religions”).

Since the original purpose of the Law on Religions was to place the life of the believers and their religious organizations entirely within Bulgarian governmental control, the law is now completely inappropriate for the present democratic situation. From the point of view of juridical logic, it is impossible for a law accepted under the conditions of a totalitarian, atheistic form of government to adequately lay the foundation for free exercise of religion. Additionally, the Law on Religions also conflicts with Bulgaria’s newly adopted Constitution²³ which is not surprising, since the two are based on radically different, even opposite principles.

Another reason for the creation of the Law on Religions was that the Constitution of the Communist era did not have “direct application.”²⁴ The Constitution contained a provision which limited its own power and reach. The Constitution had binding force only to the extent its norms were granted concrete implementation by the party. Consequently, the coexistence of the totalitarian Constitution and the Law on Religions was a manifestation of legal necessity.

With the adoption of the current Constitution of the Republic of Bulgaria in 1991, personal and civil rights, including religious rights, are set forth in a principally different, even opposite manner. The Law on Religions has now been placed at odds with the current Constitution based on radically different principles. Thus, in order to apply either the Constitution or the Law on Religions in concrete situations, either one or the other will inevitably be violated. However, speaking strictly in legal terms, when a collision between

23. The most recent Constitution in Bulgaria was adopted in 1991.

24. All Communist constitutions were not applied as direct legal relationships. It was understood that their principles should be set forth in more detailed basic implementing. Only those laws were understood to provide rules that already governed concrete relations. The current legislation, including the 1949 Law on Religions, is an example of such concretization of the principles of a Communist constitution. That is, only the 1949 Law on Religions arranged directly the legal relationships involved in the choice and practice of religion. Article 5, paragraph 2 of the Bulgarian Constitution of 1991 arranges its direct application. *See* BULG. CONST. of 1991, art. 5(2).

the two laws occurs, the Constitution, as the higher-ranking document, should be controlling law.²⁵ Consequently, the Law on Religions appears to be silently abrogated by the passing of the 1991 Constitution of the Republic of Bulgaria in places where it contradicts the Constitution. This fact can be ascertained incidentally (ad hoc) by any juridical authority in the process of solving any specific legal argument.²⁶

There are two main problematic features of the Law on Religions. First is the apparent lack of limitations on the state's power to interfere with religious freedom, and second is its control-oriented approach to handling the registration of nonprofit entities which have the goal of performing religious activities. Fundamental to the Law on Religions is its discriminatory measures aimed at believers—a logical consequence of the atheism which was a central part of Communist ideology. The complicated regime—introduced by this law exclusively to monitor citizens confessing religion and associating upon this basis—is transparently a limitation of religious rights.²⁷ By only allowing a religious organization to register with the state when it satisfies the requirements of the Council of Ministers, the law undoubtedly restricts the opportunities for association based on a religion—a burden not shared by those who associate on any other basis, such as philatelists or atheists.

25. Article 5, paragraph 1 of the Bulgarian Constitution of 1991 proclaims the priority of the Constitution. *See* BULG. CONST. of 1991, art. 5(1). In reality, however, in the process of the legal execution of specific cases, this principle is not always realized. Particularly representative are a number of court decisions from the Regional and District courts in the city of Plovdiv (mentioned in the U.S. State Department's Annual Report for Religious Rights Protection of 1999 at <http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_bulgaria.html>). These cases involved challenges to a subordinate legal act—a Decree of the Plovdiv City Council. The decree introduced a special procedure for obtaining permission for the practice of religion within the territory of the city. It was aimed primarily at Jehovah's Witnesses. Such direct and discriminatory targeting of a religious group obviously contradicts the Constitution. But it is accepted that even if the Decree contradicts fundamental law, as embodied in the Constitution, fundamental law cannot be applied directly. Accordingly, it is claimed, that the Constitutional Court ought to settle a contradiction first, and only then should a lower court be prevented from upholding the Decree. Reasoning of this type is applied only to laws passed after the Constitution of 1991 was adopted. This, by itself, represents an independent problem for the application of Art. 5, paragraphs 1 and 2 of the current Constitution, but this goes beyond the scope of the present article.

26. *See* BULG. CONST. of 1991, ch. 11 (Transitional and Concluding Provisions), § 3(1).

27. Article 6, paragraph 2 of the Bulgarian Constitution of 1991 defines a limitation of religious rights. *See* BULG. CONST. of 1991, art. 6(2).

The introduction of this mechanism for limiting registration of a religious organization is contradictory to the principle of equality provided for by the Constitution.²⁸ Interested believers are required to plead with the government in order for their religious organization to become registered with the state. The clerks who wield the executive power are entrusted with discretion to decide whether citizens can exercise their constitutional right to freedom of religion. This assessment is undertaken without any set legal criteria or any guarantee that the law will be observed. Moreover, such clerks are typically connected with a certain political force and are excused from the obligation to submit only to the law and are free to solve problems in expediency and within the context of a certain political line. In contrast, when determining whether a certain religious group may be registered with the state, it is inadmissible to allow considerations of expediency. This unequal treatment of religious organizations, connected as they are with supreme personal and social values, contradicts the spirit and principles of the Constitution, and is unacceptable in a civil society.

The Constitution requires that the right of citizen-believers to associate and obtain a legal status²⁹ for their association must be equal to the right of non-believing citizens and atheists to associate and obtain the same legal status for their associations. This same right is given to all Bulgarian citizens: believers or atheists; black or white; Bulgarian or foreign nationals; highly educated or uneducated; politically engaged or non-party oriented; high social status or common people.

The Constitution does *not* permit a different approach in obtaining the right of association based on criterion of association. If citizen-atheists associate and want their organization to receive the status of a juridical person, they directly hand in their documents to the court.

Several articles in the Constitution have direct application to religious freedom and association. Articles 6, 37, 38, and 44 provide mandatory protection for the right of confession of a religion by founding religious associations and other juridical persons (legal

28. *See id.* art. 6.

29. Obtaining legal status, or becoming a "juridical person," ensures a religious organization considerable rights concerning the management of the religious community, property, and other rights.

entities) with a nonprofit goal. The free choice of religion,³⁰ and the right of citizens to associate freely³¹ are organically connected with the principles expounded in Article 6 of the Constitution. Additionally, Article 6 proclaims the equality of all citizens by prohibiting the restriction of rights or privileges based on race, nationality, ethnicity, sex, origin, religion, education, convictions, political orientation, personal or social status or property status.³² The enumerated social characteristics of Article 6 are also criteria upon which different associations and organizations are founded.

IV. PROBLEMS WITH THE CONSOLIDATED DRAFT LAW

A. The Odd Majority or the Political Problem

In view of the previously noted delay of legislation in the sphere of human rights,³³ the unprecedented union of heterogeneous political forces³⁴ in supporting one restrictive law concerning religion and belief is somewhat odd and certainly demands explanation.³⁵ These political forces are generally sharply opposed on most other issues that are of far less importance to society.

This union of the three groups is as restrictive in its limitation on human rights as it is strange in its composition. This majority group has focused its attention on convincing the government that human rights first began as a reason for reform in Bulgaria, but they are now becoming a source of trouble for the government by changing its humanitarian content and purpose before the original purpose has been realized.³⁶

30. *See id.* art. 37(1).

31. *See id.* art. 44.

32. *See id.* art. 6(2).

33. One example of a prolonged delay in human rights legislation was the ratification of the Framework Convention for the Protection of National Minorities. Ratification was ultimately accomplished only because of strong internal political pressure and foreign policy considerations.

34. This majority includes both the ruling coalition and the Bulgarian Socialist Party (the largest party in opposition).

35. The draft law of the ruling party (UDF) is almost an exact replica of the draft prepared by the Directorate of Denominations during the government of BSP (the Socialists).

36. In a speech delivered on October 20, 2000, at a conference discussing the Consolidated Draft Law, Ahmed Youssein (the Deputy-Chairman of the Committee for Human Rights, Religions and Petitions, and a deputy of the DPS—the party behind the alternative liberal draft) stated that “both the ruling majority and the main opposition party do not have

Every government is faced with tendencies to want to exert full control over the associations it governs. In addition, each government has a tendency to seek ways to economize. Monarchy, in its varieties, has the most effective methods for taking decisions and putting them into effect. It wastes less time with management. By contrast, the democratic form of government requires far more time and effort to take action. But this additional effort is expended in the name of guaranteeing social benefits and justice which are absent in a monarchy's views of social engineering. As an analogy, normally a bus used for public transportation does not take the shortest route from the first to the last stop, but goes the route that effectively serves the optimum number of passengers. The theory behind the supremacy of the law defending human rights before all is similar to the bus ride in that satisfactorily protecting the right is more important than the length of time it takes.

B. General Problems

Problems are already evident in the individual draft laws which were used as the basis of the Consolidated Draft Law. First of all, a conflict can be seen between the law in force which contradicts the Constitution and the international legal norms which have been incorporated as part of Bulgarian law.³⁷

1. Problems of cultural collision

One important source of the problems arising from this legislation is a collision of cultures and of cultural stereotypes, resulting from difficulties arising from the integration of cultures in Bulgaria. This collision can be depicted in short as the conflict between the Western legal philosophy adopted in the Bulgarian legal system at a constitutional level and a particular brand of local Eastern mentality which at a practical level maintains a constant resilient tendency to replace the principles adopted at a constitutional level. The collision may also be viewed as a gap between vanguard legislation and the actual cultural adjustment after long isolationism

the political will" to vote for something other than the proposed Consolidated Draft Law. *See Bulgaria: A Meeting of Religious and Human Rights Activists Denounces the Final Version of the Draft Denominations Act* (visited Apr. 16, 2001) <<http://www.pili.org/lists/piln/archives/msg00692.html>>.

37. *See* BULG. CONST. of 1991, art. 5(4).

during the Communist period and deeper socio-psychological habits having a mainly statist character. Finally, the problem may be depicted as analytic rationalism versus synthetic mysticism.³⁸ In the legal field this opposition is manifested by the understanding that law may mold the society; this is quite different from the western principle that customs rule the law.

2. The problem of too much emphasis on orthodoxy

Paradoxically, the deformations of the new democratic constitutional framework occur in areas which originally provided primary motivation for the transformation toward democracy and liberation from Communism. Defined broadly as human rights, these areas place the highest priority on averting the infringement and the restriction of human values. It appears that the acceptance of principles in theory is easier than in their concrete application. Opposition begins to arise and intensifies around issues increasingly connected with national identity. Indisputable principles such as the rule of law, equality, separation of church and state, and non-discrimination are compromised as soon as we enter the field of religious rights and practices, and especially when the issue of the status of the Orthodox Church is considered. In this context, application of principles otherwise firmly held suddenly becomes a kind of treachery, or at least a dishonorable provocation against Orthodoxy, because the latter is seen as being indivisibly connected with national identity and any attack on the church is perceived as an attack on that identity.³⁹

Thus the Draft Law declares that Eastern Orthodoxy is the traditional religion of Bulgarian people.⁴⁰ On this basis is formed the political consensus of actual opposition against the complete

38. Since the liberation of the Bulgarian state in 1878, the Western legal system has been accepted in a radical and permanent way. This process also occurred in the late Ottoman Empire, from which Bulgaria separated. Now, after a fifty-year hiatus of a democratic constitutional state, another radical shift has occurred, from a limited set of fundamental juridical principles to a general acceptance of the proliferation of regulatory legislation.

39. But the state interferes especially heavily in the life of the Orthodox Church, which led to permanent division of the church into two synods.

40. See Bulgaria Consolidated Draft Law on Religious Denominations, art. 8 (Oct. 2000) [hereinafter Consolidated Draft Law]. Consolidated Draft article 8 states: "The Eastern Orthodox Faith is the traditional religious faith of the Bulgarian people. Its voice and representative shall be the Bulgarian Orthodox Church, which has historical merits with reference to the Bulgarian nation." *Id.*

application of the indicated principles in the area of religion and belief, since viewed from this angle the insistence of the minority religious groups on unconditional application of the basic juridical principles of the democratic state and law look like a lobbying for strange and unnatural rights in comparison with the national interests.

Despite the continuous presence of Protestant religious communities in the modern independent state of Bulgaria, and despite the undoubted Catholic presence since the first conversions of the Bulgarian people in the ninth century A.D., Orthodoxy still considers itself officially, although not in the Constitutional text, as the traditional religion of the Republic of Bulgaria. The very acceptance of any religion as a traditional one for the Republic of Bulgaria, a state political system that has existed for only ten years now, appears quite forced. The impression is imposed that the state followed the tradition of the Turnovo's Constitution, which was in force until the end of World War II and which proclaimed Eastern Orthodoxy as the dominant faith of Bulgaria at that time. But if during that time this approach was not an exception in the worldwide practice and was viewed as a typical part of the context of the epoch, now in the presence of a great number of ratified international legal acts, after the long Communist lethargy, the same tradition looks at least naïve. It becomes quite clear that the traditions of one nation are not created by law. They either exist or they do not.

3. Tension between the Consolidated Draft Law and the Constitution

The above-mentioned problems with the Draft Law can be defined, in broad terms, as challenges to the principle of equality. Unfortunately, the problems that are faced by religious organizations under the still enforceable Communist law will continue to a large extent under the Draft Law. Against this legal background, the provisions of the Constitution and their interpretation by the Constitutional Court look like a short pause before the restoration of the spirit of the Law on Religions. The Draft Law is built on principles which are in diametrical opposition to the Constitution, including Article 6's prohibitions and the international legal norms incorporated in the Constitution.

Under the Constitution and according to the interpretation of the Constitutional Court, religious freedom is a right of supreme

significance. It has been placed in Chapter One of the basic law, named Basic Principles. Consequently, this special right deserves strong protection and guarantees greater even than some other basic constitutional rights. Therefore, additional legislation makes sense only if it facilitates the exercise of religious rights with respect to the concept of basic law and international standards. By analogy, the penal law defends the right to life by establishing laws against murder and manslaughter and the exercise of this right is not licensed. By contrast, the Draft Law follows exactly the opposite approach. It creates a licensing regime that treats believers and their associations as a source of heightened danger which must be prevented and against which society must be protected, similar to automobiles, firearms, and nuclear reactors. Other commentators have described this protection as juridical order, established upon a presumption of guilt.⁴¹ Viewed in the most favorable light, the Draft Law exposes a paternalistic approach used by the secular political power towards the believers.

How Bulgaria applies the principle of equality better explains the meaning behind the draft laws and the Constitution. The dominant view is that Bulgarians as a whole comprise the nation, as an ethnos and a religion, while the individual is the special addressee of the legal norms. From the point of view of this principle of equality, the social-psychological model appears to say that Bulgarians are equal between themselves and not equal as individuals.

One natural factor in the consolidating of the three draft laws evolves from what we already mentioned: the purely political techniques of the political fight. Particularly interesting was the manner in which the law appeared on the floor of the Parliament. The main opposition party, the Bulgarian Socialist Party ("BSP"), used its quite limited ability to insert draft laws into the agenda of the Parliament to introduce its draft law of the Law on Religions.⁴² At this point, the ruling coalition had already introduced two other draft laws whose philosophy closely resembled that of BSP. One of the few explanations for BSP's action is that the BSP draft was intended to be a provocation towards the majority, forcing the

41. See generally W. Cole Durham, Jr. & Lauren B. Homer, *Russia's 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT'L L. REV. 101 (1998).

42. The Bulgarian Socialist Party's draft law was introduced in Parliament on February 2, 2000.

majority, in order to avoid a disadvantageous internal political situation, to sacrifice its foreign political popularity in the area of human rights. And yet the majority did not seem to be very worried by this circumstance, but only hurried to pass the restrictive religious law, perhaps not expecting heavy criticism from abroad. The assumption that criticism would not come is an indication that another factor is also at work: the lack of adequate legal experience in this sphere of Bulgaria's leading political circles.

Another problem with the Consolidated Draft Law is that due to a complex mixture of cultural, psychological, and political reasons, the notion of "dangerous sects" has been used as a convenient pretext for the restrictive Draft Law. Although lacking any concretization, legendary mystics are evoked in order to rouse a negative attitude towards any novelty or difference in the area of religion. This attitude is particularly effective because the media has been exploiting the public's customary perception of the bleak mystics to use it as a marketing tool.

In order to understand the background behind using the "preventive approach"⁴³ towards religion, it is important to consider legislators' attitudes toward religion. Ironically, there is no proof in the history of religious practices in Bulgaria of a single religiously motivated criminal act. The introduction of a restrictive regime to govern the different religious communities, most of which have already proven their "safety," is hypocritical because it conceals other motives. Moreover, the introduction of a restrictive regime is illogical even from the viewpoint of planned prevention. Instead, lawmakers should consider the possibility that difficulties in registration and normal activity for even the most harmless but "different" religious group might lead to radicalization of possible negative deviations and to the provocation of latent ones. The legal prohibition of something viable does not yet mean its death. Rather, the forbidden form of life is sentenced to deformation. Equating those two, and this in a relatively pluralistic society, is at least a manifestation of a lack of understanding.

Another problem between the Consolidated Draft Law and the Constitution is that, despite the proclaimed separation of church and state in the Constitution, the Draft Law reveals the apparent

43. This reasoning constitutes an official purpose underlying the Consolidated Draft Law.

reluctance of the state to separate itself from the church. Moreover, the lack of a different type of separation—the separation of political powers in Bulgaria—adds to the problems in the Draft Law. A complete separation of powers was not carried out in the establishment of Bulgarian state legislative practice and this failure is vividly evident in the Draft Law. Although registering religious bodies as legal entities is supposed to be done within the courts, the executive branch in the form of the Ministerial Council and its specialized body, the Director of Religions, is allowed to intervene to prevent the religion from registering. As a result, the decision of the independent judicial branch is effectively bound by the decision of the executive branch. Thus, to a great extent, the independence of the judiciary in making decisions regarding the defense or limitation of important human rights is suspended by placing them under discretionary political control.

C. Consequences of the Above General Problems

Perhaps such a restrictive attitude towards religious groups—which by nature are some of the groups most loyal to the government and are prone to endure even more restrictions than most other social groups—is evidence that the government attempts to exert too much power. On the other hand, it can be argued that dispensing with difficult preliminary conditions for the exercise of religious rights will instead lead to greater transparency among the various religious organizations and make possible the only government regulation which is really justifiable and useful for society—regulation of individual acts that have already been committed.

Besides the other defects, the lack of understanding of the judicial system appears as well. In addition to neglecting the principle of personal responsibility and introducing collective responsibility through the provided sanction—deprivation of registration—we also observe the simultaneous lack of understanding of the legal system and the operation of the whole juristic system, namely the application of the other administrative, civil, and penal legislation.

*D. Textual Defects of the Consolidated Draft Law**1. Definitions of religious freedom*

Article One of the Consolidated Draft Law establishes definitions of religious freedom.⁴⁴ However, these definitions fail to completely follow the text of Decision Number 5 handed down by the Constitutional Court in 1992. The subsequent articles of the law then restrict and put under suspicion the rights set forth in Chapter One. Even considered alone, the definition of religious freedom is inadequate. The full formulations of international standards are not given.⁴⁵ The incorporation of all the international standards is necessary to inform the Bulgarian citizen about international rights which are not widely published in a systematic form and in a manner which can effectively reach the knowledge of the addressees of the juridical norms in the country.

2. The legal norms are limited to Bulgarian citizens

The addressee of the legal norms is limited to Bulgarian citizens,⁴⁶ not to persons in general. Even the aforementioned Turnovo's Constitution accepts the religious rights of foreign residents. This failure to recognize religious rights of foreigners stems from another deeper rationale. The title of the law—"The Law on Religions"—indicates the subject matter of the law, namely *religions*. However, in the text of the law, the word "religion" is used only to refer to a religious organization. Not surprisingly, the

44. See Consolidated Draft Law, *supra* note 40, arts. 2, 3. Consolidated Draft article 2 states: "Freedom of religion is a right of citizens: (1) to freely form their religious beliefs, as well as to choose their religious faith freely; (2) to freely practice their religious faith." *Id.* art 2. Consolidated Draft article 3 states:

- (1) The free choice of religious belief and religious faith is an absolute, personal, inviolable, and basic right of every Bulgarian citizen.
- (2) No person shall be prosecuted or restricted with reference to his rights as the result of his/her religious beliefs, nor shall they be forced to change these beliefs.
- (3) Parents shall be allowed to provide religious education to their children in accordance with their own religious beliefs and faith.

Id. art. 3.

45. This is one of the main goals of the alternative draft law supported by the Union for National Salvation (ONS).

46. See *id.* art. 4 ("Every Bulgarian citizen shall have the right to freely practice his/her religious faith personally or through association.").

personal character of religious freedom is not evident at all. One of the reasons for the formulation of Decision Number 5 was the obvious need for additional clarification of this etymologically inaccurate term.

3. Preferential treatment given to the Bulgarian Orthodox Church

Despite the considerably softened position in respect to the privileges of the Bulgarian Orthodox Church given by the other sections of the Consolidated Draft Law,⁴⁷ Article 8 states that Eastern Orthodoxy is the traditional religion of the Bulgarian people. Although at first sight the text looks the same, Article 8 goes considerably further than the Constitution in an intolerable direction. While the Constitution announces Eastern Orthodoxy as the traditional religion in the Republic of Bulgaria, the Consolidated Draft Law refers to all Bulgarians as one body. Thus, the Draft Law reverts to the definition of the operating “Communist” law. In this way, all other religious communities are implicitly excluded from the term “Bulgarian nation.” This includes large groups such as Muslims and other religious communities. In this situation, all the non-Orthodox communities are put in the unenviable position of out-of-nation elements, or “perpetual guests” in their own country with the respective expectations of the consequences for that status. This does not yet mean the establishment of a church but this is the same philosophy which lies at the basis of such an establishment.

4. Limitations clause

Like the relevant international instruments, the Draft Law also contains a provision describing permissible limitations. This “limitations clause” purports to allow limitations on grounds that go substantially beyond those permitted by the limitations clauses of Bulgaria’s international commitments. The international documents very carefully set constraints on the narrow range of circumstances in which religious freedom rights can be overridden by other state concerns. Further broadening of the grounds for limiting religious freedom is not allowed. Yet, the widening of the scope of limitations is obvious when compared with Article 18, paragraph 3 of the

47. See *id.* art. 8 (reprinted in full *supra* note 40).

International Covenant for Civil and Political Rights (“Covenant”)⁴⁸ and Article 9, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”).⁴⁹ The limitations are introduced by adding new prerequisites, leaving out others, and by attaching additional legal definitions of the reproduced prerequisites from the Covenant and the European Convention. The section of the Consolidated Draft Law labeled “Additional Provisions” includes specific definitions for the different prerequisites for the limitation of religious freedom provided in the European convention.⁵⁰ Although

48. See International Covenant on Civil and Political Rights (*reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 69–82 (Tad Stahnke & J. Paul Martin eds., 1998)). Article 18, paragraph 3 states: “Freedom to manifest one’s religion or beliefs 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.” *Id.*

49. See European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (*reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS, *supra* note 48, at 140). Article 9, paragraph 2 states:

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society 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.

Id.

50. In the “Additional Provisions” section of the Consolidated Draft Law, paragraph 2, point 1, states that a religious organization “shall be deemed to be used for political purposes” when it engages in “any activities with reference to the expression of political will.” Consolidated Draft Law, *supra* note 40, at “Additional Provisions,” para. 2(1). This language is broad enough to include the voting of members of one church at elections.

Paragraph 2, point 2 of the same section states “[a] religious faith shall be deemed to endanger the national security” where it engages in activities “with reference to the enticement of ethnic opposition or national hate, which are directed against the sovereignty or territorial wholeness of the country or against the *unity of the nation*.” *Id.* at “Additional Provisions,” para. 2(2). This notion can potentially be construed to impose limitations on non-Orthodox communities, which are thought by many to differ from the national identity, which is associated with Orthodoxy. Such groups often have ties to the larger international community. Under this provision their activity could be defined as falling outside of the law.

According to paragraph 2, point 3, a threat to the public order exists when religion prescribes or includes in its practice actions that are inconsistent with “time, place and manner” constraints of written or common rules. “Time, place and manner” constraints are usually permissible, but must be structured in ways that are nondiscriminatory and do not allow abuse of official discretion. The restrictions must be proportionate and fair.

Paragraph 2, point 4 states “[a] religious faith shall be deemed to endanger the public health” when it “creates dangers of damage to the physical and/or mental health of any individual or group of individuals.” *Id.* at “Additional Provisions,” para. 2(4). Among other things, a danger to the physical or mental health of an individual includes “the prohibition of using life-saving medical treatment.” *Id.* This text is transparently aimed at Jehovah’s Witnesses.

binding on the Constitutional Court, most commentators agree that the prerequisites are quite general and unclear in the way in which they are defined. They are certainly much broader than intended by the framers of the Covenant and the European Convention, and are expanded to allow a considerably larger set of limitations on religious freedom than would be justified by the carefully drafted limitation clauses of the international instruments.

Two prerequisites are missing in the Consolidated Draft Law's attempts to impose limitations on the exercise of religious freedom. First, under Article 9 of the European Convention, limitations must be prescribed by law. All sub-law executive or administrative acts are not sufficient to serve as a basis for overriding freedom of religion or belief. Second, the key criterion of Article 9, paragraph 2 of the European Convention requires that the restriction must be "necessary in the democratic society." Without these two prerequisites, the definition is quite backward and fails to respect the constraints on permissible limitations on religious freedom imposed by international law.

E. Registration of Religious Entities

1. The Consolidated Draft Law requires a religion to be registered before it can effectively practice in Bulgaria

The Consolidated Draft Law requires that each religion must be registered with the Sofia City Court in order to be valid.⁵¹ There is a

Finally, paragraph 2, point 5 states, "a religious faith shall be deemed to endanger the [public] morals" when it prescribes or includes in its practice "any public activities, which are in deep non-compliance with the generally accepted rules of ethics for the current time and place." *Id.* at "Additional Provisions," para. 2(5). This could be misapplied to allow hopelessly broad incursions on religious freedom.

51. *See* Consolidated Draft Law, *supra* note 40, art. 14(1) ("The status of a religious faith shall become valid upon its registration at the Sofia City Court."); *see also id.* art. 13. Consolidated Draft article 13 states:

- (1) Persons of any religious community, who wish to practice their religious beliefs as a legal entity, shall incorporate a religious faith.
- (2) The founders of the respective religious faith shall approve its statutes, which shall specify in detail their religious faith, services and rites.
- (3) The approved statutes of the religious faith shall specify: (1) its name and location; (2) its structure; (3) its management authorities, methods or representations, and financial control authorities; (4) its property and financing, including provisions for termination of the faith as a legal entity.

Id.

persuasive argument that without this registration, the free exercise of religion and faith is practically nonexistent. In Article 5, paragraph 2, the term “religious community” is used to refer to an entity which is not a juridical person. The text then states that certain rights of the community are acquired only after the community attains the status of a legal entity. Only after acquiring the capacity of a legal person will a religious community achieve the status of *veroizpovedanie*,⁵² which is the only form of association which enjoys the legal benefits of a registered association according to the Draft Law. To practice in public, the religious community is obliged to have the status of *veroizpovedanie*.⁵³ This requirement is reinforced by the express provision that persons with common faith can practice their religion freely within the religious community,⁵⁴ implying that practice “outside” this community—when third persons are involved (i.e., in public)—cannot happen freely, but only under the conditions of the community’s registration.

Additionally, the chapter entitled, “Relationship of the state with the religions,” regulates a series of rights, which by the previously noted logic of Article 5, are not granted to a religious community that is not a juridical person. Obviously, the non-registered religious communities cannot establish a prayer house, invite foreign preachers from their religion, take advantage of benefits available from the government, employ workers, and receive donations among other things. Without these rights, religious communities will be severely hampered in their normal functioning.

2. Difficulties of registration and the penalties that follow not being “duly authorized” as a religious body

The real frustration of the public practice of religion is primarily introduced by Articles 51 and 52. Article 51 provides a large fine for an individual who practices publicly on behalf of a religion without being “duly authorized.” Article 52 provides even greater sanctions for a religion which engages in activities that are not included in the

52. *Veroizpovedanie* refers to a religious organization with the status of a juridical person, or in other words, one that is registered as a legal entity.

53. *See id.* art. 5(2) (“In case a religious community wishes to publicly practice its religious faith, the same may acquire the status of a religious faith in accordance with the provisions hereof.”).

54. *See id.* art. 5(1) (“Persons with common religious beliefs shall be free to practice the same within their religious communities.”).

religious organization's charter. This implies as a threshold matter that neither a religious community that is not registered as a legal entity nor its members may engage in religious practices. Technically, this would prevent a religious organization from initiating itself, because drafting the charter of a religious organization is already religious activity, but under the Consolidated Draft Law, such activity is not permitted until after registration. Presumably, the Draft Law would not be construed to create this Catch-22. But if a registered denomination cannot observe a religious practice without the practice being preliminarily described in Articles of Association, *per argumentum a fori*, a community which has no Articles of Association will not be able to either. This conclusion is further reinforced by the provision in the Consolidated Draft Law which states that a religion that "practices in public religious beliefs, services and/or rituals which are not provided in the Articles of Association" can be deprived of registration. Even more significantly as a practical matter, this provision paves the way for impermissible bureaucratic intervention in internal religious affairs. No religion can describe the full richness of all its activities in its charter. But there is the possibility that a mayor or other reviewing body could enjoin activities not judged to be authorized by the charter. Such governmental second-guessing of what comes within the religious life of a community would constitute a clear intervention in internal affairs, which would be a profound offense to religious freedom.

Religious communities cannot register themselves as legal entities by any other means. In most democratic countries, religious organizations can register as normal non-profit organizations if they so desire. Currently, however, Article 133a of the Law for Persons and Family introduces an unambiguous prohibition for registration of religious associations as secular non-profit activities. Although a change in Article 133a of the Law for Persons and Family is anticipated, this very same prohibition is reproduced, although not word-for-word, in Article 5, paragraph 2, and Article 48, paragraphs 2 and 3 of the Draft Law. It becomes clear by these texts that legal persons other than the religions registered under the Consolidated Draft Law cannot practice their religion or belief in public. This limitation may impose significant constraints on a religious organization which may elect to waive the added benefits flowing from organization under the religion law, or which may desire to

obtain legal entity status for some of its secular activities. Either way, this limitation intrudes on the organization's internal affairs.

3. The executive branch's control of the registration of religious bodies

Although registration with the court of the religious organization is required, the role of the executive government is determinative to such an extent that the court is relegated to only a secondary position. Articles 15 and 16 create a potential for parallel actions by both the court and the executive government through its specialized body, the Directorate of Denominations. Because a decision by the Directorate is a precondition, its determination resolves the issue of registration. Moreover, under classic administrative law principles, the court will be required to defer to the Directorate's expertise, and will only be able to overturn the Directorate's findings if they are clearly erroneous or lack substantial evidence. Hence, the Executive Branch is given the power to decide whether a religion can be registered and the court is legally bound by their decision. Among the documents necessary for the registration of a local branch of a certain religion is a certificate from the Directorate of Denominations.⁵⁵ Additionally, the Directorate of Denominations has exclusive authority to grant permission for the establishment of religious schools and universities. Apparently, the purpose of officially requiring registration by the court is solely to satisfy the demands of influential democratic circles in order to maintain a better image. In reality, the court's role will be quite nominal in order to preserve political control of religious activities. The government's desire to control religion demonstrates how resilient local Eastern traditions are in resisting international legal norms.

4. Provisions in the Consolidated Draft Law allowing the state to restrict registration of religious bodies

Another problem with the Consolidated Draft Law appears to be the apparent substantive review of internal religious affairs that it introduces. In order to complete registration, the Consolidated Draft Law requires the founders of the association to submit a "detailed

55. See Consolidated Draft Law, *supra* note 40, art. 23(1). Other requirements include a memorandum of association and a certificate issued by the central management authority of the religious faith certifying that the local branch has been properly established. *Id.*

description of their faith, worship and ritual practices.”⁵⁶ The idea of this requirement is to facilitate the Directorate of Denominations in accomplishing research on the religion’s faith, worship, and ritual practices, and to help the Directorate prepare its statement which will serve as the basis for the court’s decision as to whether the state will allow the religion to be registered.⁵⁷

5. Multiple entities cannot be registered with the same faith basis

Besides the limitations listed in Article 4 of the Consolidated Draft Law, an additional reason for rejecting registration is listed in Article 18: a religion cannot be registered if another one is already registered on the same basis of faith.⁵⁸ Additionally, to be certain that the state can exercise substantive control, Chapter 4 of the Draft Law provides for deprivation of religious entity status and dissolution of the religious entity if any of the provided preconditions are available. This includes all situations where the religion publicly manifests beliefs, worship, or rituals which are not specifically included in the Articles of Association, or in other words, practices which have not been approved by the Directorate of Denominations. Both of these provisions give the Directorate excessive authority to introduce into religious disputes within a denomination or otherwise to intervene in religious affairs. These provisions also overlook the fact that many religions have a congregational structure, and would normally register each congregation separately, even though each congregation has the same faith basis.

56. *See id.* art. 13 (reprinted in full *supra* note 51).

57. *See id.* art. 16. Consolidated Draft article 16 states:

(1) The Directorate of Denominations shall investigate the religious faith and rites of the thus associated religious faith and shall issue an opinion on the registration of the same.

(2) The Directorate of Denominations shall have the right to request the opinion of other state authorities, as well as to request information from foreign or international organizations with reference to the public acceptance of the respective religious faith and its practices.

(3) The Directorate of Denominations shall submit its opinion, as provided for in Clause 1 above, to the Sofia City Court and to the applicants within two months as of the date of submission of the specified above documents.

(4) The failure to submit an opinion within the specified above term shall not serve as a basis for refusal by the Court to study the application for registration of the religious faith.

Id.

58. *See id.* art. 19.

6. Excessive administrative review burdens

In addition to general court supervision to ensure compliance with the law, double administrative control is provided through (1) broadened rights for the Directorate of Denominations, and (2) strongly increased rights for mayors in connection with the registration of the local branches of the religions. Most of the new rights given to the Directorate of Denominations have already been mentioned above. But especially problematic and substantial are the rights of mayors. In the first place, it is clear that mayors' rights are similar to those of the Directorate of Denominations. One of the differences is that the statement of the mayor is not formally considered by the court, as compared with the central registration. Since under the Draft Law the real functioning of a religious community is doubtful without local registration, this right of mayors—which in this case acts as territorial arms of the central government and not as an executive body of the local authorities—appears to be decisive for the existence of the religions. The practical result is as follows. Smaller non-orthodox communities could no longer rely on national level registration, but would instead have to fight the registration battle in every city. Further, for Islamic communities that are in the majority in some cities, approval by the local mayor no longer suffices to assure registration.

According to the Law on Religions which is now in force, a religious community's local branches automatically acquire the status of juridical persons with the registration of the central administration of the community.⁵⁹ Under the Consolidated Draft Law, the local religious branch must also submit a letter of registration and obtain approval from the mayor of the local municipality. Because of this two-level registration requirement, a number of regions' minority religious groups—although registered at the central level—are denied their location registration. This denial sharply restricts their activities as a practical matter within the territory of these municipalities. According to the Consolidated Draft Law, mayoral

59. See 1949 Law on Religions, *supra* note 18 (“A Denomination is deemed recognized and becomes a corporate entity upon affirmation of its charter by the Council of Ministers or by a duly authorized thereby Vice Chairman thereof. Likewise from same date each and all of the local branches of that same Denomination acquire a corporate entity. The Council of Ministers may, by a motivated resolution, revoke recognition if the activities of a certain Denomination violate the Laws, the public order or the standards of good behavior.”).

decisions are no longer ministerial, nondiscretionary acts, but individual administrative acts over which the mayor has discretion. These acts create rights and obligations which are acts of decisive or discretionary administration and which will operate on the basis of expediency. Besides the general problems generated by political control, the Consolidated Draft Law will also create problems in the internal relations of the religions between the central leadership and the local branches, which are often subordinated hierarchically. The contemplated structure opens the possibility of extensive interference and would allow government officials to ride roughshod over matters of ecclesiastical polity and internal organization.

7. Dissolution provisions

The deprivation of registration provided for in Part Four of the Consolidated Draft Law imposes an unusual kind of responsibility for any kind of juridical persons. This sanction may be viewed as a form of collective liability, a remedy abandoned long ago by modern legal systems, and which could impact members who have not contributed to the accomplishment of an alleged violation of law. That is, the dissolution provisions in affect allow the entire religious group to suffer the sanction of dissolution for what may be isolated acts of individual members. This could potentially abuse the rights of an unlimited number of believers. With respect to the principle of individual legal responsibility, such a legislative possibility is unjustified.

8. Unreasonable land use regulations

The Consolidated Draft Law sets unreasonable conditions on religious activities by requiring written permission from all the residents of a building before using a part of the building as a prayer house.⁶⁰ Even more difficult is the requirement that use of public buildings for religious purposes requires the availability of a separate entrance. These two restrictions drastically limit the number of places available for smaller religious groups to worship. Because of the way the legal texts are formulated, these requirements create a

60. See Consolidated Draft Law, *supra* note 40, art. 34(2) (“Prayer facilities shall be established in housing buildings only with the preliminary agreement in writing of all the persons residing therein.”).

considerable risk for further restrictions on completely private, closed religious meetings, including family meetings.

9. *Sanctions*

Chapter 6, “Administrative and Penal Provisions,”⁶¹ provides serious sanctions for different actions which are considered public exercise of religious freedom. These provisions create very atypical administrative or punitive sanctions. From the point of view of Bulgarian administrative law and criminal theory, to bring a punitive action, an activity must be characterized as socially dangerous. It is not clear at all how the exercise of a basic constitutional right constitutes a socially dangerous act. Therefore, these administrative penalty structures do not correspond to the elementary principles of

61. Consolidated Draft Law chapter 6 states:

Art. 51. Any person who practices on behalf of a religious faith without due authorization shall be subject to a fine to the amount within the range of 500 to 1,000 BGN.

Art. 52. Any religious faith or its local branch, which executes public practice of its faith or practices religious rites and/or services, which have not been provided for in their Statutes, shall be subject to a property sanction within the range of 1,000 to 5,000 BGN.

Art. 53. (1) Any person who infringes the provisions hereof shall be subject to a fine within the range of 500 to 1 000 BGN, if his actions do not comprise a crime.

(2) In cases of a second infringement of the provisions hereof as per Clause 1 above, the guilty person shall be subject to a fine within the range of 500 to 2,000 BGN.

(3) In case the said infringement has been performed by a legal entity, the same shall be subject to a property sanction within the range of 1,000 to 5,000 BGN.

Art. 54. (Alternative) Any person who in any manner whatsoever hinders the free practice and/or expression of religious beliefs, which have been registered as a religious faith, shall be subject to a fine within the range of 100 to 3,000 BGN.

Art. 55. (Alternative) Any official who from his position hinders the free practice and/or expression of religious beliefs, which have been registered as a religious faith, shall be subject to a fine within the range of 200 to 500 BGN.

Art. 56. (1) The specified above infringements of the provisions hereof shall be established by means of protocols compiled by officers of the Directorate of Denominations or of the municipal administrations. (2) The penal acts shall be issued by the Director of the Directorate of Denominations or by the mayor or the duly authorized by the same person [sic]. (3) Official[s] who do not perform their duties in accordance with the provisions hereof shall be punished in accordance with the Law on State Officials and the Law on Administrative Infringements and Punishments.

Art. 57. The compilation of protocols, the issue and appeal of penal acts shall be executed in accordance with the provisions of the Law on Administrative Infringements and Punishments.

Id. ch. 6.

the law for the creation of a lawful punitive sanction for the described religious actions.

10. Retroactivity

Because of the silence of the Draft Law on the issue, the possibility of re-registration of the already registered religions is being seriously discussed. Thus, an inexcusable retroactive application of the law may be introduced. If this view prevails, it will likely be a result of open political pressure from particular political circles, primarily the Socialist party and the IMRO, for the prohibition of already registered religious communities like Jehovah's Witnesses, the Mormons, and other legitimate groups that are sometimes labeled "dangerous sects."

11. Taxation

One of the basic considerations and reasons for the existence of a specific regime for the foundation and functioning of religious organizations on a worldwide scale is the different taxation of such organizations. The Consolidated Draft Law does not provide for any tax concessions. One of the proposed alternative versions of the only text mentioning taxation allows tax concessions only upon the recommendation of the Directorate of Denominations for each concrete organization.⁶² Such an approach points out the obviously discriminatory and restrictive character of the Draft Law.

V. CONCLUSION

The problem in establishing a culture and government which respect religious freedom raises a number of important questions. Among the most compelling questions of these is what will be the final result of the legislative process in Bulgaria and Eastern Europe? It is not just a question of the momentary status of religious rights in these countries, but rather what the long-term result will be. After this question is answered, other important questions will also be answered. Is integration between diverse cultures possible and on

62. *See id.* art. 42(3) "Alternative" ("Donations made in favor of any religious faith by local natural persons and/or legal entities shall not be subject to taxation, and donations made by foreign natural persons and/or legal entities shall be released from customs duties and taxes upon proposal by the Directorate of Denominations.").

what basis (convergence, assimilation, or isolation)? Is there anything for the West to receive from the East? Has civil society a universal character? An additional question of extreme importance arises: has the end of the confessional state come, and, if so, what will its end bring with it?

Recent events in Bulgaria have shown that a culture of protecting religious rights has not yet fully emerged. These events have shown that Bulgaria continues to place a presumption of guilt on religions and seeks to control religion rather than protect the right to practice it.⁶³ The Consolidated Draft Law is a prime example of this hesitancy in Bulgaria to allow a faith to have what the government fears as “too much freedom.” Fortunately, in the period since this article was initially written, the Consolidated Draft Law has received a negative review from Europe, which will presumably prevent this version of the Draft Law from going forward. Still, the question of the continuing hold of past tradition remains. As Bulgaria moves forward, it remains to be seen if the state will adopt legislation that conforms to the constitutionally protected right of religious freedom or if it will continue to restrict religious rights.

63. *See generally* Durham & Homer, *supra* note 40.