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COMMENTS

ON "THE PROPOSAL FOR THE ADOPTION OF THE LAW ON THE LEGAL STATUS OF A CHURCH, RELIGIOUS COMMUNITY AND A RELIGIOUS GROUP"

OF "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"*

Prepared by the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief

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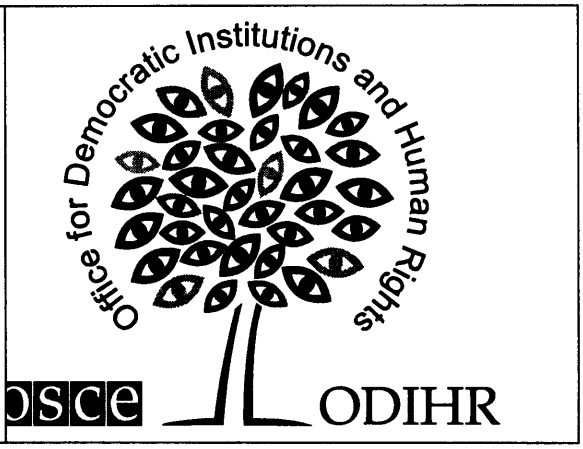
Warsaw, 1 March 2007 Opinion-Nr.: REL – FYR/085/2007 (FoRB Advisory Panel) www.legislationline.org	

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"PROPOSAL FOR THE ADOPTION OF THE LAW ON THE LEGAL STATUS OF A CHURCH, RELIGIOUS COMMUNITY AND A RELIGIOUS GROUP" OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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I. INTRODUCTION

1. The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the "Advisory Council") has been asked through the OSCE Mission in Skopje to review a "Proposal for the Adoption of the Law on the Legal Status of a Church, Religious Community and a Religious Group" of the former Yugoslav Republic of Macedonia (hereinafter referred to as the draft law) that has been prepared and revised as of February 2007. These comments are based on an unofficial translation completed as of February 2007.

2. The OSCE/ODIHR Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of religion or belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE's participating States.

3. In revising the draft law the members of the Advisory Council who drafted these comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.

4. The comments go on from a previous review of an earlier Draft Law on Religious Communities and Religious Groups prepared by the Office of Democratic Institutions and Human Rights Advisory Council on Religion or Belief as of 1 July 2005 and from the Comments on Draft Law on Religious Communities and Religious Groups, An Addendum to the Comments of July 2005 in the light of the New Draft issued in September 2005, prepared for ODIHR 11/11/2005.

5. The comments also go on from a previous review of a further Draft Law "Law on the Legal Status of Churches, Religious Communities and Religious Groups or Law on the Legal Status of a Religious Community, Church and Religious Groups" as of March 2006 prepared by the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief for ODIHR on 3 May 2006 (REL – MK/062/2006 [Adv Council on FoR])).

II. EXECUTIVE SUMMARY

6. The major findings of the comments are summarized here:

   a) In line with international commitments concerning freedom of religion or belief the draft law explicitly states the guarantee of manifestations thereof, and prohibits religious discrimination.

   b) While the draft law contains a number of provisions that meet highest standards of international law in protecting the freedom of religion or belief, and while the draft law does a lot to ensure religious freedom and tolerance and to provide positive conditions for manifesting religion or belief, many of its provisions are unclear and can be understood in a way that would make the draft law in parts incompatible with international commitments.

c) The draft law as a whole fails to make it undoubtedly clear in its specific provisions that everyone has the right to freedom of religion or belief and that this right includes the right to manifest one's religion or belief.

d) The distinction between a church, a religious community, and a religious group is unclear and could lead to discriminations.

e) It is not clear what the status in law is for those groups that have been established for religious reasons, but do not figure as a (registered) church, religious community or religious group. It must be clear that the exercise of the right to manifest one's religion or belief alone or in community and in private and in public is not conditional upon the grant of registered status.

f) It must be clear that also non-citizens of the former Yugoslav Republic of Macedonia can adequately manifest their religion or belief.

g) It is impermissible that only one church, religious community or religious group can be registered for a given denomination or confession, while some provisions of the draft law (Art. 2 and 9) could be understood in that way.

h) Legal entity status must be freely and readily available.

i) Many of the provisions are unclear and vague.

j) Religious teaching must be possible by any religious entity.

k) It must be made clear that also other than registered churches, religious communities and religious groups can organize private education.

III. Comments on the Legislation under Consideration

1. Reference points of review

7. The comments are based on OSCE commitments that codify the fundamental right to freedom of religion or belief in international law.[1] The former Yugoslav Republic of Macedonia is one of the OSCE's participating States.

8. The comments are likewise based on the relevant provisions of international treaties, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms[2] and the case law of the European Court of Human Rights, the International Covenant on Civil and Political Rights,[3] the International Covenant on

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[1] For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf; last visited on 02 May 2006].

[2] European Convention for the Protection of Human Rights and Fundamental Freedoms and its First Protocol, opened for signature by the Council of Europe on 04 November 1950, entered into force 03 September 1953 (hereinafter "ECHR"). The ECHR has entered into force for the former Yugoslav Republic of Macedonia on 10 April 1997.

[3] International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976

Economic, Social and Cultural Rights,[4] the Convention on the Rights of the Child[5]. The comments are further based on United Nation declarations, most notably the Universal Declaration of Human Rights[6] and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.[7] They are also based on examples concerning practice of protecting the freedom of religion or belief.

9. The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.[8]

10. The OSCE general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act reads: "*VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief. The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.* "This fundamental commitment has been repeatedly reaffirmed.

(hereinafter "ICCPR"). The former Yugoslav Republic of Macedonia has succeeded to the ICCPR on 17 September 1991.

[4] International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). The former Yugoslav Republic of Macedonia has succeeded to the ICESCR on 18 January 1994.

[5] Convention on the Rights of the Child, adopted and opened for signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, entered into force 2 September 1990 (hereinafter "CRC"). The former Yugoslav Republic of Macedonia has succeeded to the CRC on 17 September 1994.

[6] Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

[7] Declaration on the Elimination of All Forms of Intolerance and of Discrimination adopted and proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981.

[8] The Guidelines were adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN. 4/2005/61 para. 57. The major international instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 02 May 2006].

11. Principle 16.4 of the Vienna Concluding Document also has important implications for the law of religious associations. It provides that "*participating States will respect the right of these religious communities to establish and maintain freely accessible places of worship or assembly, organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, solicit and receive voluntary financial and other contributions.* "

12. Principle 17 of the Vienna Concluding Document states that "participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief [as detailed in Principles 16.1 through 16.11] may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments".

13. Of foremost importance for the protection of freedom of religion in Europe is the European Convention for the Protection of Human Rights and Fundamental Freedoms which the former Yugoslav Republic of Macedonia has ratified on 10 April 1997.

14. Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which contains the Convention's key substantive provision on freedom of religion or belief, reads: "*1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. 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.*"

15. 1.3.2 Limitations on freedom of thought, conscience, religion or belief, to the extent permissible at all, are only allowed with respect to manifestations of religion or belief. These limitations face a number of important qualifications and restrictions. The limitation must be "prescribed by law". The European Court of Human Rights has held that this phrase "*does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention*".[9] Accordingly, this test can be referred to as the "rule of law constraint". Rules that are impermissibly vague may fail to meet this test.

16. The second constraint is the limited set of permissible justifications: 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*". This list narrows the range

[9] European Court of Human Rights, case of Malone v. The United Kingdom, 82 Eur. Ct. H.R. (ser. A) at 32 (1984).

of state interests that can justify overriding religious freedom. It is important to note that national security interests are not alone sufficient.

17. Of specific importance is the third constraint: limitations must also be "necessary in a democratic society". 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*".[10] Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society".[11]

18. The Court has recognized the importance of a margin of appreciation of cultural difference that State authorities have in this area. This is vital to the gradual process of European integration while maintaining respect for difference in relation to religious and cultural matters. Nonetheless, the Court has made it clear that in delimiting the margin of appreciation that applies to religious freedom issues, it "*must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society*".[12] With this background in mind, the Court has construed the "*necessary in a democratic society*" requirement to mean that the limitation in question must be "*justified in the circumstances of the case by a pressing social need*" and that the contested measure must be "*proportionate to the legitimate aim pursued*".[13] Moreover, in assessing whether a restriction is proportionate to the legitimate aim pursued, "*very strict scrutiny*" must be applied.[14]

19. Oftentimes, freedom of religion or belief is closely linked with the freedom of association.

20. Article 11 of the ECHR, dealing with freedom of association reads: "*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of*

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[10] See European Court of Human Rights Kokkinakis v. Greece, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, see also Buscarini and Others v. San Marino [GC], no. 24645/94, § 34, ECHR 1999-I.

[11] European Court of Human Rights, Manoussakis and Others v. Greece, case no. 59/1995/565/651 paragraph 41.

[12] Ibid, paragraph 44.

[13] Kokkinakis, cited above A 260-A (1993), paragraph 50.

[14] Manoussakis, cited above paragraph 44.

health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

21. The European Court's 1998 decisions in United Communist Party of Turkey v. Turkey[15] and Sidiropoulos & Others v. Greece[16] have further elaborated on freedom of association and have significant implications for the law of religious associations. In the Sidiropoulos case the Court stated categorically that "*the right to form an association is an inherent part*" of the right to freedom of association and that "*citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.*"[17]

22. As with limitations on manifestations of religion, the Court emphasized that in assessing the right to association, exceptions in ECHR (article 11(2)) "*are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts*"[18]

23. Depending on their structure, religious association laws may also violate non-discrimination provisions of the ECHR (articles 1, 14).

24. The European Court of Human Rights has repeatedly and consistently stated that freedom of religion under ECHR (Art. 9) entails the right to bear witness in words and deeds of one's faith. That includes the right to try and convince others of the truth of one's religion. The Court has said: "*While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion'. Bearing witness in words and deeds is bound up with the existence of religious convictions.*"

25. According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, 'in public' and within the circle of those whose faith one

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[15] 30 January 1998.

[16] 10 July 1998.

[17] Sidiropoulos, paragraph 40.

[18] Ibid.

shares, but can also be asserted 'alone' and 'in private'; furthermore, it includes in principle the right to try to convince one's neighbour, for example through 'teaching', failing which, moreover, "*freedom to change [one's] religion or belief', enshrined in Article 9, would be likely to remain a dead letter.*"[19]

26. Only when improper means are used such as exploiting a situation of power over another individual "improper proselytism" could occur.[20]

27. In the present context, the case Metropolitan Church of Bessarabia v. Moldova, which was decided by the European Court of Human Rights in 2001[21], may be of particular relevance.

28. The case originated in an application against the Republic of Moldova lodged by the Metropolitan Church of Bessarabia (Mitropolia Basarabiei şi Exarhatul Plaiurilor) and a number of Moldovan nationals, because the Moldovan authorities had not registered the Metropolitan Church of Bessarabia on the ground that there had already been registered another church of the same (orthodox) denomination, namely the Metropolitan Church of Moldova. The Metropolitan Church of Bessarabia is attached to the Patriarchate of Bucharest, the Metropolitan Church of Moldova is subordinate to the Patriarchate of Moscow.

29. The European Court of Human Rights referred to its settled case-law to the effect that, as enshrined in ECHR (article 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, 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.

30. 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, 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.[22]

31. 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.[23] What is at stake here according to the European Court of Human Rights is the preservation of pluralism and the proper functioning of democracy, one of the

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[19] *Kokkinakis v. Greece*, Judgment of 25 May 1993, Series A, No. 260-A; (1994) 17 EHRR 397, para 31.

[20] Cf. *Larissis and others v. Greece* (Apps. 23372/94, 26377/94 and 26378/94), Judgement of 24 February 1998; (1999) 27 EHRR 329.

[21] European Court of Human Rights, Case of Metropolitan Church of Bessarabia and Others v. Moldova, Application no. 45701/99, Judgment, Strasbourg, 13 December 2001, Final, 27/03/2002.

[22] See *Kokkinakis*, cited above, p. 18, § 33.

[23] See *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, ECHR 2000-XI.

principle characteristics of which is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome.[24] 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.[25]

32. Moreover, since religious communities traditionally exist in the form of organised structures, ECHR (article 9) must be interpreted in the light of ECHR (article 11), which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which ECHR (article 9) affords.[26]

33. According to its settled case-law, the European Court of Human Rights leaves to States party to the Convention a certain margin of appreciation in deciding whether and to what extent an interference into the rights of ECHR (article 9) is necessary. In doing this the European Court of Human Rights ascertains whether the measures taken at national level are justified in principle and proportionate. It takes into account what is at stake, namely the need to maintain true religious pluralism, which is inherent in the concept of a democratic society.[27] Similarly, the European Court of Human Rights gives a good deal of weight to that need when determining, as ECHR (article 9(2)) requires, whether the interference corresponds to a "*pressing social need*" and is "*proportionate to the legitimate aim pursued*".[28]

34. The European Court of Human Rights observed that the State's duty of neutrality and impartiality was incompatible with any power on the State's part to assess the legitimacy of religious beliefs, and required the State to ensure that conflicting groups tolerate each other, even where they originated in the same group. The European Court of Human Rights considered that by taking the view that the Metropolitan Church of Bessarabia was not a new denomination and by making its recognition depend on the will of an ecclesiastical authority that had been recognised – the Metropolitan Church of Moldova – the State failed to discharge its duty of neutrality and impartiality. Consequently, the Moldovan Government's argument that refusing recognition was

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[24] See *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 27, § 57.

[25] See *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX.

[26] See *Hasan and Chaush*, cited above, § 62.

[27] See *Kokkinakis*, cited above, p. 17, § 31.

[28] See, *mutatis mutandis*, among many other authorities, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports* 1996-V, p. 1956, § 53.

necessary in order to uphold Moldovan law and the Moldovan Constitution was rejected.

35. In view of politically dangerous activities, the Moldovan Government had also submitted that in reality the Metropolitan Church of Bessarabia was engaged in political activities contrary to Moldovan public policy and that, were it to be recognised, such activities would endanger Moldovan territorial integrity.

36. The European Court of Human Rights reiterated that, in the absence of any evidence, the European Court of Human Rights could not conclude that the Metropolitan Church of Bessarabia was linked to the political activities of the Moldovan organizations, which were allegedly working towards unification of Moldova with Romania. Furthermore, it noted that the Moldovan Government had not contended that the activity of these associations and political parties was illegal.

37. As for the possibility that the Metropolitan Church of Bessarabia, once recognised, might constitute a danger to national security and territorial integrity, the European Court of Human Rights considered that this was a mere hypothesis which, in the absence of corroboration, cannot justify a refusal to recognise it.

38. From this decision of the European Court of Human Rights it therefore is evident that non-recognition of a religious entity just because there already is another religious entity of the same denomination or confession is impermissible.

39. One of the predominant and most relevant provisions of international law protecting the right of freedom of religion or belief is ICCPR (article 18).

40. ICCPR (article 18) reads: "1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. 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. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*"

41. In 1993, the U.N. Human Rights Committee issued its General Comment No. 22 (48) which provides a detailed official interpretation of the meaning of ICCPR (article 18). The General Comment begins by noting that "*[t]he right to freedom of thought, conscience and religion ... is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others*". It notes that "*the fundamental character of these freedoms is ... reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2)*".

42. The General Comment further notes that limitations on freedom of religion, to the extent permissible at all, are only allowed with respect to manifestations of religion: "*Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or adherence to a religion or belief.* "

43. Similarly, "*[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted*". This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in article 18(2).

44. The General Comment pays particular attention to the permissible restrictions on manifestations of religion by stating that "*In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. ... [P]aragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.*"

45. It is important to note that thus any limitations to the right to manifest one's religion or belief must be prescribed by law, serve one of the purposes listed in ICCPR (article 18(3)), and be necessary for attaining this purpose. This means that interference with this right must be set down in formal legislation or an equivalent norm in a manner adequately specified for the enforcement organs. There must be adequate certainty of the scope of the limitations.

46. Furthermore, the interference must be necessary to attain one of the purposes listed in the ICCPR (article 18(3)). The restrictions must thus be proportional in severity and intensity to the purpose being sought and may not become the rule. This also means that the restriction must be proportionate in the given case.[29]

47. The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR

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[29] For these rules on the permissible restrictions cf. Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd revised edition, 2005, pp. 425-426; Sarah Joseph, Jenny Schultz, and Melissa Castan, The International Covenant on Civil and Political Rights, 2nd edition, 2004, pp. 507-508.

makes it very clear that State parties are obligated "*to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*" (ICCPR article 2(1)). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties "*to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant*" (ICCPR article 2(2)) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (ICCPR article 2(3)). Further, ICCPR (article 26) provides: "*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"

48. The U.N. Human Rights Committee has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights". While the Covenant itself does not define discrimination, the Human Rights Committee States, consistent with the general usage of this term in international law, that ""*"discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.* "

49. General Comment No. 18 (37) also stresses that the Covenant is not limited in its reach to discrimination with respect to the protection of the substantive rights it enunciates: "*While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words,*

the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for in the Covenant."

50. ICCPR (article 27) affords particular protection against discrimination where "ethnic, religious or linguistic minorities exist". It provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". The U.N. Human Rights Committee's General Comment No. 23 (50) on article 27 indicates that "*the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party." The General Comment goes on to note that "Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents.*"

51. The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, though not formally binding as a treaty obligation, distils many of the principles articulated in the ICCPR.

52. Article 2(2) of the 1981 Declaration defines "intolerance and discrimination based on religion or belief" as: "*Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.*"

53. Article 3 of the 1981 Declaration underscores the significance of the anti-discrimination norm established by article 2, noting that "*Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights...*"

54. Article 6 of the 1981 Declaration spells out the implications of the foregoing religious freedom norms for a variety of recurrent and practical contexts that are vital to religious freedom. Article 6 provides: "*In accordance with article 1 of the Declaration, and subject to the provisions of article 1(3), the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:*

> *(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;*
>
> *(b) To establish and maintain appropriate charitable or humanitarian institutions;*

(c) 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;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

2. Analysis and recommendations in general

55. In this part some of the points are highlighted that run through the draft law as whole. While it is important to note that many provisions of the draft law do indeed meet highest standards of international law and best practice in protecting the freedom of religion or belief and that the draft law does a lot to ensure religious freedom and tolerance, and to provide positive conditions for manifesting religion or belief, a number of points of concern make the draft law in parts incompatible with international commitments. The draft law also explicitly states that any kind of religious discrimination is not allowed. However, there are certain points of concern that repeatedly figure throughout the draft law. Since the comments are not a comprehensive review, further issues may be included in the draft law that can give rise to concern, but are not addressed here.

56. The draft law seems to make a distinction between a church, a religious community, and a religious group. However, it is not clear what the difference could be.

57. One possibility is that the term "church", as a genuinely Christian term not to be found in other religions, should figure in the law. Religious community could stand for those entities in religions that form communities but not churches, whereas religious group would be taken for entities within those religions that do not form any communities, but associations, foundations, etc.

58. On the other hand the distinction in terms could refer to a hierarchy among such entities.

59. Also, the distinction could point at a difference in internal cohesion within the respective entities, with stronger cohesion in churches and less intensive cohesion in religious groups.

60. Furthermore, the distinction could indicate a difference in seize by which religious groups would be smaller than religious communities.

61. Moreover, the distinction could implicitly refer to other manifestations of religious collectivities, religious groupings, religious foundations, etc., that are not covered by the draft law.

62. The draft law apparently does not make any distinction in substance, legal status or legal consequences between a church, a religious community, and a religious group. All three entities are apparently treated alike. It is not clear why then such a distinction should be introduced.

63. It is recommended that the distinction should either be deleted or that the distinction should be made clear in its function.

64. It is not clear what the status in law is for those organizations that have been established for religious reasons, but do not figure as a church, religious community or a religious group in the meaning of the draft law. Manifestations of religion or belief must be freely possible in community with others even if their organization is not registered.

65. It is recommended that the status of religious organizations that do not form a church, a religious community or a religious group is made clear.

66. The draft law (Art. 2 Sec. 1) seems to introduce a difference between those churches, religious communities or religious groups without a legal status on the one hand and those churches, religious communities or religious groups that have obtained by way of legal status with legal capacity registration on the other hand. Registration of an existing church, religious community or religious group would give such entities the "status of legal entity" (Art. 9 Sec 1). This could indicate that a church, a religious community, and a religious group can exist in the draft law without being registered and without having the status of a legal entity.

67. However, it is not clear whether there is such a distinction. It is also not clear what the legal consequences would be. In some cases the draft law explicitly speaks of a "registered" church, religious community, and/or religious group (e.g. Articles 2 Sec. 2, 9 Sec. 2, 10 Sec. 1, 18 Sec. 3, 18 Sec. 4, 18 Sec. 6, 19 Sec. 2). In other cases the draft law refers to the term church, religious community, and religious group without such qualification (e.g. Articles 1 Sec. 1, 2 Sec. 2, 5 Sec. 1, 5 Sec. 2. 6 Sec. 1, 6 Sec. 2, 8, 9 Sec. 1, 9 Sec. 3, 9 Sec. 4; 10 Sec. 2, 10 Sec. 4, 11 Sec. 1, 12 Sec. 1, 12 Sec. 2, 12 Sec. 3, 13, 14, 15, 16 Sec. 1, 17 Sec. 1, 18 Sec. 1, 21 Sec. 1, 22 Sec. 1, 23 Sec. 1, 23 Sec. 2, 24 Sec. 1, 26 Sec. 2, 27 Sec. 1, 28 Sec. 2, 32, 33, 34, 35 Sec. 1, 35 Sec. 2, 37 Sec. 1). In some of those cases such as draft law (Art. 21 or Art. 27) one might expect that the rights attributed might depend on prior registration of the church, religious community or religious group, but no explicit reference is made to registration.

68. It is recommended that the legal difference between registered and non-registered churches, religious communities, and religious groups should be made more explicit and clear. It is also recommended to make clear that also non-registered religious entities can freely manifest their religion in community as is stated in the international instruments.

3. Analysis and recommendations per article

69. In this part points are raised as they arise per article of the draft law. Some of the points of concern that run through several or all articles have been highlighted above (cf. 2), they will not necessarily be raised in this part again. Since these comments are not a comprehensive review, further issues may be included in the draft law that can give rise to concern, but are not addressed here. Also, the following analysis does not address each article of the draft law explicitly; rather it highlights those provisions that most openly and directly solicit special comments.

70. Article 2. Art. 2 of the draft law raises concerns mainly in two respects:

    a) taken together with Art. 9 Sec. 3 and 4 of the draft law the provision could be read as excluding split-offs or competing religious organizations from existing;

b) the provision seems to be ambiguous and unclear in its meaning.

71. Draft law (Art. 2 Sec. 1) states that "*in accordance with this Law, a church and a religious community are communities of phisyical beings that exercise the freedom of religion, and are united by one religion and identical religious service, prayer, rites and* other forms of manifestation of one's religion".

72. The draft law (Art. 2 Sec. 1) thus seems to obligate churches and religious communities to one single religion and identical religious service, prayer, rites and other forms of manifestation of one's religion. This language could exclude differences in manifestations of religion or belief that are visible and normal practice in many churches and religious communities throughout the world. For example, the Evangelische Kirche A.B. u. H.B. (Protestant Church of Augsburg Confession and Helvetic Confession) in Austria is one church, but combines beliefs and confessions as well as manifestations of religion or belief of two quite distinguishable religious approaches. In many cases, churches and religious communities have merged in the course of history forming one community while sustaining their differences in specific issues such as teaching, service or rites.

73. A provision that obligates churches and religious communities to give up on such differences would unduly limit the autonomy of churches and religious communities.

74. There is no reason visible that should make such limitation necessary in a democratic society.

75. It is recommended to clarify the meaning of the provision or, if necessary, to eliminate the restriction to "*one religion and identical religious service, prayer, rites and forms of manifestation of one's religion*".

76. The difference between a church and a religious community on one hand side and a religious group on the other hand side in the draft law (Art. 2 Sec. 1 and 2) is not clear.

77. The draft law (Art. 2 Sec. 2) seems to define a religious group by the fact that a religious group has a religious belief that does not coincide with the religious belief of a registered church or a religious community.

78. It is not clear what "do not coincide" with the beliefs of a registered church and a religious community means. This term could mean that the beliefs must not be similar. The term "not coincide" could also mean that the beliefs may well be similar, but must not be identical. However, it would constitute a violation of freedom of religion or belief, especially of autonomy of religious organizations concerning their teaching, to prohibit "similar" teachings.

79. It is recommended to clarify the meaning of the provision.

80. Apparently, a church and religious community also do not "coincide", because otherwise two different terms would not be needed. However, this is not clear. There is no valid reason visible why the beliefs of a religious group must "not coincide" with that of a church whereas that should be the case for a religious community.

81. It is recommended to clarify the meaning of the provision.

82. In defining a religious group as "a voluntary association" in the draft law (Art. 2 Sec. 2) while not using this definition ("a voluntary association") in the draft law (Art. 2 Sec. 1) in regard of a church and a religious community it could be argued that a church and a religious community are not voluntary associations. A church and a religious community in the draft law (Art. 2 Sec. 1) are only defined by "communities of physical beings". That could mean that a church and a religious community could be communities of physical beings who are not associated voluntarily. There is no reason visible why this should be necessary in a democratic society. It would be contrary to freedom of religion as stated in the draft law (Art. 3).

83. The draft law could also be self-contradictory in this respect. Self-contradictory laws would not constitute a limitation to freedom of religion or belief that would be "prescribed by law" in the sense of ECHR (article 9(2)).

84. It is recommended to clarify the meaning of the provision.

85. The draft law (Art. 2 Sec. 2) defines a religious group by "the same religious beliefs that do not coincide" with a registered church and a religious community. An equivalent distinction is not made in respect of a registered church and a religious community. This could be understood as saying that a church and a religious community could have the same religious beliefs. It is not clear why then a religious group must not have the same religious belief as a church or a religious community.

86. It is recommended to clarify the meaning of the provision.

87. The draft law (Art. 2 Sec. 2) defines a religious group as a voluntary association of physical beings that have "the same religious beliefs" that do not coincide with a registered church and a religious community.

88. It is not clear what "the same religious beliefs" should mean in practice. The term "the same" is vague in the context of "religious beliefs". It could mean exactly the very same beliefs in any respect, i.e. identical teaching. The term also could mean the same basic teaching allowing differences in details. E.g. "Shiite" teaching as a whole might be regarded as the same belief as "Sunnite" teaching. Both could be regarded as "the same religion" in being "Islam". Equally it is not clear whether forms of orthodox Judaism would be regarded as "the same religion" or not. The same would hold true for "Christianity", "Catholicism", "Protestantism", "Orthodoxy" and many others.

89. It would be an undue limitation of freedom of religion if it should be state authorities such as state courts that should decide on the question of whether beliefs are the same or not. This would mean that the state authorities would decide on theological questions. If such decisions should be taken against the will of the religious body at stake it would mean an undue intervention into freedom of religion.

90. It is recommended to clarify the meaning of the provision.

91. By referring to "the same religious beliefs" the draft law (Art. 2 Sec. 2) could be understood as excluding the possibility that a religious group could split in terms of

relevant authorities while keeping the same beliefs and manifestations thereof. E.g. a minister might break away from the existing religious group insisting that he is the only legitimate authority of the religious group while maintaining the same religious beliefs, etc.

92. The equivalent problem could arise for churches and religious communities ("one religion").

93. It is not a task of state authorities legitimate under international instruments to prevent a religious group to split.

94. It is recommended to clarify the meaning of the provision.

95. The draft law (Art. 2) is also not clear in respect of the distinction between a church, a religious community and a religious group. The draft law (Art. 2 Sec. 2) seems to make a difference between a religious group and a "registered" church and a religious community. The draft law (Art. 2 Sec. 2) defines "a religious group" in distinction with "a registered church and a religious community". This could be read as saying that churches (and probably religious communities) are defined by being registered whereas a religious group is not registered. On the other hand, Art. 2 Sec. 1 of the draft law does not refer to registration in respect of a church and a religious community.

96. However, the draft law (Art. 9) states that a church, a religious community and also a religious group are (or can be ?) registered.

97. It is recommended to clarify the meaning of the provision.

98. The ambiguity of Art. 2 of the draft law taken together with the provisions on registration in Art. 9-17 of the draft law leads to the question of the status of non-registered religious organizations.

99. The draft law does not contain an explicit provision about the status of non-registered religious organizations. Art. 2 Sec. 1 of the draft law states that a church and a religious community exercise the freedom of religion. This could be read as saying that non-registered religious bodies do not enjoy the right to exercise the freedom of religion. That would overtly contradict and violate the freedom of religion or belief as guaranteed under international instruments. It must be quite clear that any religious body regardless of registration is free in exercising their religion or belief and that they have access to legal capacity.

100. The reading that all churches, religious communities and religious groups are and have to be by definition registered is supported by the draft law (Art 17 Sec. 1) whereby the dissolution of a church, religious community and a religious group will be registered for the purpose of erasing the organization from the relevant register. It would not be clear why a non-registered religion organization should or could be deleted from the register.

101. The reading that all churches, religious communities and religious groups are and have to be by definition registered is also supported by the draft law (Art. 22). Draft law (Art. 22) states that "*a church, religious community and a religious group have the*

right to establish religious schools of all degrees of education, except for primary education, for the purposes of educating priests and religious officials, having as well the right to establish dormitories for accommodation of persons educated at the said institutions. Religious schools are equal with other educational institutions and their pupils and students have the same rights."

102. It is likely and normally the case that organizations need the status as legal entity in order to be able to establish bodies such as schools and dormitories. This is especially the case when such institutions shall be equal with state educational institutions as stated in the draft law (Art. 22 Sec. 2).

103. However, Art. 2 of the draft law taken together with Art. 9 of the draft law can also be read as stating that unregistered churches, religious communities and religious groups can exist. They would then not have legal entity status which they would acquire upon registration. In this reading, however, it would not be clear why the beliefs of a non-registered religious group may "not coincide with a registered church or a religious community" whereas the beliefs of a non-registered church or religious communities can do so.

104. It is recommended to clarify the status of non-registered religious organizations.

105. d) The draft law (Art. 2 Sec. 1) states that a church and a religious community "exercise the freedom of religion". However, the draft law (Art. 2 Sec. 2) does not refer to the exercise of freedom of religion in respect to a religious group. This could be read as saying that a religious group does not have the right to exercise the freedom of religion. There is no reason visible why this should be necessary in a democratic society.

106. It is recommended to clarify the meaning of the provision.

107. Article 3. The draft law (Art. 3) states:

"*(1) Everyone has the right to freedom of belief,*

thought and conscience.

(2) This right includes the freedom of expression

of one's religion or belief, either alone or in community

with others in public or private.

(3) In relation to paragraphs 1 and 2 of this Article,

everyone is guaranteed the freedom of religion

and the right to expression of that religion."

108. It is not clear what function Art. 3 Sec. 3 of the draft law has in relation to Art. 3 Secs. 1 and 2 of the draft law. It seems that Art. 3 Sec. 3 of the draft law just reiterates the provisions and guarantees of the draft law (Art. 3 Secs. 1 and 2).

109. It is recommended to clarify the function of the draft law (Art. 3 Sec. 3) or to eliminate the provision.

110. Article 5. The draft law (Art. 5 Sec. 1) states: "*Citizens can freely establish a church, religious community or a religious group.*"

111. Art. 5 Sec. 1 of the draft law seems to restrict the right to establish a church, a religious community or a religious group to citizens of the former Yugoslav Republic of Macedonia.

112. Freedom of religion or belief, however, is a human right. Freedom of religion or belief as a human right entails the right to manifest one's religion in community with others and in public or private. This includes the right to establish religious organizations. There is no reason visible why a restriction to freely establish a church, religious community or religious group to citizens should be necessary in a democratic society.

113. The provision would be in clear violation with international human rights standards when a church, a religious community or a religious group would and could exist as an unregistered entity. In that case the draft law would prohibit non-citizens from forming groupings of believers. The draft law (Art. 5 Sec. 1) would then prevent non-citizens from manifesting their religion in community with others. That would be contrary to ECHR (article 9) and other international instruments.

114. It is recommended to clarify the rights of non-citizens in the field of freedom of religion or belief in accordance with the relevant international commitments.

115. Article 7. The draft law (Art. 7) allows to limit freedom of religion or belief in the interest of "national security". This language may be due to translation. International instruments make a difference between "public security" and "public safety". However, Art. 7 expressly distinguishes between national security and public safety.

116. National security does not figure among the permissible aims for limitations of religion or belief under ECHR (article 9) nor ICCPR (article 18). The European Commission of Human Rights has stated: "*[P]aragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.*"

117. It is recommended to clarify the provision.

118. Article 8. The draft law (Art. 8) states that: "*A church, religious community and a religious group can not, in any way, influence or obstruct citizens from choosing their religion, or from affiliating with a certain church, religious community and religious group.*"

119. The draft law (Art. 8) could be understood as prohibiting also internal disciplinary or theological means to react to a change of religion. There are manifold cases in which a member of a religious organization wants to leave this religious organization in order to choose or affiliate with another religion or religious organization. Examples are: a priest decides that he no longer wants to be a priest in a specific church but converts to

another religious organization. A member of a religious organization converts to another religion. In such cases usually the priest would lose his position as being a priest of the relevant religious organization; he could no longer act on behalf of that religious organization. In the case a member converts to another religion very often this member would lose automatically his or her membership in the original religious organization; there can be excommunications or other theological sanctions.

120. The draft law (Art. 8) could be understood as prohibiting such internal sanctions. Such a reading would contradict the autonomy of religious organizations as guaranteed in the draft law (Art. 5 Sec. 2).

121. It is recommended to clarify the meaning of the provision.

122. The draft law (Art. 8) explicitly mentions "*a church, religious community and a religious group*" as being prohibited from influencing or obstructing citizens from choosing their religion or from affiliating with a certain church, religious community or religious group. This could be read as excluding individuals or other religious organizations or state authorities from the prohibition and allowing them to influence or obstruct others in a way that is prohibited for churches, religious communities and religious groups. It is not clear why such a distinction should be made.

123. It is recommended to clarify the meaning of the provision.

124. It is not clear why the draft law (Art. 8) prohibits the influence or obstruction only of citizens and not also of other people. There is no reason visible why such a distinction and limitation should be necessary in a democratic society.

125. It is recommended to delete that distinction.

126. The draft law (Art. 8) could be read as prohibiting any form of influence towards citizens in choosing a religion or affiliating with a religious organization. That could be read as prohibiting any form of teaching. It could be read as prohibiting to make statements on the truth or value of one's own religion or belief. Freedom of religion or belief, however, includes the right to missionarize and also to convince people to change their religion.

127. It is recommended to clarify the meaning of the provision.

128. Article 9. Art. 9 Sec. 1 of the draft law seems to refer to registration as conveying the status of legal entity towards the church, religious community or a religious group. Then it is not clear what the relation to the draft law (Art. 2 Sec. 1 and 2) in respect of registration is. As stated above Art. 2 of the draft law is not clear in defining a church, a religious community and religious group in respect of registration.

129. It is suggested to clarify the issue.

130. The draft law (Art. 9 Sec. 3) could be read in relation to Art. 2 of the draft law as prohibiting the registration of a religious organization if the state authorities should estimate the applicant to be of "one religion and identical ... manifestation" of another religious organization. In such reading the provision could be understood as

prohibiting registration of an organization that holds itself to be the "true" or "better" expression of the religion or belief of an organization that has already been registered. State authorities, however, must not under ECHR (article 9) restrict religious pluralism.

131. It is recommended to clarify the meaning of the provision.

132. The same question arises in respect of Art. 9 Sec. 4 of the draft law concerning the registration of a religious organization that has "the same identity".

133. It is recommended to clarify the meaning of the provision.

134. d) Art. 9 Sec. 4 of the draft law prohibits the registration of a religious organization with "a name similar" to an already registered religious organization. This language is vague. It is not clear what "similar" exactly means.

135. It is recommended to clarify the meaning of the provision.

136. It is not clear why it should be necessary in a democratic society that the name and an insignia of a religious organization cannot contain official names and insignias of other states.

137. It is recommended to clarify the meaning of the provision.

138. Article 14 and 15. Art. 14 and Art. 15 of the draft law count "Sec. 1", but do not have further sections.

139. It is recommended to correct the numbering.

140. Article 18. Art. 18 Sec. 2 of the draft law could be read as restricting e.g. private prayer and other religious ceremonies and manifestations in private if it should violate the religious sentiments of others without any further condition; such a provision would unduly limit the freedom of manifesting one's religion or belief. If any violation of the religious feeling of others should be prohibited this provision would be unproportionate.

141. It is recommended to include due restrictions on the prohibition.

142. It is not clear why only the violation of religious sentiments of other "citizens" should be a basis for limitations and not religious sentiments of non-citizens.

143. It is recommended to eliminate the distinction concerning citizens and non-citizens.

144. The draft law (Art. 18 Sec. 3) provides that "*Religious rites in a religious facility may be performed only by a person of a registered church, religious community and a religious group in the Republic of Macedonia or upon their authorization.*"

145. It is not clear what a "religious facility" is.

146. It is recommended to clarify the term.

147. Art. 18 Sec. 3 of the draft law could be read as saying that only persons of registered religious organizations may perform religious rites in the former Yugoslav Republic of Macedonia. That could be understood as prohibiting manifestations of religion or

belief by non-registered religious organizations. That would be in contradiction to international commitments guaranteeing freedom of religion or belief.

148. It is recommended to delete the provision.

149. It is not clear what "official person" in the draft law (Art. 18 Sec. 4) means.

150. It is recommended to clarify the meaning of the provision.

151. Article 21. The draft law (Art. 21 Sec. 1) states that a "church, religious community and a religious group have the right to organize religious teachings." Since the draft law does not make a clear statement on the existence and status of non-registered religious organizations and of grouping that may not meet the definition of a church, religious community or religious group this provision could be read as excluding such other organizations or groupings from organizing religious teachings. However, under ECHR (article 9(1)) everyone has the right to manifest his or her religion or belief in teaching in community with others regardless of their legal status.

152. It is recommended to clarify the meaning of the provision.

153. Article 22. The draft law (Art. 22 Sec. 1) states that a "church, religious community and a religious group have the right to establish religious schools of all degrees of education, except for primary education, for the purposes of educating priests and religious officials, having as well the right to establish dormitories for accommodation of persons educated at the said institutions." This could be read as excluding other religious entities from educating their religious stuff. This would be in contradiction of ECHR (article 9).

154. It is recommended to clarify the meaning of the provision.

155. Article 26. Art. 26 Sec. 2 of the draft law allows foreign citizens to teach religious instruction in religious schools "only on occasional basis". There is no reason visible why such a restriction should be necessary in a democratic society. This is the more problematic if such a restriction would apply only in the field of religion. It is recommended to delete the provision.

156. Article 30. Art. 30 of the draft law could be understood as prohibiting students above the age of 15 to attend religious instruction. This probably is not meant.

157. It is recommended to clarify the meaning of the provision.

158. Article 31. It is not clear what Art. 31 of the draft law means by "*shall differ from*".

159. It is recommended to clarify the meaning of the provision.

160. Art. 31 of the draft law states that religious teaching carried out at educational institutions shall differ from the religion teaching organized by religious communities. This excludes religious teaching organized by churches or religious groups. It is not clear why such a distinction should be made.

161. It is recommended to clarify the meaning of the provision.

162. Article 37. Art. 37 Sec. 1 of the draft law calls the relevant state authority "Commission for Relations with Religious Communities and Religious Groups". It is not clear why the term "churches" is omitted.

163. It is recommended to clarify the name.

164. Art. 37 Sec. 2 of the draft law refers only to religious communities and religious groups that are registered until 1998, but not to churches. It is possible that no churches have been registered until 1998 in the sense of the draft law. However, this is not clear.

165. It is recommended to clarify the issue.