108th CONGRESS
1st Session

Printed for the use of the
Commission on Security and Cooperation in Europe

BULGARIAN LAW ON RELIGIONS:
Problematic Law Out of Step with OSCE Commitments

A Report Prepared by the Staff of the
Commission on Security and Cooperation in Europe

WASHINGTON, DC: 2003

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The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 55 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

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In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

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BULGARIAN LAW ON RELIGIONS
Problematic Law Out of Step with OSCE Commitments

As Bulgaria prepares to assume the Chairmanship of the 55-nation Organization for Security and Cooperation in Europe (OSCE), its Law on Religions is a concern, as several provisions are out of step with Bulgaria's religious freedom commitments as an OSCE participating State. Reports of problems with the new law are already arising. The Sofia City Court, which is mandated to handle all registration applications, has reportedly stalled on the re-registration of some groups, as the new registration scheme includes additional elements not previously required. For instance, since visas are contingent on re-registration, the Missionary Sisters of Charity and the Salesians have reportedly been denied visas.

Unfortunately, in the rush to approve the legislation in December 2002, some religious communities were reportedly not consulted during the drafting process, and the government's promise to have the draft critiqued again by the Council of Europe went unfulfilled. Also, on July 15, 2003, the law was reviewed by the Bulgarian Constitutional Court, in response to a complaint brought by 50 Parliament ary deputies. The Court upheld the legislation, despite six judges ruling against and five in favor. Under Bulgarian law, seven of the court's twelve judges must rule together for a law to be found unconstitutional.

Notwithstanding this decision on the constitutionality of the law, the following report highlights areas in need of further evaluation and legislative refinement in light of Bulgaria's OSCE commitments on religious freedom. Concerns exist with how the Bulgarian Orthodox Church is favored over the alternative Orthodox synod and other religious groups. In addition, the new registration scheme appears open to manipulation and arbitrary decisions, thereby jeopardizing property holdings and the ability to manifest religious beliefs, as both depend on official registration. The sanctions available under the Law on Religions are also ambiguous yet far-reaching, potentially restricting a variety of religious freedom rights.

It is therefore hoped the Government of Bulgaria will demonstrate a good faith effort to ensure the religion law is in conformity with its OSCE commitments. This report outlines a number of suggested changes. The government could also submit the Law on Religions for technical review to the OSCE Panel of Experts on Freedom of Religion or the Council of Europe. Either of these bodies could highlight deficiencies addressable through amendments.

GOVERNMENT RECOGNITION OF A "TRADITIONAL" CHURCH

Article 11 was crafted to force a resolution to the longstanding church dispute between the Bulgarian Orthodox Church and an alternative Orthodox synod, which split after the fall of communism. Article 11 enumerated detailed characteristics of the Bulgarian Orthodox Church, thereby establishing the synod of Patriarch Maxim above the other Orthodox synod and all other religious communities. In short, Article 11(1) attempted to settle the church dispute through legislative fiat by establishing the Bulgarian Orthodox Church as the "traditional religion," a politically expedient decision which is inconsistent with Bulgaria's OSCE commitments.

While Article 11(2) automatically registers the Bulgarian Orthodox Church, the other Orthodox synod is faced with going through the complete registration process. Registration is critical, as the law ties property ownership rights to legal personality. However, the process is open to manipulation where the govern-

ment could deny registration to select religious groups. Considering the animosity between the Orthodox synods over property, this appears to place the unrecognized Orthodox synod at a great disadvantage. Article 11(3) does state: "Paragraph 1 and 2 cannot be the basis to grant privileges or any advantages [to the Bulgarian Orthodox Church] over other denominations by a law or sub-law." However, while this claims no special benefits accrue, Article 11(2) is contradictory as it automatically gives the Bulgarian Orthodox Church legal personality, an "advantage" no other church or religious group receives through the law. Favoritism of this kind also creates internal conflicts within the religion law, as Article 3(1) prohibits limitations or privileges based on "affiliation or rejection of affiliation to a religion," and Article 4(4) states "no religiously based discrimination shall be allowed."

Considering the problematic nature of these provisions, removing Article 11(1) through amendment would allow these two religious Orthodox communities to reconcile their differences independently without government involvement. The appropriate venue for the handling of these types of disputes is the court system, not the Parliament . In addition, amending Article 11(2) either to allow automatic registration of all previously registered churches or omit entirely this provision would lessen the discriminatory effect of the law.

REGISTRATION

It is positive that the law does not require registration, nor does it establish temporal or numerical thresholds for religious communities to meet. Yet, the proper administration of the registration process has increased in importance, since many rights and powers of organizations and their communities appear tied to registration status and other avenues for legal personality have been closed. For example, Article 29(2) provides that nonprofit organizations do not have "the right to accomplish activities which represent practice of religion in public." As a result, if a group does not obtain official registration as a "religious community," no other options exist to provide some type of legal personality.

The Law on Religions does provide guidelines for the registration process. Article 16 requires that all religious groups wishing to register must do so before the Sofia City Court. This is problematic, as it adds an unnecessary burden for groups existing outside the capital. Improvements to the law should allow the submission of national registration requests in every provincial capital court or other designated government office.

For local branches to form officially, Article 21 requires the organization to first register at the national level and then re-register at the local level through a mayor's office. While the drafters intended this to be a perfunctory requirement, it is problematic, as it creates yet another unneeded bureaucratic hurdle to overcome. Additionally, the involvement of mayors in the registration of religious groups should be avoided, as in the past registration through mayoral offices were plagued by arbitrary and non-transparent decisions. Revisions should remove registration requirements obligating groups already registered to re-register at the local level. If local re-registration must occur, amendments should permit re-registration at a local court or other designated government office.

The Article 19(2) requirement that a "short statement of religious beliefs" be included in an application, which can be reviewed by the Directorate of Religions for an "expert opinion" (Article 18), is highly problematic. This places the government in the subjective position of evaluating the beliefs of a religious community to determine if they "qualify" as a religion. Therefore, the removal of the Article 19(2) requirement is recommended, so that the Directorate of Religion cannot base recommendation for registration eligibility on the religious beliefs of an applicant group.

There are at least two instances in the Law on Religions that demonstrate the critical nature of registration. Article 5(3) appears to allow only registered religious organizations to engage in the public manifestation of religion. "The religious belief is expressed in private when it is accomplished from a specified member of the religious community or in the presence of persons belonging to the community, and in public, when its expression can as well become accessible for people not belonging to the respective religious community." How the government will apply this article is unclear, as it attempts to distinguish the public versus the private practice of religion. If only registered religious organizations can publicly manifest their beliefs, this is inconsistent with OSCE commitments that protect the right to practice religion with or without legal entity status. It should consequently be made explicit through refining amendments that unregistered religious groups and their members have the right to engage in the public manifestation of their religious beliefs.

Furthermore, it is unclear if individual members of a religious community can own property in their personal capacity for use by the corporate body, as only registered communities can hold property under Article 24(1). The article states: "Religions and their branches, which have acquired status of a legal person, according to the procedures of this law shall have right to their own property." This reenforces the importance of ensuring the registration process is timely and transparent. Amendments should make explicit that individual members of a religious community may own private property for use by the corporate body.

LIMITATION CLAUSE

Article 7(1) of the religion law provides: "Freedom of religions shall not be directed against national security, public order, people's health and the morals or the rights and freedoms of persons under the jurisdiction of the republic of Bulgaria or other states." This language is similar to other limitation clauses, but its structure is problematic, as it enunciates standards not found under Article 17 of the Vienna Concluding Document of the OSCE or Article 18 of the International Covenant on Civil and Political Rights.

For example, the Vienna Concluding Document in Article 17 declared, "The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief 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." The next sentence is also an important qualifier, declaring States "will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief." Article 18(3) of the ICCPR stated: "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."

It is well settled that restrictions on manifestations of belief must be consistent with the rule of law and must be necessary in a democratic society— directly related and proportionate to the specific need on which the limitation is predicated. For example, it is not enough to justify burdensome limitations by merely arguing they are key to maintaining public order. Only when limitations further a legitimate government objective and are genuinely "necessary" can negating a religious freedom be justified. To be sure, this test is not easily met. In addition, international custom has not established "national security" as a legitimate reason for limiting religious rights, so amendments to the law should correct Article 7 to reflect the abovementioned international standards.

SANCTIONS

Article 9 of the Law on Religions allows courts to impose sanctions against groups if they determine that an Article 7 violation has occurred. The six available sanctions available under Article 9 include:

(1) Prohibiting dissemination of certain printed publications;

(2) Prohibiting publishing activity;

(3) Restricting public manifestations;

(4) Depriving registration of educational, health or social enterprises;

(5) Cancelling activities for a period of up to six months;

(6) Nullifying registration of the legal entity of the religion.

The Article 9 restrictions are vague yet extensive in their scope, potentially curtailing a variety of fundamental freedoms. Accordingly, the use of the Article 9 sanctions list must be predicated on a finding of abuse under the Article 7 limitations clause. However, the situations enumerated in Article 7 are for exceptional situations. As these sanctions touch upon fundamental rights, use of Article 9 and the denial of these rights should not occur for mere infractions of administrative regulations. As previously discussed, international commitments make clear that limitations on the manifestation of religion are permissible only in narrowly defined situations.

A distinction must also be made between the actions of individuals and punitive sanctions on the entire religious community. It is individuals, not whole religious groups, who may be involved in criminal activities, so penalties should not punish the entire community for the actions of individuals. However, provision (3) empowers courts to restrict the public manifestation of religious views for an entire religious community, in effect restricting an individual member's right to practice his or her faith. Provision (6) is also a concern; if a court can remove a religious group's registration status, it is unclear who would hold their property, potentially exposing their holdings to seizure.

Concerns exist that the Article 9 sanctions list will be employed in situations not meeting international standards, thereby allowing the restriction of the freedom of speech, the freedom to the religious education of children in conformity with the parent's convictions, and the freedom to profess and practice, alone or in community with others, religion or belief. Therefore, removal through amendment of the Article 9 sanctions list would be positive, as it potentially allows overly burdensome restrictions on basic human rights.

Further concerns over potential sanctions exist in other areas of the religion law. Later in Article 37(8), the law also gives the Directorate of Religion the unchecked and potentially arbitrary powers to take complaints from citizens concerning violations of Article 7, and when deemed appropriate, forward the complaints to the public prosecutor. Allowing the Directorate to function in this manner opens the opportunity for the politicization of religious freedom issues, potentially exposing the Directorate to pressures to act arbitrarily against certain minority religious communities. Consequently, legislators are encouraged to eliminate the ability of the Directorate of Religion to forward complaints to the public prosecutor, as this role is better left with law enforcement agencies.

Article 38 has established monetary penalties for "any person carrying out religious activity in the name of a religion without representational authority." The provision appears crafted to penalize the unrecognized Orthodox synod for using what it considers to be its name, and could easily be misused against religious communities deemed by authorities as unpopular or out of favor.

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