

THE CONSENT OF STATE AND THE BLESSING OF CHURCH: A CASE STUDY ON THE NEW BULGARIAN DENOMINATIONS ACT¹

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Abstract:

This paper is an attempt to reveal how the law-making process confronts new problems that arise in the search for pragmatic solutions to state-church relations. The specific case study used is the Denominations Act, adopted by the Bulgarian National Assembly on December 20, 2002,² which serves as an example of a meeting ground for secular and religious politics in post-communist Bulgaria.

Key words: denomination act, Orthodox Church, secularism, postcommunism

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2 Denominations Act, *Dържавен вестник* [State Herald newspaper], No. 120 from December 29, 2002. An English version of the bill is available on the Institute on Religion and Public Policy website www.religionandpolicy.org/show?p+1.1.292, but its translation slightly differs from the terminology used proposed in the proposed text.

The collapse of communism in Eastern Europe, combined with the adoption of the Bulgarian 1991 Constitution, created conditions for the democratization of the religious lives of Bulgarian citizens. Although the Constitutional Court's Decision No. 5 of 1992 abolished some of the most undemocratic components of the 1949 communist law on religious denominations, the latter remained in force until the end of 2002. This abnormal situation lasted so long because the majority of Bulgarian statesmen, as well as the Orthodox hierarchy, supported the old system of registering religious institutions with the Directorate of Religious Affairs, and rejected their opponents' suggestion that religious institutions and communities should be registered in court.³ While the option of court registration introduced by the new Denominations Act of 2002 was a step forward for democracy, as will be shown below, some areas of the act are quite problematic.

The Troublesome Article

The main criticism leveled against the Denominations Act concerns Art. 10, which states:

- (1) The traditional denomination in Republic of Bulgaria is Eastern Orthodoxy. It has a historical role for the Bulgarian State and is of actual importance for the state life. Its voice and representative is the autocephalous Bulgarian Orthodox Church that under the name 'Patriarchate' is the [legitimate] successor of the Bulgarian Exarchate and is a member of the United, Holy, Ecumenical and Apostolic Church. It is governed by the Holy Synod and represented by the Bulgarian Patriarch, who also is the Metropolitan of Sofia.
- (2) The Bulgarian Orthodox Church is a judicial entity. Its structure and government are established by its statutes.
- (3) Clauses 1 and 2 shall not serve as a ground for offering privileges or any advantages by a law.

Most Bulgarian religious institutions and communities objected to this part of the Act, and expressed serious concerns about the *ex lege* recognition of the Bulgarian Orthodox Church. In their view, Art. 10 placed the Orthodox Church in a position different from that of other religious denominations, the latter of which were required to undergo

³ Kohen, E. and K. Kanev, *Religious Freedom in Bulgaria*, *Journal of Ecumenical Studies*, vol. XXXVI, Numbers 1-2 (Winter-Spring 1999): 221-242.

court registration for official recognition.⁴ The sharpest criticism came from the so-called Alternative Synod, who stressed that the ex lege recognition would be granted only to the Orthodox Church headed by Patriarch Maxim.⁵ Within the government, the National Assembly split over the text of Art. 10. Support came from representatives of the National Movement Simeon II (NMSII) and the Bulgarian Socialist Party (BSP), while it was opposed (via boycott) by members of the Movement of Rights and Freedoms (MRF) and the Union of Democratic Forces (UDF). As a result, 150 out of 240 deputies voted for the troublesome text.⁶ As we will see below, the debates surrounding the Denominations Act revealed the specific interests of secular and religious parties had in this bill.

The Denominations Act as a Solution to the Division within the Bulgarian Orthodox Church

One of the main criticisms of Art. 10 concerned its definition of the Bulgarian Orthodox Church as a religious institution governed by the Holy Synod and represented by the Patriarch, who was also the Metropolitan of Sofia. De facto, this means that only the Synod, headed by Patriarch Maxim, would receive the ex lege recognition as a judicial entity. The Alternative Synod, established in 1992 and headed by the Metropolitan of Sofia Innokentii, who had no patriarchal dignity, would not receive this same recognition.⁷

The division within the Bulgarian Orthodox Church is a purely post-communist phenomenon. In 1992 the first UDF government accused Patriarch Maxim of being elected with the aide of the Bulgarian Communist Party, and published documents proving that the Metropolitan Maxim's 1971 elevation to the rank of patriarch had been realized with Todor Zhivkov's consent.⁸ The Directorate of Religious Affairs denounced Maxim's election, saying that it had not been accomplished in accordance

4 Bulgaria: Minorities Object to Religion Bill, Keston News Service published on December 17, 2002. Available: <http://www.pastornet.au/jmm/pray0285.htm>

5 Members of the parliament abused and anathemized by priests, Standart [newspaper "Standard"] of December 16, 2002. Available: http://www.standartnews.com/archive/2002/12/-16/theday/s3579_7.htm. The alternative Synod is discussed in the next part of the article.

6 Veselin Toshkov, New Bulgarian law on religion sparks criticism, CENSUR Center for Studies on New Religions, December 20, 2002. See: [wysiwyd://58/http://www.censur.org-2002/bulgaria_01.htm](http://www.censur.org-2002/bulgaria_01.htm)

7 For a chronology of the division within the Bulgarian Orthodox Church, see Spasov, M., [Director of the Directorate of Religious Affairs], "[The present Patriarch] Maxim Has Never Been Established as a Patriarch in Accordance with Canon Law," *Demokratsia* [newspaper "Democracy"], No. 137 (713) from June 10, 1992.

8 *Ibid.*

with the procedure stipulated by the Orthodox Church's Statutes and the requirements of the 1949 law on religious denominations. Soon afterwards, several members of the Holy Synod rejected the patriarchal dignity of Maxim and established an alternative synod.

Meanwhile, the Bulgarian Communist Party's records were opened. They revealed that the Bulgarian Orthodox Church's Statutes of 1951 had been enforced hierarchically, and as such, could not serve as a legal and/or canonical ground for the above-mentioned accusations against Patriarch Maxim. As a result, the UDF distanced itself from both Synods, forbidding their metropolitans to participate in the national holidays of 1998. Because of this, the divided Church was required to find a canonic solution for restoring unity.

From September 30 to October 1, 1998, a "Pan-Orthodox council"⁹ held in Sofia tried to heal the division within the Bulgarian Church. The participation of representatives of foreign Orthodox churches was considered a formal recognition that Maxim served as the canonical head of the Bulgarian Orthodox Church. In accordance with the council's decisions, fourteen bishops of the Alternative Synod repented and were accepted back into the canonical Church of Patriarch Maxim. However, soon afterwards it was revealed out that the repented bishops were accepted back with lower ranks,¹⁰ which meant that the hierarchs from the Alternative Synod had to give up their rights of diocesan government, and had to return to the Church as ordinary bishops without any administrative power.¹¹ Such a

9 This forum is described as Pan-Orthodox Council mainly by the Russian and Bulgarian Orthodox churches, while the Ecumenical Patriarchate does not mention it as such. Another problem is that it is not clear to what extent representatives of the foreign Orthodox church actually took part in the decision making process, and especially what their role would be for the further application of the decision taken, and what the canonical legitimization of such an intervention in the life of another autocephalous Orthodox church would be. The materials published in the Bulgarian and Russian Orthodox press do not answer to these questions. For example, an article published in the Internet Journal of Moscow Patriarchate in October 1998, under the title "Church Schism in Bulgaria Healed," says only: "The Pan-Orthodox Council with the participation of the Primates and hierarchs of all Local Orthodox Churches was held in Sofia, Bulgaria, on September 30 - October 1, 1998. The Council was convened on the initiative of the Holy Synod of the Bulgarian Orthodox Church with His Holiness Patriarch Maxim of Bulgaria at the head who asked all Orthodox churches to support canonical Orthodoxy in Bulgaria and to affirm the unity of the Orthodox Church in Bulgaria by the authority of the Pan-Orthodox Council."

10 *Patriarchal and Synodal Encyclical Letter to the clergy and flock of the Bulgarian Orthodox Church on the decisions of the Pan-Orthodox Church Council, held in Sofia from September 30 to October 1, 1998*, published in the Internet edition of Church Newspaper, No. 20, 1998. See <http://members.tripod.com/~bulch/20br98.htm>

11 Only metropolitans in the Bulgarian Orthodox Church have the right to govern eparchy. While bishops can be used in church offices or as their vicars, they are dependent on metropolitans. All metropolitans are also members of the Holy Synod, which enable them to exert real administrative and financial power over all church affairs.

solution met neither divisions' interests, nor did it meet those of the UDF.¹² On October 8, most of the repented bishops rejected their new appointments and returned back to the Alternative Synod, allowing Maxim's Synod to call the latter a schismatic body.¹³

At the same time, the UDF government's policy on how to deal with this problem shifted from ecclesiastical to administrative. On October 18, 2000, the Supreme Administrative Court issued decision No. 6300, which recognized the Alternative Synod as the second Bulgarian Orthodox Church.¹⁴ On the basis of this some of the Orthodox temples and church property that originally belonged to Maxim's Synod were transferred to the alternative Synod. In addition, Maxim's synod was deprived of the rights of judicial entity, and its economic situation was badly affected. By 2000 the governing UDF returned to their support for the Alternative Synod, while the BSP backed the Patriarch Maxim. In essence, the division of the Orthodox Church followed the bipolar model of Bulgarian political life.

The entry into Bulgarian politics of the former King Simeon Saxe-Koburg-Gotha finally broke this stalemate. Although the policy of the National Movement Simeon II (NMSII) distinguished itself from that of previous Bulgarian governments, it was similar in its stance on the Orthodoxy. The NMSII assumed that the decisions of the 1998 Pan-Orthodox council were an ecclesiastical solution to the schism, and therefore assumed that the task remaining was to make this a fact of public administration through legal means.¹⁵ According to the NMSII, the clergymen of the Alternative Synod had left the canonical Church, and therefore the Denominations Act established this as legal fact. Paragraph 3 from the "Transitory and final provisions" of the bill reads:

12 *The Attacks against the Bulgarian Patriarch Maxim Are Continuing!*, published in the Internet edition of Church Newspaper, No. 20, 1998. See <http://members.tripod.com/~bulch/20br98.htm>

13 *The Attacks against the Bulgarian Patriarch Maxim Are Continuing!*, published in the Internet edition of Church Newspaper, No. 20, 1998. See <http://members.tripod.com/~bulch/20br98.htm>

14 This act is mentioned by Prof. Nenovski in his article: "Our Church is 'registered' by the Constitution," Trud [newspaper "Labor"] from December 23, 2002, p. 26. In this respect, it is also important to mention that only one autocephalous Orthodox Church could act within a given canonical territory according to canon law. This rule was aimed at preventing the intervention of a secular power in establishing new eparchies within the canonical territory of an autocephalous Orthodox Church. Therefore, the current solutions offered by the European Court concerning the recognition of the Bessarabian Church in accordance with European Convention of Human Rights violate the Orthodox canons and thus are disputable and could cause extreme complications, not only in inter-church, but also in the inter-state relations.

15 Interview with Borislav Tsekov [a former member of the NMSII parliamentary group and one of the authors of the draft law under question], entitled "The Schismatic Clergy Is Involved in Suspicious Affairs," *Kesh* [newspaper "Cash"], No. 50 from December 20, 2002, p.6.

Persons, who, by the moment of introducing this law, have separated themselves from (quitted) the registered religious institution in violation of its statutes, could not use an identical name and use or manage property of the same institution.

The exclusive recognition granted to the Synod of Patriarch Maxim has certain advantages because it takes into consideration the Orthodox Church's specificity and the public frame of mind. First, Patriarch Maxim is considered the canonical head of the Bulgarian Church, not only by most of the domestic Orthodox clergy, but also by the heads of the other autocephalous Orthodox churches. Second, this approach was welcomed not only by the Orthodox world, but also by non-Orthodox one, as the 2002 visit of the late Pope John Paul II to Bulgaria indicated. Third, the choice of continuity seems to be more convenient to Bulgarians who are tired of revolutionary changes. Yet despite these advantages, the support of Patriarch Maxim established by means of a civil law did not erase the skepticism among Bulgarian citizens.

The Problem of Church Property

The above-quoted text raises some doubts concerning the offered legal solution to the schism within the church. Specifically, the legal definition of the Bulgarian Orthodox Church is designed in such a way as to guarantee that the entirety of the church property taken away by the communist regime—and assessed at a value of over five milliards Euros will—would be given only to the Synod of Patriarch Maxim.¹⁶ Yet contrary to the intention of the lawmakers, §3 does not in fact guarantee Maxim's Synod property rights over the property of the Bulgarian Orthodox Church. In 1992, when the clerics of the Alternative Synod quit the Bulgarian Orthodox Church—i.e., “the registered religious institution,” according to the proposed new law—the 1951 Statute was still in force. Since the Orthodox Church's canonical character is questioned by the newly open archives, this means that the Alternative Synod has grounds to contest paragraph 3 before the court. In other words, there is an opportunity for additional complications and further worsening of the crisis of the Bulgarian Orthodox Church.

At the heart of this debate is church property taken away between 1944 and 1953. The land had to be restored to the Church in accordance with two laws: the Law of Land Property and Its Use

¹⁶ Pavlina Zhivkova, “The Patriarchs’ Red Autumn, Monitor [newspaper], September 30, 2005, p. 12.

(adopted in March 1991),¹⁷ and the Law of the Restitution of Immovable Property taken by the State (adopted in February 1992)¹⁸ From these it seems that the 1992 split within the Orthodox hierarchy was conditioned on the restitution of this property.¹⁹ The first argument for such a suggestion is the date, March 9, 1992, on which the Directorate of Religious Affairs issued its circular letter declaring that the election of Maxim as Patriarch was illegitimate.²⁰ Similarly, on February 10, 1992, the Directorate “declared the election of Mr. Gendzhev in 1988 as Chief Mufti of the Muslims in Bulgaria null and void and proclaimed his removal from that position.”²¹ This decision provoked a split in the Muslim leadership, identical to the division within the Orthodox one.

The second argument is rooted in the fact that the distribution of the restored church property has followed the trajectories of Bulgarian political life. For example, when the UDF was in power they supported the transfer of church property to the Alternative Synod, and when the BSP was in power they supported Maxim’s Synod. Similar developments took place in the Muslim community as well. Giving credence to this further is that one part of the church property had been received by the Synod of Patriarch Maxim, another by the alternative one, and the third had been appropriated by outside persons who made use of the chaos and fighting between both churches.²²

Although the Denominations Act made positive improvements in the religious sphere, the text contains within it a threat to democracy. Firstly, by defining Maxim’s Synod as the only legitimate successor to the historical Bulgarian Orthodox Church it creates an opportunity for a retroactive application of the law towards the property obtained by the

17 *Dŭrzhaven vestnik* [State newspaper], No. 17 from March 1, 1991.

18 *Ibid.*, No. 15 from February 21, 1992

19 By the time of the split within the Orthodox Church, the Muslim community in Bulgaria experienced a similar division, because the appointment of the chief mufti was declared illegal by the Directorate of Religious Affairs. In fact, the Muslim community was the next big religious organization that had to restore a considerable number of possessions. The problem is discussed by Emil Kohen and Krasimir Kanev in their article “Religious Freedom in Bulgaria,” in: *Journal of Ecumenical Studies* vol. XXXVI, Winter-Spring 1999, Nums. 1-2, p. 243-264. See also the Judgment of the European Court of Human Rights on the case “Hasan vs. Chaush (Strasbourg, October 26, 2000) available in: www.uni-tuebingen.de/kirchenrecht/nomokanon/urteile/eughmr001026.htm.

20 Spasov.

21 See the Judgment of the European Court of Human Rights on the Case Hasan vs. Chaush (Strasbourg, October 26, 2000), available in: <http://www.uni-tuebingen.de/kirchenrecht/nomokanon/urteile/eughmr001026.htm>.

22 A good example of appropriating church property is one of the offices of Biochim Bank in the centre of Sofia, that has used a building, belonging to the Sofia Bishopric Office without paying any taxes for years because it was not clear to whom of both Metropolitans to pay it.

Alternative Synod. Secondly, although one can present good reasons for adopting an ex post facto law in favor of Patriarch Maxim, granting the entire church property to this institution will do nothing to bring about reconciliation in the religious sphere.

This author agrees with people's concerns who are skeptical about the positive effect the new bill would have on the property issue. According to archival documents, by 1944 the Orthodox Church's property was estimated to be 364 000 decares of forest and 82 000 decares of arable land. According to Art. 22 of the new law, "the management of the property belonging to religious denominations is settled by their statutes." This could create problems, since traditionally Eastern European Orthodox churches' property are governed by their corresponding synods, and neither the Orthodox lay community nor the Orthodox priests are able to exert control over, or observe how, their spiritual leadership is using the Church's possessions.

This lack of transparency opens an opportunity for the accumulation of a considerable amount of capital in the hands of the Synod, who essentially is not accountable to ordinary believers or priests. The Holy Synod of the ex lege recognized Orthodox Church is in charge not only of all canonical and dogmatic questions, but also of who has control over the Church's administrative and economic affairs. While Art. 25 (2) foresees an independent financial audit for registered religious denominations, this does not prevent cases where the Church's leadership could manage its property legally and financially correct, but still do so against the interests of the religious community. The Synodal monopoly over ecclesiastical affairs makes this possibility a reality. This same problem concerns the Alternative Synod, which distinguishes itself from the Maxim's by having its priests play a more active role in the church, sometimes to the point of taking full control of certain immovable church property and the corresponding incomes.²³

The fact that no other religious denomination in Bulgaria has so considerable a size of property, and one that is practically uncontrolled by its religious community or by an external agency, explains the keen interest political parties have in the Orthodox Church's property. Because of this, a serious weakness of the Denominations Act is its lack of concern over the use of church property for political ends. As the Act stands now, it could bring politics into religious life by using church property as a hidden source of finance for political campaigns or corruption. Therefore, the establishment of transparency over the property's use is essential for democracy in Bulgaria. Otherwise

²³ Interview with Kamen Barakov [Orthodox priest and supporter of the Alternative Synod], *Kesh*, No. 50 from December 20, 2002, p.7.

paragraphs 1 and 2 of Art. 7 could be reduced to empty declarations used for the 'legal' suppression religious minorities whose activities might be considered troublesome by state officials.

Art. 7 (1) The freedom of religion shall not be directed against the national security, public order, people's health and the morals or against the rights and freedoms of other persons [citizens].²⁴

(2) Religious communities and institutions, as well as religious beliefs shall not be used for political ends.

Pro and Contra the Traditional Character of the Bulgarian Orthodox Church

Another problematic aspect of the Denominations Act concerns the motives for granting ex lege recognition to the Orthodox Church. The law's supporters defend this on the basis of Art.13, §3 of the 1991 Constitution, which states: "The traditional religion in Republic of Bulgaria is the Eastern Orthodox denomination."²⁵ This is furthered by the fact that about 85% of Bulgarian citizens affiliate themselves with Orthodoxy.²⁶ According to the interpretation given by the Constitutional Court of February 18, 1998, "the traditional nature of Eastern Orthodoxy expresses its cultural and historical role for the Bulgarian state, as well as its present significance for the state life and especially by its impact on the system of official holidays."²⁷ Yet the Denominations Act gives a different meaning to the above-mentioned constitutional text. No longer is Eastern Orthodoxy defined as the "traditional religion," but instead a particular religious institution, namely the Orthodox Church, is defined as such.

An analysis of the Denominations Act's terminology reveals that this change was made with the help of the term *veroizpovedanie* [denomination]. According to §1 of the "Additional Instructions" written

24 According to the text of the Denominations' Act it is not clear whether the term "persons" refers only to Bulgarian citizens or also to the citizens of foreign states living in Bulgaria. The second sentence in the English translation of the Institute on Religion and Public Policy does not exist in the official version of the bill. According this sentence, "other ground for limitations of the right of religion, different from the enumerated, shall not be introduced." This translation seems more as an interpretation of the official Bulgarian text.

25 Constitution of Republic of Bulgaria, adopted by the Great National Assembly on July 12, 1991 (Sofia, 1995).

26 Kohen and Kanev, 221-242.

27 Nenovski, "Our Church Is 'Registered' by the Constitution," Trud [newspaper "Labor"] from December 23, 2002, p. 26.

in the final part of the bill, “denomination” refers to “a totality, embracing a religious community with its religious beliefs and principles as well as its institution,” while the term “religious institution” refers to “a registered, in accordance with the Denominations Act, religious community, that has the quality of judicial entity with the corresponding ruling organs and statutes.” In this way, the traditional character of Eastern Orthodoxy as a religion/denomination is transferred to the Bulgarian Orthodox Church as an institution. Therefore, it is not surprising that the law’s preamble speaks not about Orthodoxy, but about “the specific and traditional role of the Bulgarian Orthodox Church in the history of Bulgaria for the building and development of its spirituality and culture.” This declaration is explained in Art. 10, which says that the Bulgarian Orthodox Church represents Eastern Orthodoxy. Such a change, however, confines Orthodoxy to a national or even nationalistic frame.

During the debates on Art. 10 the traditional character of the Orthodox Church was defended not just on the basis of law, but also on the basis of history--or to put it more correctly, on the basis of interpretation. The problem with this approach is that it suppresses Bulgarians’ consciousness of their common Christian roots with the rest of Europe, and could bring additional complications to their post-communist European reintegration. For instance, emphasizing the Orthodox adherence of Bulgarians alienates Christian, non-Orthodox European nations, and unnecessarily creates a religious division on the continent.

Orthodox Bulgarians vs. Non-Orthodox Bulgarians

The Denominations Act could jeopardize the religious peace in the country, as Non-Orthodox Bulgarians feel uncomfortable about the text of Art. 10. It is not unusual to hear public figures referring to Orthodox people as Christians while at the same time speaking of Catholics and Protestants as if they were not Christians.²⁸ Yet much more dangerous is the rhetoric that operates on a wider religious basis and creates tension between Orthodox and non-Christian citizens. As evidence of this take Maxim’s Synod, that in an official address to the Bulgarian people announced on Channel 1 of the Bulgarian National Television—four days before the final voting of the bill (December 16, 2002)--stated that the new bill “makes concrete and develops further the Constitutional

28 There are parallel attitudes in Western Europe where Catholics or Protestants often refer to themselves as Christians while excluding the other Christian denominations.

formula of [the term] “traditional religion.”²⁹ The Denominations Act is regarded as recognition of the “natural rights of the Orthodox majority of Bulgarians,”³⁰ and concluded that

... the vote “for” and “contra” the texts, recognizing the Bulgarian Orthodox Church ... will be a clear and undeniable sign [revealing] who takes the side of the forces that have been working against our kinfolk Church for years and who considers the freedom of our religious convictions, the unity and authority of the Republic of Bulgaria.³¹

Although the secular advocates of the Orthodox Church’s special status do not use the phrase “natural right,” they are not far from it when they claim that it humiliates Orthodox Bulgarians if the law requires their Church to observe the same rules as non-Orthodox religious institutions. They justify the exclusive application of such rules to non-Orthodox religious denominations as a protection against religious fundamentalism.³² According to them, Art. 10 does not give special privileges to the Orthodox Church because Art. 3 (1) forbids persecuting, restricting, or privileging individuals on account of their religious faith. Supporters also refer to the section of Art. 4 (1) that reads: “Religious denominations are free and have with equal rights. Religious institutions are separated from the State.”³³

Yet opponents of Art. 10 do not consider the Act to be a positive development in the Constitutional formula. In their view, the law differentiates between the particular Orthodox Church and others, the latter of which must go through court registration for official recognition. In fact, the law divides the denominations into three categories according to their procedure for recognition: the Orthodox church of Patriarch Maxim that receives recognition *ex lege*; religious

29Address of the Holy Synod of the Bulgarian Orthodox Church concerning the debates on the draft of the new Denominations' Act, read by His Holiness Bulgarian Patriarch Maxim on Channel 1 of the Bulgarian National Television on December 16, 2002 (Before the adoption of the law) and published in the Tsúrkoven vestnik [Church Newspaper] No. 1, 2003: http://synpress.bglink.net/index_broev.html

30 It is important to mention that the word used in Bulgarian - "estestveni" could be translated also as "logical" or "self-understandable." Address of the Holy Synod from December 16, 2002.

31 Ibid.

32 Nenovski.

33 The exemption of the Bulgarian Orthodox Church’s candle industry from the WAT was announced on January 13, 2005 in: <http://www.religiabg.com/?p=oldnews&id=3653>. It was justified on the basis of the new Denominations Act. According to the Minister of Finances, the trade with candles and church plate is used for the Orthodox Church’s financial self-support and thus it has to be exempted from the WAT.

institutions whom were registered under the previous law (Muslims, Armenians, Catholics, Jews, etc.), and are automatically recognized and preserve their status as judicial entities (§2 of the “Transitory and Closing Regulations” orders to the Directorate of Religious Denominations to transfer the files of these institutions to the court for a formal registration); and religious denominations who have not yet received recognition, and must apply to the court in accordance with the procedure spelled out in articles 14-20 of the bill.

At the same time, the *ex lege* recognition of the Bulgarian Orthodox Church means that some legal regulations do not apply to certain elements of the Church’s activity. For example, it is exempted from the regulations of Art. 8, concerning restrictions of the religious rights, when freedom of religion is used against “the national security, public order, people’s health and the morals or against the rights and freedoms of other persons,” as well as when religious societies and institutions are used for political aims (Art. 7 (1) and (2)). Due to exemptions like these, there are doubts as to whether religious institutions are really equal before law. The fear that the new religious movements that have recently appeared in Bulgaria will increase religious fundamentalism does not justify a selective approach to non-Orthodox confessions. Only not distinguishing between the religious entities in the Denominations Act will guarantee the fulfillment of Art. 6 § 2 of the 1991 Constitution, which reads: “All citizens are equal before law. No limitation of rights and privileges, based on race, nationality, ethnical affiliation, sex, origin, religion... is allowed.”

Between Civil Law and Religious Canons

The Denominations Act raises one more important question: how compatible are secularism and religion in contemporary Bulgarian law? During the debate over the Denominations Act a group of parliamentary deputies approached the Bulgarian Constitutional Court with a request to pronounce several texts of the law, including Art. 10, “as incompatible with the Constitution and inconsistent with the European Convention for Protection of Human Rights and Fundamental Freedoms (the Convention) and with the International Covenant on Civil and Political Rights (the Covenant).”³⁴ The Constitutional Court faced a situation without precedent in its history: the constitutional judges were involved in a discussion of canon law, an area of law in which they had no

³⁴ See: Decision No. 12 of July 15, 2003 in Constitutional case No. 3/2003, which English summary is available in: http://www.constcourt.bg/constcourt/ks_eng_frame.htm

competence. Some of them supported the opinion that the Patriarchal office had to be bound to that of the Metropolitan of the capital city on the basis of the 34th Canon of the First Ecumenical Council (325).³⁵ Their opponents argued that a civil bill such as the Denominations Act incorporated religious principles that brought the State into religious affairs, and was thus against the principle of separation of Church and State. Still, the opponent's numbers were not sufficient, and the challenge of the text to Art. 10 was dismissed.

As the law currently stands, secular and religious elements are still mixed in Bulgarian civil law, which could provoke conflicts in the religious field in the future. This danger became reality on July 21, 2004, when police occupied the premises used by the Alternative Synod. As a result, 250 churches and other properties of the 'alternatives' were transferred to Patriarch Maxim.³⁶ It seems that the conflict could not be solved without external assistance, and in this respect, the PACE's recommendations with regards to Art. 10 of the Denominations Act could help. In the case of paragraphs 1 and 3, they suggest ensuring "that the special recognition given to Eastern Orthodoxy does not lead to the discrimination of other religions for practical purposes." At the same time, they recommend either deleting the provision for the *ex lege* recognition of the Bulgarian Orthodox Church, or ensuring that her leadership is legitimate according to Orthodox canonical law.³⁷

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The complicated story of the Bulgarian Denominations Act leaves many questions open. At the domestic level, the new bill does not seem

35 Decision No. 12 of July 15, 2003 in Constitutional case No. 3/2003, *Dürzhaven vestnik*, No. 66, 2003.

36 See: Bulgaria: Country Reports on Human Rights Practices, Released by the Bureau of Democracy, Human Rights, and Labor on February 28, 2005. Available in: http://www.usembassy.bg/policy/human_rights_04.html.

37 See Resolution 1390 adopted by the Standing Committee, acting on behalf of the Assembly of the Council of Europe, adopted on September 7, 2004, available in: <http://assembly.coe.int/Documents/WorkingDocs/doc04/EDOC10065.htm>. According to this resolution,

"a. paragraphs 1 and 3 (special recognition of Eastern Orthodoxy and the principle of non-discrimination): recognising that the wording of these provisions is not objectionable per se, to ensure that the special recognition given to Eastern Orthodoxy does not lead to the discrimination of other religions for practical purposes such as state or municipal support, restitution of property, treatment of taxation matters, teaching of religion, etc.;

b. paragraph 2 (*ex lege* recognition of the Bulgarian Orthodox Church): either to delete this provision outright, thereby subjecting the Bulgarian Orthodox Church to the same registration requirements as other religious communities; or to ensure in other ways without interference by the executive that the leadership of the Bulgarian Orthodox Church is legitimate according to Orthodox canonical law."

a sufficient solution to the schism within the Bulgarian Orthodox Church. At the level of interreligious dialogue, it creates the possibility for unequal treatment of non-Orthodox denominations, and thus endangers the interethnic peace of the country. The Act deprives non-Orthodox Bulgarians of being part of the Bulgarian nation, and at the same time, obscures Bulgarians' sense of common Christian roots with the rest of Europe.

The new Denominations Act also brings our attention to contemporary church-state relations. Those who accuse the Bulgarian state of intervening in the religious sphere by attempting to find a legal or secular solution to the Bulgarian Orthodox Church's "schism," *de facto* occur in the same situation asking the arbitrage of another secular institution – the Council of Europe or the European Court. This brings us to the next problem concerning the theory and practice of human rights. Despite the advancements during the Cold War, today human rights face difficulties in cases where religious rights are at the stake. In fact, it seems that the human rights' approach could even sharpen the "clash of civilizations."

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