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Current status of the state-religion relationships in Bulgaria.
Focus on muslim community

The article is devoted to the current situation of the relationships between the state and the religious denominations on the basis of the legislation's analysis with focus on the Muslim community. The study is restricted temporally and encompasses the period after 1989: the transition after the totalitarian regime in Bulgaria. On the ground of the last census data since 2011 the composition of the population on «religious belonging» will be analyzed with special attention to the Muslim community. An important characteristic of the Bulgarian regulation of the matter of equality, non-discrimination and minorities' relations are the primacy of the obligations under the International Public Law.

Key words: Bulgaria, status, muslim community, state-religion relationships, International Public Law.

Introduction

The current status of the relationship between the Bulgarian state and the religious denominations is the result of a long, complex and sometimes dramatic historical process.

The Bulgarian State is one of the oldest in Europe and the only one that has kept its original name «Bulgaria» since its establishment to the present day. Along with the creation of the Bulgarian nation historically, groups of people from different ethnicities, religions and nationalities have been shaped and they have eventually settled down. The ethnic composition of the country is not uniform, and in this regard, our country is no exception.

The subject of the present article is the current situation of the relationships between the state and the religious denominations on the basis of the legislation's analysis with focus on the Muslim community. The study is restricted temporally and encompasses the period after 1989: the transition after the totalitarian regime in Bulgaria. On the ground of the last census data since 2011 the composition of the population on «religious belonging» will be analyzed with special attention to the Muslim community.

I. STATISTICAL DATA

There are three undeniable traits that define persons belonging to minorities and differentiate them from the majority of countries: «ethnicity», «mother tongue» and «religion.» They are the basis of the methodology used in collecting statistics in recent years in the Republic of Bulgaria.

In the period from 1900 till now there have been 13 official censuses of the population in Bulgaria.

The main principle of the last census laid down in the Law on the Census of the Population and the Housing Fund [1] is the self-identification of the individuals involved. Pursuant to Art. 6, Para. 3 the data about the belonging to an ethnic group, a religious denomination and command of mother tongue were to be collected voluntarily from the individuals interviewed in the census. The Law on Statistics does not put under obligation the natural persons to give to the statistics bodies data about their race, nationality, ethnic origin, religion (religious denomination), health condition, private life, political affiliation, committed legal offences, philosophical and political opinions (Art. 21, Para. 2) [2].

The data of the last census includes also information on:

- citizens of the European Union and foreigners with permission for permanent stay according the Law on Foreigners in the Republic of Bulgaria before 1st February 2010 (Art. 4, Para. 1, 4); 4. (amend. SG. 100/2010, amended. SG. No. 9 as of 2011);
- persons that have been granted protection by virtue of the Law on Asylum and Refugees before 1 February 2010 (Art. 4, Para. 1, 5); 5. (amend. SG. No. 100 as of 2010);
- citizens of the EU and foreigners with permission for short term, continued, long term and permanent stay according the Law for the foreigners in Republic of Bulgaria after 31 January 2010, except for the persons under item 4. (Art.4, Para.1, 7) 7. (amend. SG. No. 100 as of 2010, amended. SG. No. 9 as of 2011);
- persons undergoing a procedure for granting protection or with granted protection according to the Law on Asylum and Refugees after 31 January 2010. (Art. 4, Para.1, 8), 8. (amend. SG, No. 100 as of 2010)

The last population census conducted in 2011 shows the following data.

The last 2011 census combined the features «ethnic groups» and «mother tongue», because of the historically grounded realities [3].

Statistical data of the population by «mother tongue»

According to the data, by 1st February 2011 the citizens of Bulgarian nationality by mother tongue are in absolute numbers 5,631,759 of the total 6,611,513 nationals. The second ethnic (national) group by mother tongue Turkish are the Turks with 604,246 people, followed by the Roma (Gypsies) with 280,979 people [4].

Other smaller ethnic groups by mother tongue are: Armenians (5,567), Jews (141), Wallachians or Vlachs (1,815), Russians (15,211), Tartars (1,367), Arabians (1,321), Greeks (3,182), Macedonians (1,376), Romanians (5,454), Ukrainians (1,691), other (9,946) and ones that are not self-identified (47,458).

Statistical data of the population by «ethnic groups»

The last data of the population census by ethnic groups is the following: Bulgarians 5,604,300; Turks 585,024; Roma (Gypsies) 320,761; Armenians 6,360; Jews 1,130; Vlachs 3,598; Karakachans 2,511; Russians 986; Greeks 1,356; Macedonians 1,609; Romanians 866; Ukrainians 1,763; other 19,260; and ones that are not self-identified 53,107.

The complexity of the picture arises, because the features «mother tongue» and «ethnicity» do not always coincide. For example, the group of Pomaks who are Muslims, speak Bulgarian language. They are the descendants of the Slavic Bulgarians who converted to Islam centuries ago during the Turkish domination. The Gagauz are Turkish speaking, but they are Orthodox Christians. A problem rises also with the definition of the Macedonian language and whether the Macedonians are a linguistic minority. The official Bulgarian position is well-known: the Macedonian language does not exist; it is a dialect of the Bulgarian language. This official position does not impede the relations between the two states. It should be underlined that Bulgaria was the first state officially recognising Macedonia under the name «The Republic of Macedonia» on 15th January 1992.

The picture of the religious minorities presents the same complexity. The ethnicity differs from the religious confessions and beliefs. The pure cases as: Bulgarian nationally and Orthodoxy, or Turkish nationality with Muslim confession are diversified. The Muslim religion is the second largest religion in Bulgaria. There are Bulgarian Roman-Catholics, Bulgarian Muslims, Bulgarian Jews, as well Orthodox Roma, Protestant Roma, Muslim Roma. The only absolutely homogenous religious group is the Armenian minority, where all Armenians are Armeno-Gregorians.

Historical background

The existing ethnic groups can be classified in two categories on the grounds of their historical arrival on the territory of the state. The first category includes the so called 'historical minorities'. They are an integral part of the Bulgarian population on the basis of the historical destiny of the country. The following are listed here: Turks, Roma, Armenians, Jews, Wallachians or Vlachs, Karakachans, Russians, Tartars, Circassians or Cherkess, Gagauz, Albanians, Serbs, Bosnians, Greeks, Romanians, Slovaks, Slovenes, Ukrainians and the Macedonians who require additional clarification [5]. The second category presents the so called 'new minorities', such as Africans, Arabians, Vietnamese, Kurds, Germans, Poles, Hungarians, French, Syrians, etc. Their presence in Bulgaria is the result of migration, mixed marriages or other reasons.

Population by confession by 01.02.2011

Total for the country	5,758,301
Eastern Orthodox	4,374,135
Catholics	48,945
Protestants	64,476
Muslims	
Sunni Muslims	546,004
Shiite Muslims	27,407
Muslims	3,728
Armeno-Gregorians	1,715
Judaism	706
other	9,023
I profess no religion	272,264
not self-identified	409,898

The brief statistical review demonstrates the differentiation on the grounds of national and ethnic origin, language and religion. In addition, we can also add cultural differences, historical traditions, etc. This complex picture needs to be legally regulated in order to meet the needs of the democratic society, the rule of law, human rights, international obligations and domestic social relations.

II. THE LEGAL FRAMEWORK

An important characteristic of the Bulgarian regulation of the matter of equality, non-discrimination and minorities' relations are the primacy of the obligations under the International Public Law. According to Art. 5, Para. 4 of the Bulgarian Constitution, the international treaties ratified in accordance with the Constitution, promulgated and entered into force for Bulgaria, become an inherent part of the Bulgarian domestic legislation. They prevail over the contradicting dispositions of the internal (domestic) legislation. In addition, Bulgaria as a member state of the European Union is subject to the European Union Law which is characterized by its direct effect and primacy.

Thus, the relevant law provisions can be classified in the following three big categories:

- A. Obligations under the International Public Law.
- B. Obligations under European Union Law.
- C. Obligations under the domestic legislation.

GENERAL INTERNATIONAL OBLIGATIONS

- The Charter of the United Nations — Art. 1, Para. 3, Art. 55, Art. 56.
- The Universal Declaration of Human Rights — 1948.

SPECIFIC INTERNATIONAL OBLIGATIONS ON THE MINORITIES, INCLUDING RELIGIOUS MINORITIES

- Article 27 of the International Covenant on Civil and Political Rights (ICCPR) — 1966: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.' [6; 41].

- UN Declaration on the Rights of Individuals, belonging to national, ethnic, religious and linguistic minorities — 1992.

- Framework Convention for the Protection of the National Minorities — 1995, into force 1998.

OTHER RELEVANT INTERNATIONAL OBLIGATIONS

- Convention on the Prevention and Punishment of the Crime of Genocide — 1948.
- International Covenant on Economic, Social and Cultural Rights — 1966.
- International Convention on the Elimination of All Forms of Racial Discrimination — 1966.
- Convention on the Elimination of All Forms of Discrimination against Women — 1979.
- International Convention on the Suppression and Punishment of the Crime of Apartheid — 1973.
- Convention of the Rights of the Child — 1985.

OBLIGATIONS UNDER THE EUROPEAN STANDARD ON HUMAN RIGHTS/COUNCIL OF EUROPE AND EUROPEAN UNION LAW

- European Convention for the Protection of Human Rights and Fundamental Freedoms — 1950.
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms — 2000.
- Framework convention for the Protection of National Minorities — 1995, into force 1998.

- Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation.

RELEVANT DOMESTIC LEGISLATION

The following list of the relevant domestic acts is based on the supremacy of the Bulgarian Constitution. The list of the acts is made on my personal doctrinal appreciation on the importance of the laws for the minorities in the country [7].

- The Constitution of 1991.
- Political Parties Act — 2005.
- Law on Bulgarian Citizenship — 1998.
- Law on Foreigners in Bulgaria — 1998.
- Protection against Discrimination Act — 2003 (the name was amended in 2006).
- Law on Religions — 2002.
- Public Education Act — 1991.
- Higher Education Act — 1995.
- Law on Radio and Television — 1998.
- Law on the Educational Degree, the Educational Minimum and the Learning Plan — 1999.
- Protection and Development of Culture Act — 1999.
- Civil Registration Act — 1999.
- Law on the Bulgarians Living Outside the Boundaries of the Republic of Bulgaria — 2000.
- Penal Code — 1968.
- Law on Normative Acts — 1973.
- Judiciary Act — 2007.
- Civil Procedure Code — 2007, in force since 1 March 2008.
- Criminal Procedure Code — 2005.
- Administrative Procedure Code — 2006.
- Civil Servants Act — 1999.
- Defence and the Armed Forces Act — 2009.
- Law on Non-profit Legal Entities — 2000.
- Child Protection Act — 2000.
- Social Assistance Act — 1998.
- Labour Code — 1986.
- Commercial Law — 1991.
- Regulations on the Organisation of the Activities of the Constitutional Court, 1991.
- Rules of the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry, 1993.
- Rules and regulations for the implementation of the Public Education Act, 1999.
- Decree for the general educational minimum and the distribution of school hours, 1999.

The Bulgarian system for protection of the rights of the minorities is based on two fundamental levels. The first is the general principle of equality before the law and non-discrimination for all Bulgarian citizens. This principle is established on a large scale in the Bulgarian legislation.

The second level of protection of individuals, belonging to minority groups [8; 81, 82] consists of legal guarantees, establishing specific rights in all spheres of human rights.

Thus, the individuals, belonging to the minorities fully enjoy all rights and freedoms as Bulgarian citizens, and in addition they have a wide list of specific rights in order to preserve and develop their identity. On this criterion, the domestic legislation can be divided into two groups: provisions on the equality and non-discrimination, and special rights, protective measures and norms of the type of 'positive' discrimination.

In the first big group of legal provisions concerning minorities the following ones need to be cited: Art. 6, Para. 2 of the Constitution; Art. 8, Para. 3 of the Labour Code [9]; Art. 4 of the Protection against Discrimination Act [10]; Art. 10, Para. 2 of the Law on the Protection of the Child [11]; Art. 11, Para. 1 of the Code on Criminal Procedures [12]; Art. 7 of the Civil Servants Act [13]; Art. 3 of the Social Assistance Act [14]; Art. 2 of the Law on Encouraging the Employment [15] and others [16; 138].

III. THE MAIN PRINCIPLES GOVERNING THE RELATIONSHIP BETWEEN THE BULGARIAN STATE AND THE RELIGIOUS DENOMINATIONS

The religious rights and freedoms are proclaimed in the basic law: the Constitution of the Republic of Bulgaria, adopted in 1991. The main principles in the regulation of this matter are the following:

- Practicing any religion is free (Art. 13, Para. 1 of the Constitution);
- The religious institutions shall be separate from the state (Art. 13, Para. 2). Prof. Giovanni Cimbalò pointed out that the secularization is a very important feature of the constitutions of the East European states, nevertheless the relationship between the state and the confessions is realised by different instruments [17; 16].
- The Eastern Orthodox Christianity is considered the traditional religion in Bulgaria (Art. 13, Para. 3);
- Religious institutions and communities as well as religious faith shall not be used to political ends (Art. 13, Para. 4 of the Constitution) [18].

IV. LEGAL REGULATION OF THE FREEDOM OF CONSCIENCE, THE FREEDOM OF THOUGHT AND FREEDOM OF RELIGION

The main disposition is Art. 37, Para. 1 of the Constitution: «The freedom of conscience, the freedom of thought and the choice of religion and religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers of different denominations, and among believers and non-believers».

The freedom of conscience, the freedom of thought and the choice of religion or religious or atheistic views are proclaimed and guaranteed as fundamental individual rights of the Bulgarian citizens.

I believe that the inclusion of freedom of atheist views is an original solution to the Bulgarian Constitution. Of course, it is considered by some authors as a remnant of the totalitarian past. If the qualification about an imposed «forced model of atheism» [19; 201] of Alejandro Torres Gutierrez is valid for the period 1944 — 1989, then how can one explain the majority that claimed to have atheistic views 25 years after the democratic changes? As it is evident from the statistics in 2011, 272,264 people say they do not profess religion and other 409,898 are not self-identified.

Terminology

Before analyzing the Bulgarian legal regulation of the freedom of conscience, the freedom of thought and freedom of religion, it is useful to precise the terminology of the Constitution and the Law on Religions.

The freedom of conscience

The freedom of conscience means the freedom of every person to build his/her own religious belief (or not to build such a belief) for the situation of the human being in the world and his/her relation to the supernatural (Supreme powers) and accordingly, their behavior should be in conformity with these beliefs. The freedom of conscience encompasses the internal freedom to believe or not to believe, as well the external freedom: the belief to manifest and disseminate. Accordingly, the expression of the thesis of freedom is not only a positive one — sharing views and belonging to a religious community, but a negative one as well — omission of religious views or not forming such views.

The freedom of thought

The freedom of thought means that the human being is free to create his/her own way of looking at things and to act according to it and the faith professed. The freedom of thought is without doubt part of the freedom of opinion (Art. 39 of the Constitution) as a fundamental right of every person.

The constitutionally proclaimed freedoms may be subject to restrictions. The grounds for that are national security, public order, public health and ethics and the rights of the others. The listed grounds are compatible with the internationally accepted restrictions, especially with the provision of Art. 9, Para. 2 of the European Convention of Fundamental Rights and Freedoms.

The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and ethics, or the rights and freedoms of others (Art. 37, Para. 2 of the Constitution).

The Law on Religions was adopted by the National Assembly of the Republic of Bulgaria on 20 December 2002 [20; 86].

Religion/ religious denomination

The terminology on religious rights and freedoms is specified only for the purposes of the Law on Religion. There are substantial differences in Bulgarian and English terminology used. According § 1, Para. 1 of the Complementary disposition «**Religion** (вероисповедание) means the totality of the faith convictions and principles, the religious community and its religious institution». Paragraph 2 of the same text defines «**Religious community**» as a voluntary union of physical persons for confessing religion, performing worship, religious rites and ceremonies.

According Para. 3 «**religious institution**» is a religious community registered in accordance with the Law on Religions which has the capacity of a legal entity, with its management and statute.

In this study I use the term «religion» as defined by the Law on Religion and as a synonym of «religious denomination» in English. In Decision No. 12 of 15 July 2003 the Constitutional Court found that the definition «religious institution» is not relevant for the term used in the Constitution [21].

The provisions of the Law specify the constitutional rights on religion and faith and provide the legal status of the religious communities and institutions and their relations with the state (Art. 1). The main principles proclaimed in the Constitution are specified in detail by the Law:

- The right of religion and faith has an absolute character, including the right of free choice of religion and free practicing of religion. It is fundamental, absolute, subjective, personal and inviolable.
- The obligations, established by the Constitution and the Law shall not be defaulted upon on grounds of religion or other convictions.
- The principle of secularization means that the religious institutions shall be separated from the state. «No state interference in the internal organization of the self-administered religious institutions shall be allowed» (Art. 4, Para. 2).
- Discrimination on the ground of religion and faith is prohibited. «Nobody shall be persecuted or restricted in their rights because of their religious faith. No restrictions or privileges based on affiliation or rejection of affiliation to a religion are allowed» (Art. 3, Para. 1).
- The religions are free and equal in rights (Art. 4). The Law on Religions reaffirms the historically established position of the Eastern Orthodox Christianity as the traditional religion in Bulgaria.
- The registration of the religious communities is not compulsory. The right of religion and faith can be practised through associations without registration [22].

The special historical role and position of the Eastern Orthodox Church is a specific feature of the Bulgarian legislation on religious rights and freedoms: «The traditional religion in the Republic of Bulgaria is the Eastern Orthodox. It plays a historic role in the Bulgarian statehood and has a genuine meaning in the state's life. Its voice and representative is the autocephalous Bulgarian Orthodox Church, which under the name Patriarchy, is the successor of the Bulgarian Exarchate and is a member of the United, Holy, Congregational and Apostolic Church. It is presided by the Holy Synod and is represented by the Bulgarian Patriarch who is also the metropolitan of Sofia» (Art. 10, Para. 1). The Bulgarian Orthodox Church is *ipso iure* (by the Law on Religions) a legal entity. Its structure and management are established in its statute (Art. 10, Para. 2).

In 2003 some of the provisions of the Law on Religions were contested by a group of 50 deputies before the Constitutional Court of Bulgaria. They claimed contradictions of the legal rules with the European convention on human rights and fundamental freedoms (ECHR) and the International Covenant on Civil and Political Rights. The second contested disposition was Art. 10, Para. 1 and Para. 2, as well as § 2, Para. 3 of the Transitional and Final Provisions.

According to § 2, Para. 3 of the Transitional and Final Provisions: «The court officially incorporates in a closed-door session the registered religions under paragraph 1 except for the religion under Article 10. In this case the court could not refuse the registration».

Thus the acquisition of this status by law is allowed only to the Bulgarian Orthodox Church.

The claim asserted that through these dispositions one religion was placed in a position of inequality and was privileged in comparison with the other religions. The members of Parliament consider it as direct interference in the internal organization of the Bulgarian Eastern Orthodox Church on behalf of the state. This, in their opinion, does not support the mutual understanding, tolerance and respect on matters related to the freedom of conscience and religions. They claim this is in contradiction to Art. 6, Para. 2, Art. 13, Para. 2, Art. 37, Para. 1 of the Constitution and Art. 9 of ECHR.

For this item of the claim the Constitutional Court did not reach a majority vote and it was rejected. The lack of majority vote impeded the formulation of common motives for the decision. There were two different statements supported by the judges. According to the first group, this regulation was in compliance with Art. 13, Para. 3 of the Constitution underlying the traditional role of the Bulgarian Eastern Orthodox Church. The recognition of the role of the prevailing religion in the respective country is not an exception in Europe (Art. 4 of the Constitution of Denmark; § 2 of the Constitution of Norway; § 4 of the Act on the Succession to the throne in Sweden; Art. 3 of the Constitution of Greece; Art 1 of the Constitution of Cyprus; Art. 8 of the Constitution of Italy; the situation of the Anglican Church in the United Kingdom) [23; 117, 118]. Thus, the

ascertaining of the prevailing religion is in the spirit of the actual European constitutional tradition. The equality of all religions is expressly proclaimed and guaranteed by the Law on Religions in the Preamble and Art. 4, Para. 1. The reference to «Orthodox», «United», «Holy», «Congregational and Apostolic Church» are terms with theological content and have no juridical relevance to the constitutionality of the provision. The Church has two denominations: one for theological, internal use, the second for the secular, legal regulation. The dogmas about the apostology, the cathedral, synodal form of governance, or the rule that the patriarch shall be the metropolitan of the capital city do not affect the constitutionality of the text.

The disposition that the Bulgarian Orthodox Church is a legal entity does not contravene to Art. 6 of the Constitution. This constitutional provision rules the equality of the citizens and does not exclude the right of the legislator to create different regime for the various categories of legal entities. The Law on Religions embraces the more liberal democratic standards in practicing a religion. Every individual can practice his/her own religion through an association. There is no obligation for registration of the religious community. Art. 14 stipulates: «Religious communities shall acquire the status of a legal entity on the conditions and according to the procedures of this law.» The revised formulation of the text shows clearly that the registration is a possibility, but not an obligation for the religious communities. Thus, the right of religion and faith can be exercised through association in non-registered communities. When there is a wish of the citizens in the association created by them to become an independent legal entity, participating on their behalf and on their own account in various legal relations, they must register it as such.

There is no constitutional prohibition for the state to recognize by law the status of a legal entity a certain community, in this case the Bulgarian Orthodox Church. This recognition does not in any way impede the right of association. According to this argumentation the claim is not grounded.

The second opinion of the constitutional judges states that the claim is well founded and must be accepted. The provision of Art. 10, Para. 1 embraces the denomination, the governing body and the person who represents it as well as the functions of the Patriarch as a governor of the Sofia diocese. This violates the principles of freedom of religions and separation of the religious institution from the state (Art. 13, Para. 1 and 2 of the Constitution). They are autonomous and independent from the state deciding the matters of their self-government such as the questions of denomination, of their seat, of the religious faith, the religious practice, structure, governing bodies, their constitution and representation. The decision of the Constitutional Court is to this effect, as formulated in Decision Nr. 5 of 11 June 1992 (Constitutional case No. 11/1992): «The state through its bodies and institutions cannot intervene and manage the internal organizational life of the religious communities and institutions. This is a matter of regulation by their statutes and other internal rules of the organization». The case-law of the European Court on Human Rights is also to this effect. In some of the cases it has stated that in a dispute among the religious communities and the state institutions the state cannot intervene between the disputing parties and make decisions, but it must ensure tolerance between the disputing parties, as the role of the state is not to eliminate the ground for the tension suppressing pluralism, but to guarantee the alternativeness between the disputing groups. (The Decision of 20 October 2000 in the Case Hassan and Chaush v. Bulgaria, the decision in the case Serif v. Greece, the decision of 12 December 2001 in the case of the Bassarabian Metropolitan Church v. Moldova.)

Article 10, Para. 1 reiterates the dispositions of the Statute of the Bulgarian Orthodox Church. The Statute is an act of the religion. It can be modified when necessary, adopting another decision on the matter regulated by the statute. The Law regulation on these questions excludes such modifications, that will contravene the law. Thus, due to the state intervention there is no possibility for the modification in the statute on any matter, that must be regulated exactly by the statute, which is a restriction on the freedom of religious faiths and the autonomy of the religious institutions, in accordance with Art. 13 Para. 1 and 2 of the Constitution.

Pursuant to Art. 10, Para. 2 the Bulgarian Orthodox Church is a legal entity. Its structure and management are established by its statute. The part of the text proclaiming the Bulgarian Orthodox Church for legal entity contravenes Art. 6 of the Constitution. The acquisition of this status by law is allowed only to the Bulgarian Orthodox Church. The other religious denominations can acquire the same status under the conditions and according to the procedures in Art. 14 — 20 of the Law on Religions, through registration by the Sofia Municipal Court pursuant to Chapter 46 of the Code of Civil Procedures. The different acquisition of the status of legal entity (by law and by registration) demonstrates the inequality of the legal regime of the religious denominations. As it acquires the status of legal entity by law, the Bulgarian Orthodox Church is exempt of the obligations which exist for the other denominations, as well as of the sanctions that may be imposed on them. This places it in a privileged position in comparison to the other denominations, although Art. 13, Para. 3 of the Constitution does not create a special privileged status for the Eastern Orthodoxy. This inequality

in the legal regime of the denominations violates Art. 6 of the Constitution. The same principle is evoked demonstrating the contradiction between § 2, Para. 3 of the Transitional and Final Provisions to Art. 6 of the Constitution.

An interesting case is the one connected with the registration of the Bulgarian Orthodox Church under Interpretative Decision № 1/23, November 2010 of the Supreme Court of the Republic of Bulgaria, the General Assembly of Commercial Colleges [24].

The Supreme Court of Cassation — Commercial Colleges was referred to by the Minister of Justice of the Republic of Bulgaria with a request for a ruling on the question:

«Is there a need to register the Bulgarian Orthodox Church in the Public Register of Religions, which is at the Sofia City Court under Art. 18 of the Law on Religions (LR) as well as the entry of its local branches, according to Art. 20 of LR and their re-registration under § 2 Para. 4 of LR in order to prove their legal capacity and governmental power?»

The reflections on the case of the Commercial Colleges follow this legal logic: «Art. 15 of the Law on Religions (LR) since 2002 envisages a judicial order for the registration of religious communities as legal entities. The entry into the public register under Art. 18 of LR is provided for emerging religious communities with a view to acquire their status as legal entities (Art. 14 of LR) and the religious denominations recorded under Art. 6 of the repealed Religious Denominations Act (RDA), retaining their status of legal persons.

With Art. 10 Para. 2 of LR and § 2 Para. 3 of the Rules of LR, the Bulgarian Orthodox Church (BOC) is explicitly excluded from the procedure for registration provided for in Chapter III of the Act.

Regarding the entry into the Public Register under Art. 18 of LR of the traditional Eastern Orthodox Christianity in the Republic of Bulgaria, whose expression is the Bulgarian Orthodox Church, there is a lack of any case law. Nowhere in the practice of the courts has the question of the necessity of the BOC entry in the register under Art. 18 of LR been raised, neither as a new one (Art. 15 with reference to Art. 14 of LR), nor as an established one within the meaning of § 2 Para. 1 of TFP (Transitional and Final Provisions) of LR whether a religion should obtain or maintain its status as a legal entity. In the Public Register of Religions that is kept by Sofia City Court, the Bulgarian Orthodox Church has not been recorded and there is not a batch open for entering the circumstances under Art. 18 of LR.

Therefore, the **General Assembly of the Commercial Colleges deviates** the proposal of the Minister of Justice for an interpretative decision on the question «Should the BOC be entered in the public register of religions, which is kept in the SCC, pursuant to Art. 18 of LR as well as the registration of its local branches, according to Art. 20 of LR.

In terms of local branches of BOC the Commercial Colleges rules the following legal arguments in such a way:

«The Religious Denominations Act adopted in 1949 (repealed) does not provide legal registration for religions or their local units. According to Art. 6 of RDA (repealed) the religious denominations acquire the quality of a legal entity from the moment of validating their statutes from the Council of Ministers or its authorized deputy chairperson of the Council of Ministers. From this moment on the quality of the legal entity is obtained by the local branches of religion as well.

Following the adoption of LR in 2002 the established local branches that are legal entities are subject to registration in the register of the respective district court, preserving this status according to that established order under § 2, Para. 4 TFP of LR.

The controversial case law is the result of different interpretations by the courts regarding the applicability of this order of existing local branches of the Bulgarian Orthodox Church. Legal acts containing conflicting interpretations of the law are laid down on the occasion of registered proceedings under Art. 500 of CPC (repealed) and upon inspection under Art. 25 of CPC (repealed) of the legal capacity of a party in contentious proceedings.

The problem arises because of the different legislation in repealing the Law on Religions and registry system introduced by the Religious Denominations Act since 2002.

The legal definition of the concept of «local units» in LR is missing. It also lacks in the repealed RDA which under Art. 6, Para. 1, proposal 2 with reference to 1 defines only the procedure for acquiring the quality of legal entities of local branches of religious denominations. The statute of the BOC approved in 1949 is consistent with the RDA. This Statute does not contain the term «local units».

With the adoption of the new Statute of the Bulgarian Orthodox Church — Bulgarian Patriarchate (BOC-BP), in 2009 the definition of «local units» was introduced. Under Art. 13, Para. 1 of the new Statute,

as local units — legal entities — are listed the following: bishoprics, churches and monasteries. The contradictory case law on the application of § 2, Para. 4 of LR preceded the adoption of the Statute of the Orthodox Church in 2009, but as far as the courts ruling is under cases related to the necessity of registration and proof of legal capacity of churches and monasteries, there is no obstacle to the interpretation of Art. 124, Para. 1 of JA under the present case for the court to use the definition of local branches established by this Statute, excluding the other legal entities under Art. 13 of the repealed statute from the scope of ruling.

One of the views covered is that the existing local branches of the BOC that are LE should be entered in the registers of the respective district courts under § 2, Para. 4 of TFP of LR since the law has not excluded the applicability of protective proceedings in respect of them, as it did with the religions under Art. 10 of LR — § 2, Para. 3 of TFP of LR.

The other thesis in the case law is that the existing local branches of LR of BOC that are LE should not be entered in the registers of the respective district courts, as although the law does not explicitly exclude them, regarding them there extends the exception under Para. 3 of § 2 of TFP of LR, insofar as divisions of religions for which this mode does not apply.

On the applicability of the procedural rules under § 2, Para. 4 of TFP of LR, there is a controversial case law calling for the application of Art. 124, Para. 1 of JA regarding it, due to which SCC-Commercial Colleges owes a ruling under this matter.

The legal reasoning of the Higher Court of Cassation is the following.

Regulating the special status of the BOC-BP under Art. 10 of Chapter II, the law excludes the traditional religion of the Republic of Bulgaria on the mode of the registration of the religions established by Chapter III (Articles 14–20 of LR).

The legal logic suggests that since the Registry mode is excluded for religion, this scheme does not apply to its local branches.

The local units — components of the BOC-BP and their legal status as a legal entity are defined by Art. 13 of the Statute (the Statute established by LR since 1949) and the current Statute of 2009. The procedural order under § 2, Para. 4, proposal 3 of the TFP of LR includes the mandatory presentation of a document determined by the entry of religion into the register under Art. 18 of LR that BOC-BP can not present as it is not to be included in this register.

Due to the foregoing considerations, the General Assembly of the Commercial Colleges of the Supreme Court of Cassation holds that the procedure under § 2, Para. 4 of TFP of LR does not apply to existing local divisions of the Bulgarian Orthodox Church — Bulgarian Patriarchate.

The legal capacity of the BOC-BP is subject to direct settlement by the law: Art. 10, Para. 2, proposal 1 of LR, so it is not susceptible to proof under Art. 27 of CPC. The power of representation of the BOC-BP is also governed by the law: Art. 10, Para. 1, proposal 4 of LR with reference to Art. 30, Para. 1 of CPC; the act of choosing the Bulgarian Patriarch (Art. 47, Para. 4 of the Statute of the BOC-BP) is considered to be a legitimizing document.

Local units of the Bulgarian Orthodox Church — Bulgarian Patriarchate, those having the status of legal persons are bishoprics, churches and monasteries: Art. 13 of the Statute of the BOC-BP with reference to Art. 10, Para. 2, proposal 2 of LR. Their legal representatives within the meaning of Art. 30, Para. 1 of CPC identify themselves as such by the acts of election or appointment, issued by bodies that elected or appointed them: Art. 96, Para. 3 of the Statute — about bishoprics: Art. 140, Para. 4 of the Statute — about the churches and Art. 161, Para. 3 and Para. 4 of the Statute — about the monasteries.

Therefore, the General Assembly of the Commercial Colleges decided that the local branches of the Bulgarian Orthodox Church — Bulgarian Patriarchate is not subject to re-registration under § 2, Para. 4 of TFP of LR. The legal capacity of the Bulgarian Orthodox Church — Bulgarian Patriarchate and its local branches, having the status of legal persons, derives from the law: Art. 10, Para. 2 of LR. The representative power of those who represent them is evidenced by acts of election or appointment issued by bodies that elected or appointed them [24].

V. THE MUSLIM COMMUNITY

The data of the last census shows that the Muslim community in Bulgaria consists of different «sub-groups». The traditionally living in Bulgaria ethnic Turks are in majority Muslims Sunits (546,004 persons or 94,6 %), Shiite Muslims (27,407 persons or 4,75). Other people are self-identified only as «Muslims» (3,728 persons or 0,65 %). The ethnic Turks, Bulgarian Mohammedans (Pomaks), Roma Muslims are citizens of the Republic of Bulgaria, while most representatives of the Arab countries have a status of permanent or temporary residents or refugees [26]. The comparison of the data of the censuses in 2001 and 2011 shows

a trend of decreasing of the Turkish population in Bulgaria. The number of Turks according to the census in 2001 is 746,664, while in the 2011 census this number is 585,024, which means 161,640 persons less.

Turks as to 01.02.2011

Ethnic groups	Total	Bulgarian	Turkish	Roma	Russian	Tar-tarian	Arabian	Roma-nian	Other
Turks	585,024	18,975	564,858	549	15	8	4	4	52

The sociological survey of Emilia Chengelova, Roska Petkova and Vesselin Minchev, conducted in 2010 distinguishes three distinctive stages of the image of the Muslim community in Bulgaria since 1944.

«The first stage spans the period until the beginning of 1980s, when in the conditions of a state-organized social and economic regime the Muslims were treated as one of the minorities in the country, with equal rights and opportunities for free will, equal access to medical services, social insurance, education and labour. The main focus, however, was placed on the ethnic Turks. Purposeful care was taken for their integration in the Bulgarian society, and special attention was paid to the so-called regions with mixed population. This stage was characterized with the implementation of a state policy for encouraging the ethnic Turks to acquire higher education and directing them towards professional realization in the construction-engineering and some humanitarian areas.

This stage was considerably calm and the ethnic Turks were considered one of the minorities, which were the part of the Bulgarian state without any problems. The predominating public attitudes among the Bulgarians towards the ethnic Turks are that they are peaceful, hard-working, diligent people, cooperative and neighbourly. Difference is made concerning the Bulgarian Mohammedans, who are referred to as a more closed community (compared with the ethnic Turks), following more strictly the norms of the Muslim religion and leading a considerably more capsulated social life» [25; 18].

The second period in the positioning of the Muslim community in the Bulgarian context encompasses the end of 1970s and the beginning of 1980s with the carrying out of the so-called «regeneration process». The tragic events during the coercive change of the names of the Turks and their replacement with Bulgarian names in 1984 — 1985 gave birth to illegal formations, which gradually crystallized in the form of a movement of the Turks and Muslims for restoration of their rights. «The respondents talk carefully about this period, not hiding their deep disappointment from the violence exercised upon them. They talk about the inevitable changes in the way of thinking of the ethnic Turks, who, in response to their rights being taken away, choose the moving to Turkey» [25; 18].

It is less known that the so called «Revival Process» has its preceding stages in respect to the Bulgarian population with Muslim faith.

The current state of the Bulgarian Muslim community (the so called Pomaks) is the subject of a new field study carried out in 2014 under the guidance of Hristo Matanov [26]. He rightly noted that «the problems of the Bulgarian Mohammedan community in our country during the last century and a half have been the subject of interest that sometimes subsides, then grows depending on the situation in the Bulgarian society. It is usually treated without regard to its historical roots.» [27; 5].

In order to integrate this population, the first steps were undertaken through changing the traditional clothing. «Then, in the period 1964 — 1974 there was an action on the change of the Arab-Turkish names to Bulgarian ones. It did not run smoothly, as it was recognized by many of the participants.» [28; 7]. In most of the interviews taken by Ilian Iliev, the answer to the question of «How should I call the citizens of the Republic of Bulgaria, who profess Islam?» is Bulgarians who profess Islam, pure Bulgarians, Mohammedan Bulgarians or Bulgarians professing the Muslim religion.» [28; 107, 112, 116, 122, 127].

The years of the so called regeneration process were a serious ordeal for the Bulgarian society: the existing peaceful inter-ethnic attitudes were destroyed, many challenges to the social peace appeared, and in the regions with mixed population conflicts occurred. In this situation emerged the Movement for Rights and Freedoms (MRF), which set its primary goal to fight for restoring and protecting the rights of the ethnic Turks and Muslims in Bulgaria.

The third stage of the development of the ethnic Turks started after 10th November 1989. The radical changes in the political and socio-economic conditions in the country cleared the way for political pluralism. This new opportunity was perfectly captured by the MRF leaders who participated actively in the pluralistic political life. In its rhetoric MRF actively defended the protection of the rights of the Turks and Muslims in Bulgaria. With time MRF identified itself as a spokesman for the interests and guarantor of the rights of all

Muslims living in Bulgaria. The authors of the sociological study pointed out: «Our intention has been to avoid the political discourse, but during the interviews it became clear that it was impossible. For the other communities predominant are organizations and unions of cultural, religious and social character, but for the ethnic Turks there is a serious political mobilization. They think that maintaining their identity is possible almost only through an active political activity, which would guarantee real mechanisms for protecting the universal rights. That is why the respondents point MRF as the only organization, which expresses their interests. So, de facto, despite their numerousness, the ethnic Turks have no other legitimate for them organizations. The study also shows that the main focus of their activity is protecting their civil and human rights, which concerns implementing certain policies and active involvement in the political life of the country.

The interviews show that this thesis is most closely followed by the representatives of the ethnic Turks. They point MRF as the main institutional form of organizing the activities of the Muslim community in Bulgaria» [28; 19].

VI. LEGAL REGULATION OF THE MUSLIM COMMUNITY/HEAD MUFTI'S OFFICE/The religious institutions of the Muslim community

Another important organization, which supports the Muslim community's identity, is the Head Mufti's Office [29; 85]. According to the respondents, the most correct definition of the Head Mufti's Office is a religious institute of the Muslims in Bulgaria, which organizes their religious life. The Mufti's Office organizes the religious education. These are mainly Qur'an courses, as well as education helping people of all generations to understand the Muslim religion. Special attention is drawn to the involvement of young people in the Qur'an courses and their introduction to the main ethic and moral norms concerning the practice of religion [30; 95, 96].

The current Statute of the Muslim faiths was adopted by the Extraordinary National Muslim Conference on 12.02.2011.

According to Art. 1: «The Muslim religion is an autonomous community of citizens, followers of the Islamic religion based on uniformity of religious affiliation and religious rituals.» [31].

Article 3 governs the composition of the Muslim religion: «The Muslim religion includes the Muslim religious community as a voluntary union of all citizens that are followers of Islam and its religious institutions for spiritual management.»

Art. 4 of the Statute is especially important: «The Muslim religion and its institutions can not be used for preaching racial, religious or ethnic hatred and other anti-human activities.»

In the post communist transition period the situation in the leadership of the Muslim religion in Bulgaria was complicated. There are disputes within the Bulgarian Muslim community, especially on the officially registered Chief Mufti.

One of the groups in this religious denomination: Fikri Sali Hassan lodged a complaint before the ECHR in 1996 [32]. The dispute broke out as a result of the 2003 election of two different chief muftis by bodies which both claimed to represent the Muslim community. One of the 2003 conferences elected Fikri Sali as a new Chief Mufti to replace Selim Mehmed. Sali formerly held the position from 1992 — 1994. The other conference was convened by another former Chief Mufti, Nedim Gendzhev, and selected Ali Hadji Saduk to replace Mehmed. Both conferences submitted documentation to the Sofia Municipal Court listing their respective candidates as a new Chief Mufti. A registration controversy ensued, leaving no legally recognized successor to Mehmed.

On March 8, 2004, two Sofia Municipal Court rulings annulled the 1997 and 2000 conferences of the Muslim denomination, thereby invalidating the leadership elected by each of the conferences. On 19 July 2004, the Sofia Municipal Court appointed Fikri Sali, Ridvan Kadiov and Osman Osmailov as interim representatives of the Muslim community pending the settlement of some civil court cases related to the leadership dispute. On 5 November 2005, the Sofia Appellate Court overruled the appointment of the triumvirate, stating that the Muslim community leadership could be appointed only on its own initiative and not by the Sofia Municipal Court. In January 2005, the Supreme Court of Cassation upheld the ruling. The Supreme Court ruling combined with the March ruling of the Sofia Municipal Court effectively restored the pre-1997 Supreme Islamic Council, headed by Nedim Gendzhev, as the legal representative of the Muslims in the country. However, following the Supreme Court's January 2005 ruling, the Supreme Cassation Prosecution confiscated the case files, which prevented their being transferred to the Sofia City Court and thereby delayed Gendzhev's registration of the new leadership. In May 2005 the prosecution turned the case file over to the Sofia Municipal Court for 24 hours, allowing the Sofia Municipal Court to pass the five rulings affecting the leadership dispute. Gendzhev immediately appealed the registration of Mustafa Alish Hadji, and the ap-

peal was pending for the Prosecution's release of the case files. By decision of the Supreme Administrative Court form 8 of February 2008 the election of Mustafa Alish Hadji at the conference held in 2005 was declared null and avoid. The Sofia City Court has convoked *ex officio* a new Muslim conference after receiving a list with 1000 names. This represents an infringement of the Muslim's rules according to Ashim Hadji Hassan from the Supreme Muslim Council [33].

The Chief Mufti dispute was finally resolved by the decision of Sofia Appellate Court № 632/20.04.2011.

On 12.02.2011 there was an Extraordinary National Muslim Conference (ENMC) convened on the initiative and decision of the Muslims. It is expressed in a petition including the signatures of 215,000 adult Muslims, as well as the signatures of over 4000 members of Muslim trustees and imams, representing Muslim municipalities in Bulgaria (about 870 Muslim trustees).

For holding the conference there was a decision of the Supreme Muslim Council, elected by ENMC, held on 31.10.2009, the procedure for the registration of which has been pending since 08.12.2010.

The Members of the Supreme Islamic Council (SIC), elected at the National Muslim Conference in 1996, were informed of ENMC on 12.02.2011 and 4 people of them — Bekir Halil, Hadzhimurad Faik, Mustafa Nuri and Yusuf Ali attended the ENMC. Moreover, there are obtained written statements in support of the decision to hold ENMC. Due to the expired term of the Supreme Islamic Council (SIC) since 1996, they declared the inability of the body to meet regularly and to pass valid resolutions as well as the support for convening and active participation in organizing ENMC on 12.02.2011.

Convening the conference is announced in mosques, trustees, through the media, including publications in two national daily newspapers: «Dnevnik» and «Telegraph» newspapers.

At the meeting of the Extraordinary National Muslim Conference there were more than two thirds of the listed members, according to Art. 64, Para. 4 of the Statute of the religious denomination since 07/08/1996. The Muslim trustees in the country with the right to appoint delegates are 1217. The quorum required by the Statute is 812 people. The people that attended the meeting were 939, and their participation was attested by the signatures of each delegate. According to the agenda of the conference a new Statute was adopted, and under it a Chief Mufti Mustafa Alish Hadji was elected as well as a composition of the Supreme Islamic Council — Central Authority.

The Muslim religion is registered at Sofia Municipal Court officially, according to § 2, Para. 3 of the TFP of LR.

A new Statute of the Muslim religion was adopted on 12.02.2011.

The careful analysis of the judicial saga shows that the Sofia Appellate Court had twice applied the principle of secularization as a justified non-intervention in the affairs of the Muslim religion: in 2005 and in 2011. A special attention should be paid to the reasoning under the Judgment of 2011. The Court highlights the following:

«And as the right of religion, as a value of the highest order, includes the possibility of free exercise of religion, the regime for the registration of legal entities — beliefs — should be subject to the rule of non-interference in the internal affairs of the religious denominations community.»

«In the end, based on the assessment of the evidence and facts of the case as a whole, it is clear that the community is one that can adopt, amend and repeal rules or decisions regarding its structure and activity, as well as selecting certain governing bodies. The designated authority — collective or individual can not have more power than the community that it has chosen and empowered by its inherently belonging power. There is no legal prohibition on members of the denomination to adopt structural rules or change them. In this regard, it should be assumed that after the requested changes have occurred, subsequent to valid decisions of the community and not against the law and the statute of the denomination, they are subject to registration.»

«It should therefore be given a decision through which the will of delegates elected by the Muslim community in compliance with the requirements of the Statute of the denomination could be respected, through which there could be an unbroken right to a denomination to establish and maintain its religious community and institutions with a structure and method of representation that are appropriate to the free conviction of their members stipulated in Art. 13 of the Constitution of the Republic of Bulgaria, respectively, in Art. 6 of the Law on Religions expressed on 12.02.2011 at the Extraordinary National Muslim Conference. It is unacceptable to limit the rights of religion in violation of the provisions and of Art. 37 of the Constitution and Art. 8, Para. 1 of LR and the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF) of the Council of Europe. According to Art. 2, Para. 1 of LR, the right of religion is fundamental, absolute, subjective, personal and inviolable. The restriction of the right to religion is possible

only when there are certain conditions, respectively in Art. 37, Para. 2 of CRB and Art. 7 of LR, which are absent in the case. The conclusion of the Court of First Instance that the State, by an entry in the register, determines the means of representation and management of different faiths, cannot be shared. Assuming with its decision which authority is legitimate to convene a conference and which is entitled to represent the community, the court goes beyond the procedural powers, in particular contentious proceedings, and violates the principle enshrined in the Constitution for freedom of religion, which is also contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms and the established practice of the European Court of Human Rights.»

Despite the high degree of integration, the Muslim community (mostly the ethnic Turks) faces problems and challenges. According to the people interviewed [34], the main source of these problems is the ethnic and religious confrontation, the attempts for political isolation of the representatives of the ethnic Turks and their non-admission in the managing structures of certain ministries.

The sociological survey proves that the problems of the ethnic Turks are clearly economical. The respondents refer to the poverty and the low incomes as one of the most serious motives for creating negative attitudes among the ethnic Turks and the Bulgarian Mohammedans. Since they cannot find steady income sources, many of them turn to Turkey. And although they feel Bulgaria as their motherland, they prefer to work in Turkey so they can be better provided materially.

According to the respondents, in the last few years there is an increase of the xenophobic acts, and the acts of anti-Islamism become more daring. The original talks are provided by «Ataka» [35], which is the main propagator of anti-Islamic patterns of thinking. The clash between the activists of «Ataka» and the Muslims in front of the Sofia mosque on the 20th May 2011 raises serious concerns about the state of the reality of exercising religious rights in Bulgaria.

There are many attacks against mosques, arsons included, and not one case has been solved.»[36] According to the report of the chief mufti Mustafa Hadzhi in the period 1991–2009 59 cases of profanation of religious places of the Muslim confession were recorded.

VII. LAST ATTEMPTIONS FOR AMENDMENTS TO THE LAW ON RELIGION

In recent years there have been several attempts to amend the Law on Religions. The first was related to the problem of the legitimacy of the Chief Mufti. In a «Report on a Bill on amending and supplementing the Law on Religions, № 054–01–71, filed on September 3, 2010 by MP Tuncher Mehmedov Kardzhaliev and MP Chetin Kazak [36], there was a proposal on the creation of Para. 6 in Art. 19. The project was in close connection with the above-described specific case in Islam. As indicated in the «Report», «The opinion of the importers is that there is a serious gap in the Law on Religions and the statutes of the major religious communities in the Republic of Bulgaria, which in rare cases leads to the practical impossibility to «freely and unhindered exercise religion» as regulated in Art. 4, Para. 3 of the Law on Religions.

The main point of the proposed changes is the ability for Sofia City Court, at the request of more than a half of the registered local branches of the religion, upon the occurrence of exceptional circumstances, to convene the supreme body of the religious community.

The grounds of the importers make it clear that the specific reason for the bill are the problems in a particular religion — Muslim — and the alleged failure to convene the supreme body of religion. The proposed change, however, would affect all registered religious institutions. The importers themselves admit that their institutional structure can not be uniform, because it is rooted in the religious tradition, canons and dogmas laid down in their statutes.

After a discussion, the Commission on Human Rights, Religion, Complaints and Petitions of citizens with 2 votes «for», 3 votes «abstain» and 8 votes «against» proposed to the National Assembly not to accept the bill on amending and supplementing the Law on Religions submitted by Tuncher Kardzhaliev and Chetin Kazak during the first reading. It was rejected during the plenary vote of the National Assembly, too. 32 out of 138 MPs voted «for», 30 «against» and 76 «abstain».

The following bills amending and supplementing the Law on Religions concern the right of ownership and restitution proceedings. They provoked strong reactions in both the Holy Synod and the Chief Mufti's Office as well as among academics. As it is pointed out by Assoc. Prof. Dilian Nikoltchev, Professor of Canon Law at the Theological Faculty of Sofia University «St. Kliment Ohridski»: «Above all it must be said that the Bulgarian Orthodox Church was indeed particularly affected in its right of property, after a period of 40 years it was in a constant mode of a property dictate and no small part of its property was confiscated and expropriated. This is the situation on the one hand. On the other hand, the Orthodox Church was at the gate of the changes, unprepared and almost impossible to organize all those inherently property legal processes.

To a large extent this role was played by its senior picture — bishops, «born» from the womb of State Security and as this repressive communist authority, reborn in the most multifaceted economic and political lobbies and interests, shortly said, and quite current — oligarchic appendage, hiding behind the form of faith and cassock. This is confirmed by the numerous scandals of recent years, in large part associated with not quite transparent sales on transactions and swaps of church property» [37].

On July 16, 2013 members of the BSP, DPS (Movement for Rights and Freedoms) and «Ataka» led by the former parliament speaker Mihail Mikov tabled amendments to the Law on Religions, which provoked sharp controversy between the church and other institutions on ownership of religious temples. The idea of the importers was that the denominations should be owners of the temples, where they perform a liturgical activity. The draft of Mikov envisaged that the religions obtain ownership on such property and continue to manage and use them for the purposes of their religious activity, as their status of cultural or national monuments remains.

The Holy Synod expressed publicly its position to support the bill on amending the law that was introduced by the Chairman of the National Assembly Mihail Mikov and a group of MPs.

According to representatives of cultural institutions and museums, however, the texts were vague and unclear and one can see the desire of religions to gain ownership rights not only on existing temples and monasteries, but also on those built in time for this purpose, most of which are monuments of cultural heritage.

Then archaeologists and cultural heritage experts reacted very sharply, the law was not adopted by the Commission on Culture and it did postpone the discussion of the law during the first reading in the plenary hall of the National Assembly [38].

Then there was a submission of a new bill amending and supplementing the Law on Religions prepared by deputies of the Left Dimitar Dabov, Plamen Slavov and Tatiana Burudzhieva [39]. According to the draft bill of three deputies, the temples and religious properties that are cultural monuments will be state property and will not be reimbursed to the denominations.

The project was submitted to the parliament after protests in Karlovo against the return of the monument «The Bullet Mosque» to the Islam religion and the decision of Sofia City Administrative Court in the summer of 2013, which recognized the right of ownership of the Chief Mufti's Office on 1500 waqf properties. Meanwhile the status of the Memorial Church «St. Al. Nevski», built on state land with Russian gifts still remains unclear, along with other Orthodox churches, which are cultural monuments.

The Holy Synod took a formal position (statement of December 16, 2013), including a written statement to Chetin Kazak, Chairman of the Legal Affairs Committee of the 42nd National Assembly [41]. The main arguments of the Holy Synod are the following. First, there is a distortion of the general legal principle that the new law can not re-arrange pending legal relations (proposal outlining the proposed sites, which are excluded from the restitution action of § 5, Para. 1 of the Transitional and Final Provisions of the Law on Religions); it is an absolute subjective material right, such as the right to property. The next reason is that the bill is unconstitutional because it conflicts with Art. 17, Para. 1 of the Constitution, taking away the ability of religion to reclaim ownership of their their nationalized properties under the rules of § 5. «Since the object of the Bill is namely places of worship, the constitutional norm of Art. 13 is also violated» [40].

In the common position of the Chief Mufti, the statement of the Holy Synod was fully supported [41]. «Such a legislative initiative is not consistent with the interests of the whole Bulgarian people, it is biased in their intentions and anti-democratic», the position added [41].

The protests in Plovdiv, the escalation of tensions related to «The Bullet Mosque», the subsequent events in the Bulgarian political life prevented texts come onto the agenda on the 42nd National Assembly. «The Mufti office withdrew its proposals for amending the Law on Religions,» said the lawyer of the Chief Mufti Krasimir Ruev to «Nova TV» [42].

However, in 2013 there were several amendments to the Law on Religions, which affected the implementation of medical, social and educational activities of religions [43]. The general provision of Art. 30 enables registered religions to disclose medical, social and educational institutions. The amended Art. 31 empowers the Ministry of Health, Ministry of Labour and Social Policy and the Ministry of Education to ensure compliance with state requirements for carrying out the relevant medical, social and educational institutions of religion.

Another amendment affects the opening of theological schools of registered religions. According to Art. 33 «Registered faiths with the permission of the Minister of Education may establish religious schools for their ritual needs in accordance with the Public Education Act».

Education received in religious schools is considered a secular one in accordance with the Public Education Act.

Registered religious groups can detect secondary schools under the terms and conditions set out in the Public Education Act for private schools.

The admission to these schools is done through a written request by parents or guardians, except in cases when the student is at least 18 years old.

The educational establishments of the registered religious denominations can not hinder the provision of required levels of public education under the Constitution and the law.

The registered religious denominations may open universities under the terms and provisions of the Law on Higher Education.

Higher spiritual schools are established under a proposal to the management of registered religions with the permission of the Council of Ministers.

Some conclusions:

The detailed comparison of the structures of religious rights and freedoms in the Republic of Bulgaria and the relations between the Bulgarian state and religions gives grounds to assert that they comply with the obligations of the country undertaken according to the International Law and our EU membership. The Constitution of Bulgaria provides primacy of those obligations under the International Law (Art. 5, Para. 4 of C). The legislation on religious rights and freedoms consistently regulated the secularization principle as a fundamental one. The last presented case law of the Court of Appeal in Sofia and the Supreme Court of Cassation also demonstrates adherence to the separation of state from religion and the strict observance of religious rights and freedoms as fundamental, absolute, subjective, personal and inviolable.

The principle of equality and non-discrimination on the basis of professing religion or atheistic views is consistently developed and applied. References to «atheistic views» could be described as «obsolete» since the time of the totalitarian regime. But one can not ignore the objective fact of the large number of persons who have not declared their affiliation to any religion/religious denominations, according to the last census in 2011 [44]. Those having atheistic views are a relatively large part of the Bulgarian society and this fact can be explained by the forcible inculcation of atheism 25 years after the democratic changes in the country.

The Bulgarian legislation could be assessed as extremely democratic, especially in the section on the registration of religious denominations. The registration of the religious communities is not compulsory. The right of religion and faith can be practised through associations without registration. The widely criticized by some authors «privileged» position of the Bulgarian Orthodox Church is no exception to the legislation in other countries in Europe. The Bulgarian Orthodox Church is explicitly excluded from the procedure for registration and its legal capacity is the subject of direct settlement of the Law on Religions. This conclusion is confirmed by the Interpretative decision of the Supreme Court of Cassation that is analyzed in detail in the article. This «privileged» status does not always create legal stability, as evidenced by the problems surrounding the restitutions of church properties.

The latest amendments to the Law on Religions broaden the scope of various activities of religious denominations, but does not solve the complex problems associated with restitution claims.

Regarding the existing legal framework, one should take the reality into account. The Bulgarian state has the «tools» for influencing religions by the state subsidy [45], the regulation of other activities of registered religious denominations: medical, social, educational, etc. This, in my opinion, does not violate the principle of secularization, and it is an expression of the relationship between the State and the religious denominations.

It should be noted that the long schism in the Bulgarian Orthodox Church was overcome. The same is the situation with the leadership of the Muslim religion. This was chronologically in the same period: 2009 — 2011. In Bulgaria there is no specific sociological research on how the split in the two largest denominations led to negative consequences for the believers. But in any case, the unclear leadership and litigation hardly contributed to the full exercise of religious rights of the Orthodox believers and Muslims.

The current Law on Religions cannot be unambiguously assessed. The reason is the lack of assessment of the impact of legislation as *ex ante*, before its adoption, and *ex post*, regarding its operation for 12 years now. A proof of this is the case, filed by the so called Alternative Synod of Inokentiy at the European Court of Human Rights.

The case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria [46] ended with judgment for just satisfaction on 16 September 2010.

In a judgment delivered on 22 January 2009 («the principal judgment»), which became final on 5 June 2009, the Court held that there had been a violation of all the applicants' rights under Article 9 in that «the pertinent provisions of the 2002 Religious Denominations Act, which did not meet the Convention standard of quality of the law, and their implementation through sweeping measures forcing the community to unite under the leadership favoured by the Government went beyond any legitimate aim and interfered with the organisational autonomy of the Church and the applicants' rights under Article 9 of the Convention in a manner which cannot be accepted as lawful and necessary in a democratic society, despite the wide margin of appreciation left to the national authorities» [47].

A modern legal regulation of the religious rights and freedoms is at hand. The development of the recent events in our society, though, brings up the issue of the reality of exercising these religious rights and of the balance between the different groups of rights and freedoms.

Annex

Annex № 1 to Art. 6, Para. 4 of THE STATE BUDGET OF THE REPUBLIC OF BULGARIA ACT for 2014. Promulgated, State Gazette, No. 109 as of 20 December 2013, effective since 01.01.2014

Distribution of subsidies to religious denominations, registered under the Law on Religions, 2014

№	Name	Amount (thousands of BGN)
1	To support the Bulgarian Orthodox communities abroad and the priests working abroad	730,0
2	For the reconstruction and building of churches and monasteries of the Bulgarian Orthodox Church in the country	2000,0
3	For the reconstruction and building of places of worship of the Muslim community in the Republic of Bulgaria	230,0
4	For the reconstruction and building of churches and monasteries of the Catholic Church in the Republic of Bulgaria	35,0
5	For the reconstruction of synagogues and support of the Jewish Religious Community in the Republic of Bulgaria	30,0
6	For the reconstruction and building of temples of the Armenian Apostolic Orthodox Church in the Republic of Bulgaria	35,0
7	For the reconstruction and building of prayer temples for other registered denominations in the Republic of Bulgaria	50,0
8	For the reconstruction of religious buildings of the Bulgarian Orthodox Churches that are of national importance	350,0
9	For issuing religious literature and representative scientific publications	40,0
10	Reserve	500,0
10.1	including the creation of a register, cartotheque and cartography of all temples, prayer houses and monasteries on the territory of the Republic of Bulgaria	50,0
	Total:	4 000,0

References

1 State Gazette. — No. 39. — 26 May, 2009. — Amended SG. — No. 100. — 21 December, 2010. — Amended SG. — No. 9. — 28 January, 2011.

2 State Gazette. — No. 57. — 25 June, 1999. — last amended. — No. 38. — 18 May, 2012. — Suppl. SG. — № 15. — 15 February, 2013.

3 Source www.nsi.bg/census2011/index.php. For comparison with the former census, see, Otherwise different, ILEIVA, IRENA, Anti-Semitism, islamofobia and other forms of discrimination, Editor: the Centre for Comparative Studies. — P. 93–95. — [ER]. Access mode: www.tonioloricercita.it/index.php?...otherwise-different2ricerca.

4 To be compared to the data of the census in 2001: Bulgarian: 6,655,210 of the total 7,928,901 nationals, Turks with 746,664 people, followed by the Roma (Gypsies) with 370,908 people. In 2001 the percentage of the Turks was relatively constant representing 9.4 % of the country's citizens.

5 Some comments need to be made, in order to be precise in the use of the statistical methods and data on the minorities in Bulgaria. The first is on the existence of a 'Macedonian' minority in the country. The official Bulgarian position is that Macedonia is a geographical region, populated by Bulgarians. This region is now divided between Bulgaria, Greece and the Former Yugoslav Republic of Macedonia. Due to the fluctuating political qualifications of the region's population, there are differences in the census. Till 1943 the Macedonians were not considered an independent nationality. They were included in the censuses as Bulgarians. The se-

cond comment is on the differences between Romanians and Wallachians or Vlachs. From 1900 till 1975 they were included in the censuses as Romanians. The third comment is on the Cincars (Aromuns, Aromanians or Kutsovlachs). Between 1905 and 1934 they were included in the censuses as Roma. After 1934 the Bulgarian Muslims (Pomaks) have been listed as Bulgarians. From 1934 to 1965 the Tartars, Romanians, Slovaks and Serbs were not examined as independent ethnic groups.

6 For a more detailed analysis of Art. 27 ICCPR, see, ILEIVA, IRENA, *Minorities on the Balkan*. The International Protection, Open Society Foundation. — Sofia, 1994. — P. 41–52.

7 There are other relevant acts such as: Decree No. 86 as of 12th March 1997 on the certification of the state register of specialties according to the educational-qualification degrees, 1997; Regulations on the recognition of education received abroad, 2000; Law on the Protection of Consumers, 2005; Law on Community Centres, 1996, etc.

8 Analysis of the legal term «minority» in ILIEVA, IRENA, *Legal regulation of the religious rights and freedoms in Bulgaria, in Liberta di coscienza e diversita di appartenenza religiosa nell'Est Europa*. A cura di Giovanni Cimbalo e Federica Botti, Bononia University Press, 2008. — P. 81–82.

9 Promulgated, State Gazette. — No. 26 as of 1st April 1986. — last amend. SG. — No. 61 as of 25 July 2014.

10 Promulgated, State Gazette. — No. 86 as of 30th September 2003. — last amend. — No. 68 as of 2 August 2013.

11 Promulgated, State Gazette. — No. 48 as of 13th June 2000. — last amend. — No. 84 as of 27th September 2013.

12 Promulgated, State Gazette. — No. 86 as of 28th October 2005, into force as of 29th April 2006. — last amend. — No. 71 as of 13 August 2013.

13 Promulgated, State Gazette. — No. 67 as of 27th July 1999. — last amend. — No. 68 as of 2 August 2013.

14 Promulgated, State Gazette. — No. 56 as of 19th May 1998. — last amend. — No. 66 as of 26 July 2013.

15 Promulgated, State Gazette. — No. 112 as of 2001. — last amend. SG. — No. 61 as of 21 July 2014.

16 For a more detailed analysis of the antidiscrimination provisions, see, ILIEVA, IRENA, *Regulation of the principle of equality and non-discrimination*, in TSVETANA KAMENOVA, EMILIA DRUMEVA, IRENA ILIEVA, *European and National Antidiscrimination Legal Regulation*, second revised edition. S., 2004. — P. 137–176.

17 CIMBALO, GIOVANNI, *Tutela individuale e collettiva della liberta di coscienza e modelli di relazione tra stato e confessioni religiose nei paesi dell' Est Europa, Liberta di coscienza e diversita di appartenenza religiosa nell' Est Europa*, a cura di Giovanni Cimbalo e Federica Botti. — Bononia University Press, 2008. — P. 16.

18 Article 13. (1) Religious denominations shall be free; (2) Religious institutions shall be separate from the State; (3) Eastern Orthodox Christianity is a traditional religion in the Republic of Bulgaria; (4) Religious communities and institutions, or religious convictions, may not be used for political purposes. — [ER]. Access mode: http://www.vks.bg/english/vksen_p04_01.htm#Chapter One

19 Torres Gutierrez, Alejandro, *An Introduction to the History of Religious Freedom in Bulgaria*, *Oriental Studies. Between East and West. Cultural and Religious Dialogue before, during and after the Totalitarian Rule*, Scholarly papers. — University of Latvia, 2013. — Vol. 793. — P. 201.

20 State Gazette, No. 120 of 2002, last amend. SG No. 68 of 2 August 2013. For detailed analyses of the Law see Iliyeva, Irena, *Legal Regulation of the Religious Rights and Freedoms in Bulgaria, Liberta di coscienza e diversita di appartenenza religiosa nell'Est Europa*, Acura di Giovanni Cimbalo e Federica Botti. — Bononia University Press, 2008. — P. 84–92.

21 State Gazette. — No. 66/2003.

22 According to the data presented by Jasmina Donkova, senior specialist at the Direction «Religions» by the Council of Ministers by November 2006 85 religious denominations were registered and 5 were in process of registration. www.pravoslavie.bg/content/view/4122/202. As to May 2008 there are 98 registered denominations. According to the newspaper «Trud» there are 127 religious denomination registered as to 05.04.2014. — [ER]. Access mode: <http://www.trud.bg/Article.asp? ArticleId=3940395>, last visited on 12 August 2014.

23 See for more detailed Peteva, Jenia in *Law and Religion in Post-Communist Europe*, Editors: Ferrari, Silvio and Durham, W.Cole, Peeters, 2003, p. 37 and further; Donkova, Jasmina. *About the Constitutionality of the Law on Religions*, *Jurisprudence World*. — No. 2. — 2003. — P. 117–118.

24 [ER]. Access mode: http://www.vks.bg/vks_p10_81.htm

25 For more details, see, *Otherwise different*, CHENGLOVA, EMILIA and PETKOVA, ROSKA and MINCHEV, VESSELIN, *Organization, Social Practices and Problems of Jewish and Muslim Communities in Bulgaria*. — P. 17. — [ER]. Access mode: www.tonioloricerca.it/index.php?...otherwise-different2ricerca.

26 Hristo Matanov is a professor in History, Director of the Religious Denomination Directorate during the period April 1993 — October 1996, Head of the Department of «Byzantium and the Balkan people» at the Faculty of History at Sofia University «St. Kliment Ohridski».

27 *The Bulgarian Muslims and the events of 1970s. Interviews*, Matanov, Hristo, compiler. — Sofia: Sofia University Publishing House «St. Kliment Ohridski». — 2014. — P. 5.

28 See the interviews taken by Ilian Iliev with Sabina Deneva as a respondent, born in Bania, living in Satovcha. — op. cit. — P. 107; respondent Slavi Uzunov. — P. 112, respondent Mancho Djurkin. — P. 116; respondent Mustafa Avdikov. — P. 122. — Respondent Kamen Drenkov. — P. 127.

29 For more details, see the history of creation of the autonomous statute of the Muslim community in Bulgaria, as well as the analysis of the Statutes from 1945 till 2008 in PETROVA, KRISTINA, *Gli statute dell'Islam Bulgaro e il suo inserimento nell'ordinamento giuridico dello stato*, Tesi de laurea in Diritto Ecclesiastico, Facolta di Giurisprudenza. — Universita di Bologna, Anno Accademico 2007/2008. — P. 21 — 29; — P. 85–133.

30 Brief review of the leadership split of the Muslim community in ILIEVA, IRENA, *Legal regulation of the religious rights and freedoms in Bulgaria, Liberta di coscienza e diversita di appartenenza religiosa nell'Est Europa*, A cura di Giovanni Cimbalo e Federica Botti. — Bononia University Press, 2008. — P. 95–96.

31 [ER]. Access mode: <http://www.grandmufti.bg/bg/aboutus/normativni-documenti/1225-ustav.html>

32 Hassan et Tchaouch c. Bulgarie. — No. 30985/96.

33 Sega, 2008. — April, 24.

34 CHENGLOVA, EMILIA and PETKOVA, ROSKA and MINCHEV, VESSELIN, op. cit.

35 The political party «Ataka» was created on 17th April 2005 in Sofia and officially registered in the Sofia City Court in July 2005. It is self-identified as nationalist and patriotic. At the parliamentary elections in 2005 the party took 8,93 % of the votes and gained 21 places in Parliament. At the parliamentary elections in 2009 «Ataka» gained 9,36 % and 21 places. — [ER]. Access mode: www.ataka.bg.

36 [ER]. Access mode: <http://www.dps.bg/news/events/183/diskusiya-po-zakonoproekta-za-izmenenie-i-dopalnenie-na-zakona-za-veroizpovedaniyata—predlozhen-od-dps.aspx>

37 [ER]. Access mode: http://www.dnevnik.bg/intervju/2013/07/29/2110592_dilian_nikolchev_promenite_v_zakona_za/, last visited on 13 August 2014.

38 [ER]. Access mode: <http://www.mediapool.bg/promeni-v-zakona-za-veroizpovedaniyata-sa-na-pat-da-skarat-bsp-i-dps-news214480.html>, last visited on 14 August 2014.

39 The text is available on <http://parliament.bg/bills/42/354-01-91.pdf>, last visited on 14 August 2014

40 [ER]. Access mode: http://www.parliament.bg/pub/cW/20140102052249Stanovishte_Sv.Sinod_ZID_ZV.pdf, last visited on 14 August 2014.

41 [ER]. Access mode: <http://www.mediapool.bg/svetiyat-sinod-i-glavnoto-myuftiystvo-sa-protiv-novite-promeni-v-zakona-za-veroizpovedaniyata-news214614.html>, information of 12 December 2013, last visited on 13 August 2014.

42 Information from 18 February 2014. — [ER]. Access mode: <http://www.hristiqni.com/novini/ot-balgariya/2246-myuftiistvoto-otegli-predlozheniyata-si-za-izmenenie-zakona-za-veroizpovedaniyata#ixzz3AHIHILgP>

43 State Gazette, No. 68 of 2013, in force since 2 August 2013.

44 According to the survey, only 13 % of East Germans are religious, as atheism is most prevalent among people aged up to 47 years. 72 % of them did not believe and have never believed in God. In Switzerland, the number of Christian believers has decreased in recent years, although still 45 % of them believe in God. Most Swiss have some spiritual and religious ideas, but their religion is not essential. In France, over 19 % said they were never believers. In the Netherlands and Norway respectively 15.3 % and 15.9 % said the same. Bulgaria is not included in the study. — [ER]. Access mode: <http://www.dw.de/%D0%B0%D1%82%D0%B5%D0%B8%D0%B7%D0%BC%D1%8A%D1%82-%D0%B2-%D0%BD%D0%B0%D1%81%D1%82%D1%8A%D0%BF%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5/a-15902093>

45 See annex Nr. 1, data on the state subsidy for 2014.

46 Applications nos. 412/03 and 35677/04, Just satisfaction judgment of 16 September 2010.

47 Applications nos. 412/03 and 35677/04, §§ 159, 160, 169, 172, 174 and 179 and points 1–4 of the operative provisions, 22 January 2009.

И.Илиева

Болгариядағы мемлекеттік-діни қатынастардың қазіргі мәртебесі. Мұсылман қоғамдастығына назар аудару

Мақала мұсылман қоғамдастығына ерекше назар аударып, заңнамаға талдау жүргізу арқылы мемлекет пен діни ұйымдардың арақатынасының ағымдағы жағдайына арналған. Зерттеу уақыт аралығымен шектеліп, 1989 жылдан кейінгі кезең: Болгариядағы тоталитарлық тәртіптен өтуден кейінгі кезеңді қамтиды. Соңғы 2011 жылғы халық санағының мәліметтері негізінде, «діни сенімге» қатысты тұрғындардың құрамы мұсылман қоғамдастығына ерекше назар аудару арқылы талдауға алынды. Теңдік, кемсітпеушілік және азшылық ұлттар мәселесін болгарлық құқықтық реттеудің маңызды ерекшелігі — Халықаралық жария құқыққа сәйкес міндеттемелердің басымдығын сақтау.

И.Илиева

Современный статус государственно-религиозных отношений в Болгарии. Фокусирование на мусульманском сообществе

Статья посвящена текущему состоянию отношений между государством и религиозными организациями на основе анализа законодательства, с уделением особого внимания мусульманскому сообществу. Исследование ограничено временными рамками и охватывает период после 1989 г.: переход от тоталитарного режима в Болгарии. На основе последних данных переписи 2011 г. состав населения по «религиозной принадлежности» будет проанализирован с особым вниманием к мусульманскому сообществу. Отмечена важная особенность болгарского правового регулирования вопроса равенства, недискриминации и отношений меньшинств — выполнение обязательств в соответствии с Международным публичным правом.