

Warsaw, May 2006

Opinion-Nr.: REL – SRB/064/2006 (Adv
Council on FoRB)

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COMMENTS

ON THE LAW OF SERBIA

**ON FREEDOM OF WORSHIP,
CHURCHES, RELIGIOUS COMMUNITIES
AND RELIGIOUS ASSOCIATIONS**

Prepared by the OSCE/ODIHR Advisory Council

On Freedom of Religion or Belief

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1. INTRODUCTION AND SCOPE OF REVIEW

1. The current law is a much enhanced text from that commented on by the OSCE in 2005. However, there are a number of significant causes of concern. These Comments do not purport to provide a comprehensive review and merely seeks to highlight a number of the most significant issues that need to be addressed.
2. The OSCE/ODIHR would like to mention that the opinion provided herein is without prejudice to any further opinions or recommendations that the ODIHR may wish to make on the issue under consideration.

2. SUMMARY OF RECOMMENDATIONS

3. It is recommended
 - a) That Articles 1 and 3 should use the language of ECHR Article 9(1) and (2).
 - b) That it be made clear that the freedom of religion or belief as set out in those Articles is to be enjoyed all everyone, including non citizens and those whose religions have not been able, or are not eligible, to be registered under the current law. This entails amending Articles 4 and 5.
 - c) That the non-discrimination provisions in Article 2 should be made applicable to religious bodies, registered and un-registered, as well as to natural persons.
 - d) That the criteria for acquiring legal status be reviewed with the aim of making them less burdensome and less capable of subjective application.
 - e) That Article 19 be deleted or redrafted
 - f) That the grounds for refusing or revoking registration be clearer and not linked to subjective administrative evaluation.
 - g) That principles of non discrimination be made applicable to the process of registration.
 - h) That there be an opportunity to make an appeal to a Court against a refusal to register (or decision to revoke) as opposed to there merely being administrative review of that decision.

2. ANALYSIS AND RECOMMENDATIONS

2.1 General Comments on the Scope of the Law

4. The first section of the Law sets out the basic framework concerning the freedom of religion. Article 1(2) is modelled on ECHR Article 9 but it is not clear why it does not use its exact wording. The focus on ‘cultivating and developing religious tradition’ is questionable if it is taken to privilege traditional forms of religion.
5. Article 2 needs revision insofar as it only prohibits discrimination against natural persons as opposed to legal persons (i.e. it does not address discrimination between churches or

communities).

6. The limitations on the freedom of religion set out in Article 3 are also problematic since they go beyond the ground recognized in the principal human rights instruments. Freedom of religious should not be limited on ground of public security. Likewise, limitations on the basis of 'encouraging national intolerance' are potentially dangerous and unacceptable.
7. The law also needs improvement in that it does not make it clear that everyone is entitled to enjoy the freedom of religion irrespective of whether they are a member of a church or religious community that has been registered in accordance with the Law of Churches and Religious Communities. The full exercise of the freedom of religion requires that all religious communities have access to a degree of legal personality sufficient to permit them to function as such and this law does not allow for this. Although it is not made clear, it is implicit in the Law that only those churches and religious communities which have been granted registered status are able to exercise the religious liberties set out in the law (Article 4). The registration requirements, to be discussed below, also make it inevitable that small religious groups will not be able to acquire legal status. Article 5 is also unacceptable since it limits the freedom of association and of membership of Churches and religious communities to citizens. Such rights should be enjoyed by everyone.

2.2 Acquiring Legal Status

8. The Law provides that legal status is enjoyed by those registered under the law. Five Traditional Churches and two traditional communities (specified in Articles 10-16) appear to be given an enhanced position in that under Article 18 they need only submit basic information, including name, address and the details of the person authorised to represent the Church/Religious community. All other religious organizations (communities) - including those already registered - appear to need to seek re-registration through the newly set out procedures and means that they are required to fulfil additional criteria. Not only is this discriminatory, but it may result in groups which currently enjoy legal status losing that status if they are unable to do so.
9. The criteria set out in Article 18(2) and elsewhere present a number of problems, including:
 - the percentage requirement remains a significant hurdle and may prevent the registration/re-registration of existing communities
 - the details required (including the ID and signatures of members) potentially conflict with the freedom from coercion in matters of religion.
 - the description of goals and activities
 - the need to enter details concerning 'business or other activities' (Article 21(3))
10. A particular cause for concern is the requirement in Article 19 that a religious organization cannot contain a name or part of a name of an existing registered group.

This means, for example that no group including the word 'Orthodox' or 'Evangelical' could be registered, since these are already found in the names of the traditional churches. This is unacceptable.

11. The grounds for rejecting an application under Article 20 (4) appear to be very broad and subjective indeed. Although subject to administrative review, the grounds for review are not clear and this might not offer an adequate remedy in the face of an unreasonable rejection of a request for entry on the register.
12. The grounds for removal from the register are also very broad. It is not clear what triggers a consideration of whether to remove a body from the register and this can be done if any of the grounds for initial registration cease to be met. Thus a falling number of adherents could trigger de-registration, as could the failure to notify the Ministry within 30 days of 'data on business or other activities engaged in' (Article 21). This is so broad that it is tantamount to legal entity status being capable of being withdrawn almost at will.