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Comments
on the Draft Law of the Republic of Macedonia

"Law on the Legal Status of Churches,
Religious Communities and Religious Groups"
or
"Law on the Legal Status of a Religious Community,
Church and Religious Group"

prepared by the OSCE/ODIHR Advisory Council
on Freedom of Religion or Belief
I. Introduction

1. The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the "Advisory Council") has been asked through the OSCE Mission in Scopje/Republic of Macedonia to review a proposed draft law of the Republic of Macedonia "Law on the Legal Status of Churches, Religious Communities and Religious Groups" or "Law on the Legal Status of a Religious Community, Church and Religious Group" (hereinafter referred to as the draft law) that has been prepared and revised as of March 2006. These comments are based on an unofficial translation completed as of April 2006.

The OSCE/ODIHR Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE participating States. In revising the draft law the members of the Advisory Council who drafted these comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.


On February 9-11, 2006, members of the Advisory Council met with several officials and representatives of churches and religious communities in Scopje in a discussion about the previous Draft Law on Churches, Religious Communities and Religious Groups as of February 2006. The Advisory Council wishes to express its deep appreciation for the candid and informative exchange of views.
II. Executive Summary

The major findings of the comments are summarized here:

1. While the draft law contains a number of provisions that indeed meet highest standards of international law and best practice in protecting the freedom of religion or belief, and while the draft law does a lot to ensure religious freedom and tolerance and to provide positive condition for manifesting religion or belief, some of its provisions make the draft law in parts incompatible with international commitments.

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

3. It is not clear what the status in law is for those groups that have been established for religious reasons, but do not figure as a church, a religious community or a religious group. It must be clear, however, that also those groupings can adequately manifest their religion or belief in community and in private and in public.

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

5. It must be clear that religious entities can be established and operate in private.

6. It is impermissible that only one church, religious community or religious group can be registered for a given denomination or confession.

7. The draft law unduly restricts the use of names by religious entities.

8. A number of provisions are unclear and vague. It is recommended to clarify these issues.

9. Religious teaching must be possible by any religious entity.

10. It must be clear that also others than registered churches, religious communities and religious groups can organize private education.
III. Comments on the Legislation under Consideration

1. Reference points of review

1.1 The comments are based on OSCE commitments that codify the fundamental right to freedom of religion or belief in international law. The Republic of Macedonia is one of the OSCE’s participating States.

The comments are likewise based on the relevant provisions of international treaties, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child. The comments are further based on United Nation declarations, most notably the Universal Declaration of Human Rights and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. They are also based on best practice.

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1 For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf; last visited on 02 May 2006].
The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.  

1.2 The OSCE general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act reads:

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

This fundamental commitment has been repeatedly reaffirmed.

Principle 16.4 of the Vienna Concluding Document also has important implications for the law of religious associations. It provides that participating States will

respect the right of these religious communities to

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establish and maintain freely accessible places of worship or assembly,

organize themselves according to their own hierarchical and institutional structure,

select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

solicit and receive voluntary financial and other contributions.

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

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

1.3.1 Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which contains the Convention's key substantive provision on freedom of religion or belief, reads:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
1.3.2 Limitations on freedom of thought, conscience, religion or belief, to the extent permissible at all, are only allowed with respect to manifestations of religion or belief. These limitations face a number of important qualifications and restrictions. The limitation must be "prescribed by law". The European Court of Human Rights has held that this phrase "does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention". Accordingly, this test can be referred to as the "rule of law constraint". Rules that are impermissibly vague may fail to meet this test.

The second constraint is the limited set of permissible justifications: limitations must be "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". This list narrows the range of state interests that can justify overriding religious freedom. It is important to note that national security interests are not alone sufficient.

Of specific importance is the third constraint: limitations must also be "necessary in a democratic society". The European Court of Human Rights has found that democratic society necessarily presupposes religious pluralism. In articulating the importance of freedom of religion or belief, the European Court has noted that it is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it". Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society".

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

1.3.3 Often times, freedom of religion or belief is closely linked with the freedom of association.

Article 11 of the ECHR, dealing with freedom of association reads:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

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12 Ibid, paragraph 44.
14 Manoussakis, cited above paragraph 44.
The European Court's 1998 decisions in United Communist Party of Turkey v. Turkey\textsuperscript{15} and Sidiropoulos & Others v. Greece\textsuperscript{16} have further elaborated on freedom of association and have significant implications for the law of religious associations. In the Sidiropoulos case the Court stated categorically that "the right to form an association is an inherent part" of the right to freedom of association and that

> citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.\textsuperscript{17}

As with limitations on manifestations of religion, the Court emphasized that in assessing the right to association, exceptions in ECHR (article 11(2))

> are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.\textsuperscript{18}

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

\textsuperscript{15} 30 January 1998.
\textsuperscript{16} 10 July 1998.
\textsuperscript{17} Sidiropoulos, paragraph 40.
\textsuperscript{18} Ibid.
1.3.5 In the present context, the case Metropolitan Church of Bessarabia v. Moldova, which was decided by the European Court of Human Rights in 2001, is of particular relevance. This case is therefore reported and cited here in more detail:

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

1.3.5.2 The Government of Moldova had refused recognition of the Metropolitan Church of Bessarabia arguing that this Church, as an Orthodox Christian Church, was not a new denomination, since Orthodox Christianity had already been recognised in Moldova at the same time as the Metropolitan Church of Moldova. According to the Moldovan Government, there was absolutely no difference, from the religious point of view, between the Metropolitan Church of Bessarabia and the Metropolitan Church of Moldova.

The Government of Moldova had also stated that this conflict concealed a political conflict between Romania and Russia; were it to intervene by recognising the Metropolitan Church of Bessarabia, which it considered to be a schismatic group, the consequences were likely to be detrimental to the independence and territorial integrity of the young Republic of Moldova.

1.3.5.3 In 1992 the applicant natural persons had joined together to form the Metropolitan Church of Bessarabia as a local, autonomous Orthodox Church. According to its

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articles of association, it took the place, from the canon-law point of view, of the Metropolitan Church of Bessarabia which had existed until 1944. In December 1992 it was attached to the patriarchate of Bucharest.

The Metropolitan Church of Bessarabia adopted articles of association which declared its non-political character and stated that it shall respect the laws of the State and international human rights law.

The Metropolitan Church of Bessarabia had established 117 communities in Moldovan territory and a number of communities abroad. Nearly one million Moldovan nationals were at the time of the decision of the European Court of Human Rights affiliated to the Metropolitan Church of Bessarabia, which had more than 160 clergy.

1.3.5.4 The Government of Moldova submitted that the refusal to register the Metropolitan Church of Bessarabia was intended to protect public order and public safety. The Moldovan State, whose territory had repeatedly passed in earlier times from Romanian to Russian control and vice versa, had an ethnically and linguistically varied population. That being so, the young Republic of Moldova, which had been independent since 1991, had few strengths it could depend on to ensure its continued existence, but one factor conducive to stability was religion, the majority of the population being Orthodox Christians. Consequently, recognition of the Moldovan Orthodox Church, which was subordinate to the patriarchate of Moscow, had enabled the entire population to come together within that Church. If the Metropolitan Church of Bessarabia were to be recognised, that tie was likely to be lost and the Orthodox Christian population dispersed among a number of Churches. Moreover, under cover of the Metropolitan Church of Bessarabia, which was subordinate to the patriarchate of Bucharest, political forces were at work, acting hand-in-glove with Romanian interests favourable to reunification between Bessarabia and Romania. Recognition of the applicant Church would therefore revive old Russo-Romanian rivalries within the population, thus endangering social stability and even Moldova’s territorial integrity.
1.3.5.5 The European Court of Human Rights referred to its settled case-law to the effect that, as enshrined in ECHR (article 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

The European Court of Human Rights has also said that, in a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.20

However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.21 What is at stake here according to the European Court of Human Rights is the preservation of pluralism and the proper functioning of democracy, one of the principle characteristics of which is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome.22 Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.23

The European Court of Human Rights further observed that in principle the right to freedom of religion for the purposes of the ECHR excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed. State measures favouring a particular leader or specific organs of a divided religious

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20 See Kokkinakis, cited above, p. 18, § 33.
21 See Hasan and Chaush v. Bulgaria [GC], no. 30985/96, § 78, ECHR 2000-XI.
23 See Serif v. Greece, no. 38178/97, § 53, ECHR 1999-IX.
community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, would also constitute an infringement of the freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership.\textsuperscript{24} Similarly, where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of ECHR (article 9(2)).\textsuperscript{25}

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

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

\begin{itemize}
  \item \textsuperscript{24} See \textit{Serif}, cited above, § 52.
  \item \textsuperscript{26} See \textit{Hasan and Chaush}, cited above, § 62.
  \item \textsuperscript{27} See \textit{Kokkinakis}, cited above, p. 17, § 31.
\end{itemize}
whether the interference corresponds to a "pressing social need" and is "proportionate to the legitimate aim pursued".\textsuperscript{28}

1.3.5.6 The Government of Moldova had submitted that the non-registration of the Metropolitan Church of Bessarabia was necessary in a democratic society. In the first place, to recognise the Metropolitan Church of Bessarabia the State would have had to give up its position of neutrality in religious matters, and in religious conflicts in particular, which would have been contrary to the Moldovan Constitution and Moldovan public policy. It was therefore in order to discharge its duty of neutrality that the Government had urged the Metropolitan Church of Bessarabia to settle its differences with the Metropolitan Church of Moldova first.

Secondly, the refusal to recognise, in the Moldovan Government’s submission, had been necessary for national security and Moldovan territorial integrity, regard being made to the fact that the Metropolitan Church of Bessarabia engaged in political activities, working towards the reunification of Moldova with Romania, with the latter country’s support. Such activities endangered not only Moldova’s integrity but also its peaceful relations with Ukraine, part of whose present territory had been under the canonical jurisdiction of the Metropolitan Church of Bessarabia before 1944. The Government further had asserted that the Metropolitan Church of Bessarabia had been supported by openly pro-Romanian Moldovan parties, who denied the specificity of Moldova, even sometimes during debates in Parliament, thus destabilising the Moldovan State.

Thirdly, in the Moldovan Government’s submission, the refusal to recognise the Metropolitan Church of Bessarabia had been necessary to preserve social peace and understanding among believers, because the aggressive attitude of the Metropolitan Church of Bessarabia, which sought to draw other Orthodox Christians to it and to swallow up the

other Churches, had led to a number of incidents which, without police intervention, could have caused injury or loss of life.

Lastly, the Moldovan Government emphasised that, although they had not recognised the Metropolitan Church of Bessarabia, the Moldovan authorities were acting in a spirit of tolerance and permitted the applicant Church and its members to continue their activities without hindrance.

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

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

The European Court of Human Rights reiterated that, in the absence of any evidence, the European Court of Human Rights could not conclude that the Metropolitan Church of Bessarabia was linked to the political activities of the Moldovan organisations, which were allegedly working towards unification of Moldova with Romania. Furthermore, it noted that the Moldovan Government had not contended that the activity of these associations and political parties was illegal.
As for the possibility that the Metropolitan Church of Bessarabia, once recognised, might constitute a danger to national security and territorial integrity, the European Court of Human Rights considered that this was a mere hypothesis which, in the absence of corroboration, cannot justify a refusal to recognise it.

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

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

1.4.1 ICCPR (article 18) reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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

The General Comment further notes that limitations on freedom of religion, to the extent permissible at all, are only allowed with respect to manifestations of religion:

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or adherence to a religion or belief.

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

The General Comment pays particular attention to the permissible restrictions on manifestations of religion.

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

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

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

1.4.2 The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR makes it very clear that State parties are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (ICCPR article 2(1)). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties "to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant" (ICCPR article 2(2)) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (ICCPR article 2(3)). Further, ICCPR (article 26) provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law

shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The U.N. Human Rights Committee has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights". While the Covenant itself does not define discrimination, the Human Rights Committee States, consistent with the general usage of this term in international law, that

"discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

General Comment No. 18 (37) also stresses that the Covenant is not limited in its reach to discrimination with respect to the protection of the substantive rights it enunciates.

While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in
Article 26 is not limited to those rights which are provided for in the Covenant.

ICCPR (article 27) affords particular protection against discrimination where "ethnic, religious or linguistic minorities exist". It provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". The U.N. Human Rights Committee's General Comment No. 23 (50) on article 27 indicates that "the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party." The General Comment goes on to note that

Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents.

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

Article 2(2) of the 1981 Declaration defines "intolerance and discrimination based on religion or belief" as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

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

Article 6 of the 1981 Declaration spells out the implications of the foregoing religious freedom norms for a variety of recurrent and practical contexts that are vital to religious freedom. Article 6 provides:

In accordance with article 1 of the Declaration, and subject to the provisions of article 1(3), the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

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

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

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

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

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

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

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

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

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

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

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

Furthermore, the distinction could indicate a difference in seize by which religious groups would be smaller than religious communities.
Moreover, the distinction could implicitly refer to other manifestations of religious collectivities, religious groupings, religious foundations, etc., that are not covered by the draft law.

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

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

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

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

2.3 The draft law (article 4(1)) seems to introduce a difference between establishing a church, a religious community or a religious group without a legal status on the one hand and to gain a legal status with legal capacity of a church, a religious community or a religious group through registration on the other hand. Registration of a church, religious community or a religious group would give such entities the "capacity of legal entity" (article 8(1)). This could indicate that a church, a religious community, and a religious group can exist in the Macedonian law without being registered and without having the status of a legal entity.

However, it is not clear whether there is such a distinction. It is also not clear what the legal consequences would be. In some cases the draft law explicitly speaks of a "registered" church, religious community, and religious group (e.g. articles 15(3), 15(5),
16(2)), in other cases the draft law refers to the term church, religious community, and religious group without such qualification (e.g. article 1(1), 4(1), 4(2), 5(1, 2), 5(4), 6(1), 7, 8(1,2), 15(1), 16(1), 20(1), 21(1), 22 et al.). In some of those cases such as draft law (article 21 or article 27) one might expect that the rights attributed might depend on prior registration of the church, religious community or religious group, but no explicit reference is made to registration. In other cases such as draft law (article 4(2), 5, 6, 7, 21(1)) one should expect that all religious collectivities or groupings should be referred to regardless of their legal status.

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

3. Analysis and recommendations per article

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

3.1 Article 1

The reasons for the distinction in draft law (article 1) between the terms "church", "religious community", and "religious group" are not clear.

The draft law (article 1(1) is – at least in its English translation – not clear in that it provides: "This law regulates the establishment and the legal status of a church, religious
community and a religious group, the expression of belief and religious gathering." It is uncertain what the function of the second half sentence: "the expression of belief and religious gathering" is.

The provision could – at least in its English translation – be read as: "This law regulates the establishment and the legal status of a church, religious community and a religious group, and the expression of belief and religious gathering." In such an understanding, the draft law would be comprehensive and virtually all-encompassing in respect of manifestations of religion. In this reading the law would be highly problematic, since it could be understood as limiting manifestations of religion or belief to what it explicitly allows. This would – as stated in more detail below – unduly limit manifestations of religion or belief in private, by non-registered religious groupings, and non-citizens.

The provision could also be read as stating: "This law regulates the establishment and the legal status of a church, religious community and a religious group, as being the expression of belief and religious gathering." In such an understanding the provision could be seen as unduly restricting manifestations of religion or belief, because it would limit such manifestations to establishing and operating the religious entities mentioned and exclude other manifestations.

The provision could also be read as saying: "This law regulates the establishment and the legal status of a church, religious community and a religious group, as being an expression of belief and religious gathering." In such an understanding there would be no objections against this provision.

It is recommended to clarify the wording of the provision.

3.2 Article 3

The draft law (article 3) implies that conscientious religious practices must give way to general duties imposed by legislation. However, under international standards, conscientious religious practices need only to give way to legislation that is strictly necessary to furthering legitimate State interests in public safety, order, health, or morals or the
fundamental rights and freedoms of others. Thus, this provision overstates permissible limitations on manifestations of conscience that could be overridden by legislation.

It is recommended to further clarify and narrow the duties of conscientious objections.

3.3 Article 4

3.3.1 Article 4(1) provides that "the citizens can freely and publicly establish a church, religious community or a religious group".

This provision could be understood as preventing anyone who is not a citizen of the Republic of Macedonia from founding a church, a religious community or a religious group that would not have the status as a legal person. While there may be reasons to rule that only citizens can establish a legal person in a given country it would not be permissible to prevent non-citizens from collectively manifesting their religion or belief. Freedom of religion or belief is a human right. It does not depend on the status as citizen.

The restriction to citizens is re-iterated in article 9 of the draft law. Since the draft law (article 9) is placed within the subsection "Legal Status of a Church, Religious Community and a Religious Group" which at least primarily deals with registration issues, article 9 could be read as referring only to registration and obtaining the capacity of legal entity. Article 4 of the draft law which figures within the subheading "I. General Provisions" does not make any (at least explicit) reference to registration.

It is thus not clear what the meaning of draft law (article 4(1)) is in referring to citizens.

It is recommended to further clarify this issue. It is recommended to make clear that also non-citizens of the Republic of Macedonia can freely manifest their religion or belief by founding a church, religious community or a religious group at least beyond registration.

3.3.2 The draft law (article 4(1)) could be understood as prohibiting anyone to privately establish a church, a religious community or a religious group inasfar as it provides that
"the citizens can … publicly establish a church, religious community or a religious group".

ECHR (article 9) and other pertinent international instruments provide for the human right to manifest one’s religion or belief in private and to do so together with others. This means that it must be possible to privately establish a grouping performing religious activities without registering it or going public otherwise.

It is recommended to make clear that a religious entity can be established in private.

3.4 Article 5

3.4.1 The draft law (article 5(1)) provides that "no one can prevent the church, religious community and the religious group in performing its activities". This is rather far-reaching. From its mere wording this provision could be understood as excluding State action against illegal activities of a church, religious community or a religious group. That probably is not what the draft law would want to say.

It is recommended to clarify this issue.

3.4.2 The draft law (article 5(2)) provides that "the activity of the church, religious community and the religious group is public …". This could be read as prohibiting private activities of a church, religious community or a religious group. Such a meaning would violate ECHR (article 9(1)) and other pertinent international instruments. These international instruments provide that religious manifestations must be possible in private and together with others.

However, the draft law (article 5(2)) could also be understood as indicating that churches, religious communities and religious groups have a public function and that they contribute to public life. In such an understanding those entities would be seen as being positive factors in public life. Such an understanding would be in harmony with international instruments and best practice.
It is recommended to make the provision more clear and to choose a meaning compatible with international instruments.

3.5 Article 6

While the draft law (article 6) seems to refer to limitation clauses in international instruments such as ECHR (article 9(2)) or ICCPR (article 18(3)), the provision does not use the same wording. This may be due to translation difficulties. However, the wording of the translation could be read as limiting freedom of religion or belief more intensely than the international instruments would allow to do. The term "public security" as a ground for limitations should read "public safety". Public security is not a permissible ground for limitations under international instruments such as ICCPR (article 18(3)).

Furthermore, the draft law (article 6) at least in its translation refers to limitations "necessary in one society". However, ECHR (article 9(3)) allows only those limitations that are "necessary in a democratic society".

It is recommended to use the same wording of the limitation clause as found in ECHR (article 9(2)) in the draft law.

3.6 Article 8

The draft law (article 8(3)) provides in the translation used that "For one confession, to register only one only one church, religious community or religious group" (sic). These comments presume that the provision should read: "For one confession only one church, religious community or religious group can be registered". Such a provision would be in contradiction with ECHR (article 9) and other pertinent international instruments.

It is not clear what the term "confession" means. The term "confession" could be understood as "authoritative formulation of the beliefs of a religious community (or, by transference, of individuals)", "longer, more detailed doctrinal declarations". The term

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"confession" could also be understood as a synonym for "denomination". The term could mean e.g. Christianity as such or Orthodox Christianity, Catholic Christianity, Protestant Christianity; Judaism; Islam as such or Sunnite Islam, Shiite Islam, Sufi Islam. It could also mean more distinct entities of a specific religion such as Roman Catholic, Greek Orthodox, Macedonian Orthodox, Russian Orthodox.

The provision could be understood as preventing the registration of split-offs from existing churches, religious communities or religious groups. It could also entail the prohibition of registration of competing churches, religious communities or religious groups.

The comments would like to recall the findings of the European Court of Human Rights in the case of Metropolitan Church of Bessarabia and others v. Moldova\(^3\) referred to and cited above. The comment would like to recall that the European Court of Human Rights has held it incompatible with any power on the State's part to assess the legitimacy of religious beliefs and has required the State to ensure that conflicting groups tolerate each other even when they originated in the same group. The European Court of Human Rights has held it impermissible to deny registration of a church on the mere ground that another church of the same denomination or confession had already been registered. This has been decided taking into mind that the divide between two rivalling churches of the same confession or denomination could even endanger the very existence of the State. In such a case, however, the State must find other ways than non-registration of a religious entity to ensure its own existence.

From the decision of the European Court of Human Rights it is also clear that illegal activity of a religion and endangering public safety can be a reason of denying registration only when there is sufficient evidence of such activity on the part of the religion. The draft law (article 8(3)) does not require such evidence. Instead, the provision denies

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\(^3\) European Court of Human Rights, former 1st section, Case of Metropolitan Church of Bessarabia and others v. Moldova, application no. 45701/99, judgment, Strasbourg, 13. December 2001, final, 27/03/2002.
registration on the mere ground that there already is a religious entity registered for the confession.

It is recommended to delete this provision.

3.7 Article 9

The draft law (article 9) could be read as prohibiting non-citizens of the Republic of Macedonia to form a church, religious community or a religious group in the Republic of Macedonia even if this entity is not to be registered. As outlined above, this would not be consistent with the pertinent international instruments.

3.8 Article 10

3.8.1 The draft law (article 10(2)) could be understood as prohibiting the registration of a church, religious community or religious group that contains the name or the symbol of other states. This could mean that it would not be possible to register a church or dependencies thereof such as the Church of England, the Church of Scotland, the Church of Sweden, the Russian-Orthodox Church, or the Greek-Orthodox Church.

It is not clear, why such a provision should be necessary. The name of a religious entity can well be part of its religious identity; it is a manifestation of religion or belief. Limitations on the right to manifest one's religion in public must pursue a legitimate aim and must be necessary in a democratic society. There is no plausible reason, why – in a democratic society – it should be necessary to implement such a restriction. If in a specific case using a specific name for a church, religious community or religious group should be regarded detrimental to any of the legitimate aims of limiting the manifestation of religion or belief it would be possible and sufficient to prohibit using that specific name.

It is recommended to delete the provision.
3.8.2 The draft law (article 10(4)) provides that the headquarters of the church, religious community or religious group should be on the territory of the Republic of Macedonia. This could be read as prohibiting the registration of churches, religious communities or religious groups the leading body of which in terms of internal hierarchy is not situated in the Republic of Macedonia. While it could be consistent with international instruments to require the representative body of a church, religious community or religious group in terms of registration to be resident and domiciled in the Republic of Macedonia it would be highly problematic to require the leading body in terms of theology and internal religious hierarchy to be resident and domiciled in the Republic of Macedonia. It is recommended to clarify the meaning of the provision in consistency with the international instruments.

3.9 Article 15

3.9.1 The draft law (article 15(1)) provides that "religious rituals, and other ways of religious expressing are performed in religious temples, graveyards and other premises owned by the church, religious communities and religious groups". The draft law (article 15(2)) further states that "religious rituals, and other ways of religious expressing can take place in other public premises and public places, if public peace and order, are not violated".

In this wording the provision could be understood as prohibiting religious rituals and other ways of religious manifestations in private. That would be inconsistent with international instruments. The ECHR (article 9(1)) and ICCPR (article 18(1)) guarantee to freely manifest one's religion or belief in private.

3.9.2 It is not clear why the limitation clause "if public peace and order are not violated" is attached only to article 15(2) of the draft law. It seems to be rather clear that manifestations of religion or belief in places indicated by draft law (article 15(1)) must also not violate public peace and public order. The same applies to private premises and places.
3.9.3 The draft law (article 15(3)) provides that "religious rituals in a public religious facility can perform only a person from a registered church, religious community or religious group in the Republic of Macedonia or with their permission".

It is not clear what the term "public religious facility" means. There are religions for which a certain place can be a holy place such as a mountain, a river, a well or a place a revelation took place, etc. Such places may well be public places. It is not perceivable why religious rituals on such places should need the permission of a registered church, religious community or religious group.

3.9.4 It is not clear what the term "religious rituals" in draft law (article 15(3)) means. Religious rituals can be blessings, prayers, etc. It would be quite impermissible to prohibit prayers by anyone who is not permitted by a registered church, religious community or religious group in the Republic of Macedonia to do so.

3.9.5 The draft law (article 15(3)) is also vague in requiring "their" permission, i.e. registered church, religious community or a religious group. In the present wording it is not clear whether a permission of all of them is needed or only of one of them and which one that would be.

3.9.6 The draft law (article 15(4)) is not clear. It is not clear what "false public representation" could entail nor what "misuse" of religious uniforms and symbols would entail.

3.9.7 The draft law (article 15(5)) is not clear in what the term "public religious facilities" exactly means.

3.9.8 It is recommended to clarify the terms and the meaning of the draft law (article 15).

3.10 Article 16

3.10.1 The draft law (article 16(1)) provides that "a religious facility can not be built without prior approval of the church, the religious community or the religious group in Republic of Macedonia".
This provision could be understood as requiring the prior approval of all churches, religious communities and religious groups in the Republic of Macedonia for the building of a religious facility. It is, however, evident from the case law of the European Court of Human Rights and the former European Commission of Human Rights that any requirement of authorisation by another church or religious community to establish a place of worship or another religious facility is incompatible with ECHR (article 9). The provision could also be understood as requiring the approval of the church, the religious community or the religious group to which this specific religious facility refers.

It is recommended to clarify the meaning of the provision.

3.10.2 While the draft law (article 15(3) and (5)) refers to "public religious facilities" draft law (article 16(1)) speaks of "a religious facility". This could indicate that the draft law (article 16(1)) requires prior approval for the building of any religious facility, even private ones. That could entail the construction of a private chapel, a cross on private ground, etc. However, it is evident from the case law of the European Court of Human Rights that any requirement of authorisation by another church or religious community to establish a place of worship or a religious facility is incompatible with ECHR (article 9).

The draft law (article 16(2)) requires "State bodies competent for bringing the urban plans, are obliged to ask for an opinion from the registered church, religious community or religious group for the need of building a religious facility". While it would be permissible to require State development authorities to ask religions about their needs it would be impermissible to give a specific religious entity a right to decide about the needs of another religious entity.

It is recommended to clarify the meaning of the provision.

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33 Cf. ECHR, Pentidis v. Greece, cited above; ECHR Manoussakis v. Greece, cited above.
3.11 Article 18

The draft law (article 18(1 and 2)) provides for freedom of practicing religious rituals in specific institutions such as hospitals or the military.

It is recommended to make clear that not only religious rituals are legal, but also other forms of manifestations of religion or belief such as spiritual care or religious observances depending on the requirements of the well-functioning of the institution.

The draft law (article 18(3)) provides that no one shall ask for information from authorized religious officials and religious clerks from what they have learned while performing their duty. This is a rather far-reaching provision. It might not be necessary to prohibit anyone asking for information. Probably, the protection of the confessional secret is meant. For this it would be enough to provide that no authorized religious official or religious clerk is obliged to make any statement on what he or she have learned while performing their duty.

3.12 Article 20

The draft law (article 20(1)) provides that "churches, religious community and religious group are allowed to organize religious teaching".

This provision could be understood as prohibiting religious teaching by others than (registered) churches, religious communities or religious groups. However, the international instruments such as ECHR (article 9), ICCPR (article 18) guarantee freedom of religion or belief for everyone "in teaching". Thus, it must be possible for others than registered churches, religious communities or religious groups to organize religious teaching.
3.13 Article 21

The draft law (article 21(1)) provides, that "Churches, Religious communities and religious groups have the right to establish religious schools at all levels of education, except in elementary education, for teaching religious officials, as well as in dormitories and students houses for accommodation of persons that are being educated in these institutions".

It must be clear that also other religious entities than registered churches, religious communities and religious groups can freely educate their officials and clergy.

3.14 Article 23

The draft law (article 23(2)) provides that if the Government of Republic of Macedonia rejects the complaint against the prohibition to establish a religious school this means that establishing of that religious school is not allowed. This provision could be understood as excluding legal remedies before an independent court. However, at least best practice provides for the right to appeal to independent courts against state decisions.

It is suggested to redraft the provision allowing appeal to an independent court.

3.15 Article 25

The draft law (article 25) limits the right of non-citizens of the Republic of Macedonia to give religious instruction in religious schools. While it can be legitimate to restrict labour rights to citizens it would be highly problematic to prohibit working in a religious institution just because of religion.

It should be clarified that instructing in religion is not treated differently from instructing or teaching in other fields of knowledge.
3.16 Article 27

It must be clear that others than registered churches, religious communities and religious groups can establish private schools.

3.17 Article 28

The draft law (article 28(2)) could be understood as prohibiting anyone other than (registered?) churches, religious communities or religious groups from organizing visits in holy places. It must be clear, however, that anyone can organize such visits. ECHR (article 9) guarantees manifestation of religion or belief alone and in community with others regardless of the form of organization.
Appendix I

Law on the Legal Status of Churches, Religious Communities and Religious Groups

or

Law on the Legal Status of a Religious Community, Church and Religious Group

I. General provisions

Article 1

This law regulates the establishment and the legal status of a church, religious community and a religious group, the expression of belief and religious gathering.

In accordance with the Constitution of Republic of Macedonia, the church, religious community and the religious group it’s separated from the State and equal before the law.

Article 2

Everyone has a right on freedom of thought, conscience and belief.

This right includes the freedom of expression of its religion of belief, alone or together with the others, publicly or privately.
According to paragraph 1 and 2 of this article, it is guarantied the freedom of belief and the right of expression of the religion in accordance with the Constitution of Republic of Macedonia and the highest international standards for human rights and the international declarations and conventions for the freedom of belief and expression of religion.

Article 3

Any kind of religious discrimination is not allowed.

The religious persuasion does not exempt the citizen from the obligations that he has according to the Constitution, laws and other regulations, except if that is not regulated by law or other regulations.

Article 4

The citizens can freely and publicly establish a church, religious community or a religious group.

The church, the religious community and the religious group have the right to be organized freely in accordance to their institutional structure and to regulate their internal relations according to their provisions, and other religious norms.

Article 5

No one can prevent the Church, religious community and the religious group in performing its activities.
The activity of the Church, religious community and the religious group is public and should be in accordance to the Constitution, Laws and other provisions of Republic of Macedonia, international declarations and conventions for the freedom of belief and expression of religion.

State institutions and organs, in frames of their obligations and authorizations should provide conditions for continuous performing of activity of the Church, religious community and the religious group.

With this law internal cooperation between the State, the church, religious community and the religious group is regulated in spirit of dialogue and partnership.

**Article 6**

The activities of a Church, religious community and a religious group can be limited only with legal measures on the benefit of the public security, order, health and moral, or for protecting the rights and freedoms of others, necessary in one society.

**Article 7**

The church, religious community and the religious group or anyone else can not, in any way force or obstruct the human being or the citizens to express belief and religiously to determine him/her self, to become or to be a member of a certain church, religious community or group or to perform certain religious rituals or other kinds of believe expression.
LEGAL STATUS OF A CHURCH, RELIGIOUS COMMUNITY AND A RELIGIOUS GROUP

Article 8

The legal Status of the church, the religious community and the religious group is gained through registration in authorized the court with what the church, religious community and religious group gains the capacity of legal entity.

The authorized State body to establish special evidential-statistical nomenclature for registering a church, religious community and or religious group.

For one confession, to register only one only one church, religious community or religious group.

Registration of a church, religious community or a religious group can be challenged by already existing registered church, religious community or religious group of the same confession with submitting an appeal at the competent court for registering within 90 days from the day of the registration.

Article 9

A foreign citizen can not establish a church, religious community or religious group in Republic of Macedonia.
Article 10

The name and the symbols of the church, religious community and religious group should be different from the names of other already registered churches, religious communities or groups.

The name and the symbol of a church, religious community or religious group shouldn’t contain state symbols, symbols of the state or public organs and institutions as well as names and symbols of other states.

If in the name of the church, religious community or religious group, the word “Republic of Macedonia” is used, in this case words “in the Republic of Macedonia” should be used.

The headquarters of the church, religious community or religious group should be on the territory of the Republic of Macedonia.

Article 11

The church, the religious community or the religious group is enrolled in the Unique Court Registry of the churches, religious communities and religious groups (on the text bellow: court registry).

The Court Registry from paragraph 1 of this article is managed by the Basic Court Skopje1.

The data enrolled in the court registry are public.
Article 12

The applicant is obliged to appoint a person who will be responsible for submitting the registry form to the organ within 30 days from the day when the decision for establishment is brought.

With the application form from Paragraph 1 of this article the church, religious community or the religious group also submits:
- decision for establishment;
- statute or other act which regulates the status, organization and acting;
- decision for designation of persons in charge, i.e. person that will represent the church, religious community and religious group;
- name and headquarters of the of the Church, religious community or religious group;
- short description of the symbols and marks that are to be used by the church, religious community and religious group;

Article 13

The competent court is obliged in the time limit of 30 days from the date of submission of the request for registration to bring a decision for enrolling of the church, religious community or religious group in court registry.

If the competent court determines that the request for registration of a church, religious community or religious group is not in accordance to the provisions from this law, informs the submitter of this request in writing and determines the time limit for harmonization with provisions of this law.

The time limit from the previous paragraph it shouldn’t be less than 15 days and longer than 90 days.
If the submitter of this request after the written notification from the court will not proceed in the time limit prescribed with paragraph 3 from this article it is considered that the applicant of the registration for a church, religious community or religious group is withdrawing the request.

If the competent court rejects the request for registration in court registry, the applicant can appeal this decision to the Appellate court in Skopje, in the time limit of 15 days after the acceptance of the decision from the registry court.

**Article 14**

The legal status of a church, religious community or religious group ceases with its erasing from the registry with a lawful decision for erasing issued by the competent court.

Persons in charge for representing the church, religious communities or religious group are obliged to submit to the registry court application for every status changes or cancellation of a church, religious community or religious group, within 30 days from the day of bringing such decision.

**RELIGIOUS RITUALS**

**Article 15**

Religious rituals, and other ways of religious expressing are performed in religious temples, graveyards and other premises owned by the church, religious communities and religious groups.
Religious rituals, and other ways of religious expressing can take place in other public premises and public places, if public peace and order, are not violated. Religious rituals in a public religious facility can perform only a person from a registered church, religious community or a religious group in Republic of Macedonia or with their permission.

It is not allowed, false public representation of clergyperson and religious clerks, and misuse of religious uniforms and symbols.

No one is allowed to hinder a clergyperson and religious clerk of the registered churches, religious communities or the religious groups in Republic of Macedonia in practicing their religious activities in the public religious facilities and everywhere that the law allows.

**Article 16**

A religious facility can not be built without prior approval of the church, the religious community or the religious group in Republic of Macedonia.

State bodies competent for bringing the urban plans, are obliged to ask for an opinion from the registered church, religious community or religious group for the need of building a religious facility.

**Article 17**

Religious rituals like baptism, circumcision of a juvenile is allowed only with parent's or guardian's agreement, and if the juvenile is older than fourteen years, his own agreement as well in a written form.
Necessary hygiene, health and other conditions are required for these rituals. The hygienic and health conditions from paragraph 2 of this article are prescribed by the competent body with a special act.

**Article 18**

Persons who stay in hospitals, foster homes and homes for elderly persons, army and police instructions and premises, prisons and similar institutions, can practice religious rituals for expression of their faith. The persons from paragraph one of this article can be visited by authorized religious officials for practicing religious rituals. No one shall ask for information from an authorized religious officials and religious clerks from what they have learned while performing their duty.

**Article 19**

When, in accordance with law, special measures are undertaken for protection of the health of the citizens, the public order and peace, the security and property of larger range, the authority in charge of internal affairs may forbid religious gatherings and visits to religious manifestations during the period of existence of the circumstances that caused the undertaking of the special measures.

**RELIGIOUS TEACHING AND OTHER EDUCATIONAL ACTIVITIES OF THE RELIGIOUS COMMUNITIES AND GROUPS**

**Article 20**

Churches, religious community and religious group are allowed to organize religious teaching.
Religious teaching, can take place in premises where religious rituals are committed and other ways of expressing the faith, as well as in other public and private premises and places, if public peace and order is not violated.

Religious educational services held in public educational institutions are regulated by separate law.

**Article 21**

Churches, Religious communities and religious groups have the right to establish religious schools at all levels of education, except in elementary education, for teaching religious officials, as well as in dormitories and students houses for accommodation of persons that are being educated in these institutions.

The religious schools are equal with other educational institutions and their pupils and students have the same rights.

**Article 22**

The church, religious community or the religious group is obliged to submit the information for establishing a religious school, with the act for the goals and the internal organization of the school and the curriculum in accordance with this law, to the organ responsible for the issues of churches, religious communities and religious groups, at least 90 days in advance from the day that is planned the start of the works.

The institution competent for churches, religious communities and religious group’s issues is obliged to deliver its opinion to the church, religious community or religious
group within 60 days from the day of submission of the information, after they have received an opinion from the competent Ministry.

**Article 23**

If the opinion of the authority competent of the churches, religious communities and religious group issues is negative, the church, religious community or the religious group has a right to file a complaint to the Government of the Republic of Macedonia within 15 days from receiving the opinion.
If the Government of Republic of Macedonia rejects this complaint, it means that establishing of that religious school is not allowed.

**Article 24**

Lesson plans and educational programs of this type of schools should not be in contradiction with the Constitution and the laws.

The competent Ministry is allowed to conduct an inspection of the educational plan and program in the religious schools, related to par.1 of this article.

**Article 25**

The educational process in this type of schools can be performed only by a resident of Republic of Macedonia.

In exceptional cases, if the church, religious community or the religious group has need of certain personnel, instruction in religious school can also be performed by a foreign citizen, but only temporarily and in accordance with the provisions for sojourn of foreign citizens in Republic of Macedonia, after previous permission from the authority in charge of the churches, religious communities and religious group issues.
Article 26

The churches, religious communities and religious groups are running independently with the religious schools and other educational facilities that can be established in accordance with this law, and with the dormitories, students’ houses.

The person in charge for running religious schools, educational institution or dormitory is obliged to make available all the data necessary for conducting insight in their operations, to the authority in charge of the issues for the churches, religious communities and religious groups, and in prescribed time determined by this authority to eliminate eventual irregularities.

Article 27

The church, religious community and the religious group, also has a right to establish educational institutions of all levels of education, except in primary education, in accordance with the law and upon previously obtained opinion from the competent Ministry.

Article 28

Churches, religious communities and religious groups may establish humanitarian, cultural, social, educational, health and charity and other institutions in procedures and under conditions determined by law.

The church, religious community and the religious group, can organize visits in holy places.
Article 29

Churches, religious communities and religious groups may use media for public information, and to publish, issue, import and export printed materials in accordance with the laws, and to establish their own means of public information.

INCOMES OF CHURCHES RELIGIOUS COMMUNITIES AND RELIGIOUS GROUPS

Article 30

Churches, religious communities and religious groups are non-profitable and gain incomes for its activities through their own asset, heritage, presents, legacy, from performing religious rituals, from performing humanitarian, educational, cultural and other social activities, by selling of religious publications and souvenirs, from voluntary contributions and donations of local and foreign citizens and companies, and assigned or not-assigned support from the government and from local self-governance.

Article 31

Churches, religious communities and religious groups are disposing with their incomes independently according with the provisions of the churches, religious communities and religious groups and state regulations.
Churches, religious communities and religious group’s incomes will be treated according to the law and provisions that are related to the non-profitable, educational and humanitarian organizations.

**Article 32**

Churches, religious communities and religious groups that have registered economic activity, in the part of this activity are subject of paying tax, determined with proper provisions.

**Article 33**

Churches, religious communities and religious groups may collect voluntary contributions for religious, humanitarian and other aims according to the article 28 from this law.
No citizen should be forced or forbidden to give contributions for the aims cited in paragraph 1 of this article.

**Article 34**

Social, pension and health insurance of religious clerks is regulated with different provisions.

**CONCLUDING AND FINAL REGULATIONS**

**Article 35**
Basic Court Skopje I, as registry court, is obliged within three months from the day of this law going into effect to introduce register book for the churches, religious communities and religious groups.

The authority in charge of the churches, religious communities and religious group issues, is obliged within 30 days from the day of this law going into effect to transfer to the competent court the data for the churches, religious communities and religious groups that are already included in its register book.

In accordance with the Constitution, the Macedonian Orthodox Church, as well as the Islamic Religious Community in Republic of Macedonia, Catholic Church, Evangelistic–Methodist Church, Jewish Community and other registered churches, religious communities and religious groups that are registered until 1998 year are holding the current legal subjectivity and status and are not obliged for repeated procedure of registration.

Already registered churches, religious communities and religious groups from paragraph 3 of this article are obliged to harmonize their activity with the regulations of this law within six months from the day of its enforcement.

**Article 36**

From the day of the enforcement of this law, the Law Religious Communities and religious groups is no longer valid (“Official Gazette of the Socialist Republic of Macedonia” No.35/77 from 23 July 1997).

**Article 37**
This law enters into force eight days after the day of its announcement in the “Official Gazette of the Republic of Macedonia”.
RATIONALE

For bringing a Law on the Legal Status of a Church, Religious Community and Religious Group (alternative: Law on the Legal Status of Religious Community, Church and Religious Group)

I. Reasons for which the Law should be brought

The Law on Religious Communities and Religious Groups (“Official Gazette of the Republic of Macedonia” no. 35/97) regulates many issues pertaining to the activity of the religious communities and religious groups in the Republic of Macedonia. However, the everyday changes in the Republic of Macedonia which also reflect on the field of the freedom of confession and religious persuasions, as well as on the promotion of the field of human rights and freedoms, impose the need for bringing a new corresponding law. This, even more that during the time of validity of the current law, the Constitutional Court of the Republic of Macedonia abrogated some of the articles of this law with its decisions, thus creating an obligation for new legal solutions to be offered, which based on the character of the decisions of the Constitutional Court, couldn’t be prepared with amendments and supplements of the existing law. Besides the need for new solutions on the issues contained in the provisions annulled by the Constitutional Court, the necessity for regulating some issues of importance for the activity of the religious communities and groups which were not tackled by now also imposed. In that context, it is necessary to adjust the legal provisions in this field with the amendments to the Constitution of the Republic of Macedonia with regard to the freedom of confession of the citizens, likewise ensuring legal conditions for a more appropriate expression and fulfillment of these freedoms in accordance with the corresponding international documents and because of harmonizing it to the European regulations in this plan.
II. Goals of the Law

The goals of the Law are regulation of the establishment and the legal status of the religious communities and groups, i.e. religious communities, churches and religious groups, and the expression of confession and religious association in the Republic of Macedonia. More precisely, it is the regulation of the constitutional guarantees on the freedom of confession and freedom of expression of confession in accordance with the highest international standards on human rights and international declarations and covenants and regulation of mutual cooperation between the state and the churches, religious communities and groups in the spirit of the dialogue and cooperation. In that sense, the Law determines the conditions for establishing and registration of a church, religious community and religious group; it regulates the subject related to the religious rituals and of other manners of expression of confession; then the right to religious edification and the educational activities of the churches, religious communities and groups, likewise the manners of acquisition and disposition with the incomes of the churches, religious communities and religious groups.

III. The content of the Law

During the preparation of the draft of the new Law, a democratic procedure was followed, with a widest consultation on the text with the existing religious communities and groups and citizens’ associations interested on this topic. In respect of the content of the Law, it should be said that some issues were regulated with the current Law on Religious Communities and Religious Groups as well. Nevertheless, the new Law foresees many new solutions. Above all, a change of the name of the Law is proposed (Law on the Legal Status of the Church, Religious community and Religious Group, the alternative: Law on the Legal Status of the Religious Community, Church and Religious Group) which represents harmonization with the real existence of the churches, which in that manner distinct in terminological and substantial sense from the other forms of religious associations.
With regard to the legal status of the churches, religious communities and religious groups, the most important novelty is that this status is gained with the registration in a competent court with introducing a unique court register and not as it was the case up to present, with a registration by a state body competent of issues on relations with religious communities and groups.

The proposed law regulates more precisely the issues concerning the execution of religious rituals, while one of the novelties is the possibility of practicing religious rituals in institutions such as hospitals, centers for children and elders’ care, Army and Police institutions, penitentiaries, and alike. The Law regulates the manner of the practice of religious rituals as well.

This law also regulates the issue of the religious preaching and educational activities of the churches, religious communities and groups, but not the issue of religious edification within profane institutions, which is regulated with special laws. A novelty is that churches, religious communities and groups have the right to establish educational institutions of all educational levels, except primary education.

With regard to the incomes of churches, religious communities and groups, besides the already existing manners of acquisition and disposal with those incomes, it is made possible for the registration of economic activity as well, which underlies tax obligations determined with other regulations.

The social, retirement, handicap and health insurance of the religious servants is assessed as not pertinent to the provisions of this law and this subject should be regulated with special regulations.

The proposed draft of the Law does not contain punitive provisions, which is also a novelty. Namely, in respect of the sanctions, the law in fact refers to the appropriate criminal and misdemeanor provisions.

IV. Financial means

No financial means from the budget of the Republic of Macedonia are needed for implementing this law.
V. Drafting of the Law

Having in mind the fact that the fulfillment of the freedom of confession is one of the fundamental values of our legal system, the Committee for Relations with Religious Communities and Religious Groups conducted a very democratic procedure while preparing the proposed draft of the law:

- Experts’ assistance was provided in order to ascertain the most adequate legal solutions, while similar legal solutions of many countries were consulted, among which those of Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, Bulgaria, Romania, Lithuania, Russia, Sweden, Germany, Portugal and of other countries.

- For the purpose of exchange of opinions between the churches, religious communities and groups, many discussions took place with the representatives of the Interethnic Council, as well as two debates with the representatives of the religious groups in the Republic of Macedonia. There were proposals given in these meetings for concrete solutions in the legal draft.

- The NGO sector was included in reviewing and preparation of the draft of the Law, too. A debate was held on the Working Version of the Law on Religious Communities and Religious Groups in organization of the NGO European Youth of Macedonia, Helsinki Committee, Foundation Open Society Institute and the Macedonian Center for International Cooperation, with participation of representatives of political parties in the Republic of Macedonia.

- A special Conference on the topic of “Freedom of Religion and Confession in Macedonia” was held, organized by the Helsinki Committee on Human Rights.

- A debate on the solutions provided with the new Law took place in the frames of the NGO fair – Days of Religious Communities.
Especially should be noted the three-days working meeting with the OSCE experts in the field of freedom of religion, in which not only that there were exchanged opinions on the content of the law, but concrete proposals were made as well, in order to regulate this matter in the spirit of the European determinations of the international and European regulations in this field.
Appendix II

РАБОТНА ВЕРЗИЈА
НА ЗАКОНОТ ЗА ПРАВНАТА ПОЛОЖБА НА ЦРКВА, ВЕРСКА
ЗАЕДНИЦА И РЕЛИГИОЗНА ГРУПА

или

РАБОТНА ВЕРЗИЈА
НА ЗАКОНОТ ЗА ПРАВНАТА ПОЛОЖБА НА ВЕРСКА
ЗАЕДНИЦА, ЦРКВА И РЕЛИГИОЗНА ГРУПА

I. ОПШТИ ОДРЕДБИ

Член 1

Со овој закон се уредува основание и правната положба на црква, верска заедница и религиозна група и изразувањето на верата и верското дружување.

Согласно Уставот на Република Македонија, црквата, верската заедница и религиозната група е одвоена од државата и е еднаква пред законот.

Член 2

Секој има право на слобода на мислата, совеста и верата.

Ова право се вклучува слободата на изразување на својата вера или убедување, сам или заедно со другите, јавно или приватно.

Во смисла на став 1 и 2 од овој член се гарантира слободата на верисковеда и правото на изразување на верата согласно Уставот на Република Македонија и највисоките меѓународни стандарди за човековите права и меѓународните декларации и конвенции за слободата на верисковеда и изразувањето на верата.
Член 3

Не се дозволена било каква форма на верска дискриминација.

Верското убедување не го ослободува граѓанинот од обврските што ги има како граѓанин според Уставот, законите и другите прописи, освен ако тоа со закон или друг пропис не е утврдено поникау.

Член 4

Граѓаните можат слободно и јавно да основаат црква, верска заедница и религиозна група.

Црквата, верската заедница и религиозната група има право слободно да се организира во согласност со својата институционална структура и да ги уредува своите внатрешни односи во согласност со своите прописи и други религиозни норми.

Член 5

Никој не смее да ја поврзува црквата, верската заедница и религиозната група во вршењето на нејзините дејности.

Дејности на црквата, верската заедница и религиозната група треба да биде во согласност со Уставот, законите и другите прописи на Република Македонија, меѓународните декларации и конвенции за слободата на вероисповедања и изразувањето на верата.

Државните институции и органи, во рамките на своите надлежности и оптамтувања треба да содржаваат услови за непрекинато изразување на дејности на црквата, верската заедница и религиозната група.

Со овој Закон се регулира вземната соработка помеѓу државата и црквата, верската заедница и религиозната група, во духот на дијалог и соработка.

Член 6

Дејствувањето на црквата, верската заедница и религиозната група може да биде ограничено само со законски мерки во интерес на јавната безбедност, пореднокот, здравјето и моралот или защитата на правата и слободите на други, неопходни во една демократско општество.
Член 7
Црквата, верската заедници и религиозната група и некои други не смее, на кој било начин да го принудуваат или поврежуваат човекот и граѓанинот верски да се определува, да биде член на одредена црква, верска заедница и религиозна група или да врши одредени верски обреди и други видови на изразување на верата.

ПРАВЕН СТАТУС НА ЦРКВА, ВЕРСКА ЗАЕДНИЦА И РЕЛИГИОЗНА ГРУПА

Член 8
Правниот статус на црквата, верската заедница и религиозната група се стекнува со регистрација во надлежниот суд со што црквата, верската заедница или религиозната група добива својствено право лице.

Надлежниот државен орган да води специфична статистичка номенклатура за регистрираната црква, верска заедница или религиозна група.

За една вероисповед се регистрира само една црква, односно верска заедница.

Регистрацијата на нова црква, верска заедница или религиозна група може да биде оспорена од секое постојачка и регистрирани црква, верска заедница или религиозна група од иста вероисповед со поднесување на жалба до надлежниот регистарски суд во рок од 90 дена од регистрирањето.

Член 9
Странски државјани не може да основа црква, верска заедница или религиозна група во Република Македонија.

Член 10
Називот и официјалните обележја на црквата, верската заедница или религиозната група треба да се разликуваат од називите и официјал-
ните обележи на воеве регистрираните цркви, верски заседници или религиозни групи.

Во навивот и официјалните обележи на црквата, верската заседница и религиозната група не смее да бидат содржани државните обележи, обележета на други држави, верски или јавни органи или институции, како и навиви и обележи на други држави.

Доколку во навивот на црквата, верската заседница односно религиозната група се користат зборовите "Република Македонија", во таков случај мора да се употребат зборовите "во Република Македонија".

Седиштето на црквата, верската заседница, односно религиозната група, задолжително е во Република Македонија.

Член 11

Црквата, верската заседница односно религиозната група, се запишува во Единственото судски регистар на црквите, верските заседници и религиозните групи (во натамошниот текст: судски регистар).

Судскиот регистар од став 1 на овој член се воци во Основниот суд - Скопје 1.

Податоците запишани во судскиот регистар се јавни.

Член 12

Подносителот е дозгожен да определи одговорно лице кој го органот за регистрација ке поднесе пријава во рок од 30 дена од денот на доносувањето на одлука за основање.

Кон пријавата од став 1 од овој член црквата, верската заседница и религиозната група поднесува:
- одлука за основање;
- статут, односно друг акт со кој се уредува статусот, организацијата и дејствувањето;
- одлука за определување на одговорно лице, односно лице које ќе ја згатува и претставува црквата, верската заседница, односно религиозната група;
- име и седиште на црквата, верската заедница, односно религиозната група;
- краток опис на обележјата и ознаките што ќе ги употребува црквата, верската заедница, односно религиозната група.

Глава 13

Надлежниот суд е дозволен во рок од 30 дена од денот на поднесувањето на барањето за регистрација да донесе решение за упис на црквата, верската заедница или религиозната група во судскиот регистар.

Доколку надлежниот суд утврди дека барањето за регистрација на црквата, верската заедница или религиозната група не е во согласност со одредбите на овој закон, писмено го известува подносителот на барањето и му определува рок за усогласување со одредбите на овој закон.

Рокот од претходниот став не смее да биде пократок од 15 дена и не подолг од 90 дена.

Ако подносителот на барањето по писменото известување на судот не постапи во рокот утврден со став 3 на овој член, се смета дека барателот на регистрацијата на црквата, верската заедница или религиозната група го повлекол барањето.

Доколку надлежниот суд го одби барањето за запишуване во судскиот регистар, барателот може да поднесе жалба до Апелационит суд во Скопје во рок од 15 дена од приемот на решението на регистарскиот суд.

Глава 14

Правнинот статус на црквата, верската заедница или религиозната група престанува со бришење од регистарот со правосилна одлука за бришење од страна на надлежниот суд.

Лицата одговорни за застапување и претставување на црквата, верската заедница или религиозната група се должни да поднесат до регистарскиот суд пријава за секоја статусна промена, во рок од 30 дена од денот на донесувањето на одлука за промена.
ВЕРСКИ ОБРЕДИ

Член 15

Верските обреди и другите начини за изразување на верата се вршат во верските храмови, на гробишта и во други простории на црквата, верската заедница или религиозната група.

Верските обреди и другите начини за изразување на верата можат да се вршат и во други јавни и приватни простории и места доколку не се повредува јавниот ред и мир.

Верски обреди во јавен верски објект може да првши само лице од регистрирана црква, верска заедница, религиозна група во Република Македонија или со нивна дозвола.

Не е дозволено јавно ложно претставување на свештените лица и верски службеници и злоупотреба на верски унiformи и обележја.

Никој не сме да ги попречува свештените лица и верските службеници од регистрираните цркви, верски заедници и религиозни групи во Република Македонија во извршувањето на нивните верски активности во јавните верски објekti и каде што е дозволено согласно законот.

Член 16

Верски објект не може да се гради без претходно одобрение на црквата, верската заедница или религиозната група во Република Македонија.

Државните органи надлежни за донесување на урбанистичките планини, должни се претходно да побараат мислење од регистрираната црква, верска заедница или религиозна група за потребата од изградба на верски објект.

Член 17

Верските обреди крштевање, сунетисување и обреснување на малолетник може да се вршат само со согласност на родителот, идентично старостод, а ако малолетникот е постар од четиринаесет години, потребна е и негова писмена согласност.
За овие обреди задолжително се обезбедуваат нужни хигиенски и здравствени услови.

Хигиенските и здравствените услови од став 2 на овој член ги прописува наредбата на орган со посебен акт.

Член 18
За лицата кои се сместени во болници, во домови за деца и домови за стари лица, армиски и полицијски институции и простори, гатвори и слични институции можат да се вршат верски обреди за изразување на верата.

Лицата од став 1 на овој член можат да бидат посетувани од овлечениот свештен лице и верски службеници заради изразување на верски обреди.

Никој не може да бара информација од овлечениот свештен лице и верски службеници за податоци за кои дозволе во рамките на својата служба.

Член 19
 Во случај кога во согласност со закон се преземаат посебни мерки за заштита на здравјето на граѓаните, на јавниот ред и мир, на безбедноста и на имот од поголем обем, надлежниот орган за внатрешни работи може да забрани одржување на верски собири и посети на верски манифестации за време на поделка траат околностите поради кои наведените мерки се преземени.

ВЕРСКА ПОУКА И ОБРАЗОВНИ ДЕЈНОСТИ НА ЦРКВА. ВЕРСКА ЗАЕДНИЦА И РЕЛИГИОЗНА ГРУПА

Член 20
Црквата, верската заседница и религиозната група може да изведува верска поука.

Верска поука се изведува во просторите кои се вршат верски обреди и други начини за јавно изразување на верата, како и во други јавни
и приватни простори и места, доколку со тоа не се посреща јавниот ред и мир.

Одражувањето на верска поука во јавните образовни и воспитни инсвствуици се регулира со закон.

Член 21

Црквата, верската заедница и религиозната група има право да основа верска училишта од сите степени на образование, освен од основното образование, за школување на свештен лица и верски службеници, како и ученички и студентски домови за сместување на лицата кои се школуваат во не установи.

Верските училишта се изведувани со другите образовни институции и нивните ученици и студенти ги имаат истите права.

Член 22

Црквата, верската заедница или религиозната група е доцна и извеснувањето за основување на верско училиште, со актот за целите и внукршношта организација на училиштето и наставниот план и програма во согласност со одредбите на овој закон да го поднесе до органот надлежен за прашањата на црквите, верските заедници и религиозните групи најмалку 90 дена пред денот определен за почетокот на неговото работење.

Органот надлежен за прашањата на црквите, верските заедници и религиозните групи е доцна своето мислење да го достави до црквата, верската заедница или религиозната група, во рок од 60 дена од денот на поднесувањето на извеснувањето, по претходно пријавено мислење од надлежното министерство.

Член 23

Доколку мислењето на органот надлежен за прашањата на црквите, верските заедници и религиозните групи е негативна, црквата, верската заедница или религиозната група има право на притвор до Владата на Република Македонија во рок од 15 дена од добивањето на мислењето.
Доколку Владата на Република Македонија го одби привлеглот, се смета дека односното верско училиште не може да биде основано.

Член 24

Наставните планови и програми во верските училишта не смета да бидат во конфликту со Уставот и со законите.

Надлежното министерството може да врши увид во наставните планови и програми на верските училишта во смисла на став 1 од овој член.

Член 25

Настава во верско училиште може да изведува само државјани на Република Македонија.

По вклучок, доколку црквата, верската заедница или религиозната група има потреба од соодветни кадри, настава во верско училиште може да изведува и странски државјани, но само повремено и во согласност со прописите за престој на странски државјани во Р. Македонија, со одобрение од органот надлежен за прашањата на црквите, верските заедници и религиозните групи.

Член 26

Црквата, верската заедница и религиозната група самостојно управлява со верските училишта и другите образовни установи кои можат да ги формираат во согласност со овој закон, и со ученичките и студентските домови.

Одговорното лице во верското училиште, образовната установа, ученичкиот дом или студентскиот дом, е должно да му ги стави на распоредување на надлежниот орган за прашањата на црквите, верските заедници и религиозните групи сите податоци потребни за вршување увид во пивната работа, и во рок определен од тој орган да ги отстрани евентуалните недостатоци.
Член 27
Црквата, верската заедница и религиозната група, исто така, има право да основа образовни институции од сите степени на образование, освен од основното образование, согласно законот и по прибавено мисле-не од надлежното министерство.

Член 28
Црквата, верската заедница и религиозната група може да основа хуманитарни, культурни, социјални, воспитно-образовни, здравствени и доброволни и други установи, во поставка и под услови уредени со закон.
Црквата, верската заедница и религиозната група може да организира посети на свети места.

Член 29
Црквата, верската заедница и религиозната група може да ги користи средствата за јавно информирање, и да издава, увеува и извежду печатени работи во согласност со законите, како и да формира сопствени средства за јавно информирање.

ПРИХОДИ НА ЦРКВАТА, ВЕРСКАТА ЗАЕДНИЦА И РЕЛИГИОЗНАТА ГРУПА

Член 30
Црквата, верската заедница и религиозната групa e непрофитна и стекнува приходи за својата дејност од сопствени имот, наследство, подароци, легати, од давање верски услуги, од обаување на каритативна, воспитно-образовна, културна и друга општа кориска активност, со продажба на верски издадени или сувенири, од доброволни прилоги и донацији на домасти и странски физички и правни лица и нервениска поддршка од државата и од локалната самоуправа.
Член 31

Црквата, верската задвица и религиозната група сами по себе накладат на стекнатите приходи, во согласност со прописите на црквата, верската задвица или религиозната група и државните прописи.

Приходите на црквата, верската задвица или религиозната група ќе се третираат согласно законите и прописите кои се однесуваат на не-прфитабилните, образовните и каритативните организации.

Член 32

Црквата, верската задвица и религиозната група која има регистрирано стопанска дејност, во делот на таа дејност подлежи на докачните обврски утврдени со соодветните прописи.

Член 33

Црквата, верската задвица и религиозната група може да прибира доброволни прилоги за верски, хуманитарни и други цели, согласно член 28 од овој закон.

Ницо не смееш да биде принудуван или спречуван да даде прилоги за намените од став 1 од овој член.

Член 34

Социјалното, пензионското, инвалидското и здравственото осигурување на свештените лица и верските службеници, се регулира со особени прописи.

ПРЕОДНИ И ЗАВРШНИ ОДРЕДБИ

Член 35

Основниот Суд Скопје I, како регистарски Суд, должен е најдоден во рок од три месеци од денот на плетувањето во сила на овој закон да го поведе регистрот на црквите, верските задвици и религиозните групи.
Организот надлежен за припањата на црквите, верските заедници и религиозните групи, во рок од триесет денов од денот на влегувањето на силата на овој закон е должен да ги достави до надлежниот суд податоците за црквите, верските заедници и религиозните групи кои се водат во истиот регистар.

Во согласност со Уставот, Македонската православна црква, како и Исламската верска заедница во Република Македонија, Католичката црква, Евангелско-методистичката црква, Евангелската заедница и другите регистрирани цркви, верски заедници и религиозни групи заклучно со 1998 година го задржуваат постојниот правен субјективитет и статус и не надлежат на повторна регистрација.

Веќе регистрираните цркви, верски заедници и религиозни групи, во согласност со став 3 од овој член, се должни да го усвоиат своето дејствување со одредбите на овој закон во рок од 6 месеци од денот на влегување во сила.

Член 36
Со денот на влегувањето на силата на овој закон престанува да важи Законот за верски заедници и за религиозни групи ("Службен вестник на РМ", бр.35/97 од 23 јули 1997 година)

Член 37
Овој закон влегува во сила осмиот ден од денот на објавувањето во "Службен вестник" на РМ.
Образложение
за донесување на Закон за правната положба на цркви, верска заедници и религиозна група (алтернатива: Закон за правната положба на верска заедници, цркви и религиозна група)

1. Првини поради кон треба да се донесе Законот

Со Законот за верските заедници и религиозни групи ("Службен вестник на Република Македонија", бр. 35/97) без уредени повеќе прашања кои се однесувал на дејствувањето на верските заедници и религиозни групи во Република Македонија. Меѓутоа, со сеојдневните промени во Република Македонија кои се рефлексираат и во областа на свободата на вернопосветата и религиозните убедувања, како и со унапредувањето на сферата на човековите права и свободи, се наложува потребата од донесување на нов соодветен закон. Оваа, дотолку повеќе што во текот на вожното на досегашниот закон, Уставниот суд на Република Македонија со свој одлуки укина дел од членовите на тој закон со што се создаде обирска да се понудат нови законски решенија кон, со оглед на карактерот на одлуките на Уставниот суд, не би можеле да се изготват со измена и доистенувања на постојанственото закон. Покрај потребата од нови решенија за прашањата одржани во одредбите што ги укина Уставниот суд, како потреба во наместо и уредувањето на некои прашања од значај за дејствувањето на верските заедници и религиозните групи кои досега не беа уредени. Во тав смиса л е неопходно усогласување на законските одредби од оваа област со промените на Уставот на Република Македонија во поглед на свободата на вернопосветата на граѓаните, како и обезбедување на законски услови за посредствено изразување и остварување на овие свободи во согласност со соодветните меѓународни документи и западен придобивање кон европската регулатива на овој план.
II. Цели на Законот

Целите на Законот се регулирање на основањето и правната положба на црквите, верските заедници и религиозните групи, оди, верските заедници, црквите и религиозните групи, и изразувањето на верата и верското дружување во Република Македонија, повеќено регулирање на установените гаранции за слободата на вероизповеда и приватност на изразување на верата согласно највисоките меѓународни стандарди за човековите права и меѓународните декларации и конвенции и регулирање на изземната соработка помеѓу државата и црквите, верските заедници и религиозните групи, оди, верските заедници, црквите и религиозните групи, во духот на дијалог и соработка. Во таа смисла, Законот ги определува установите за основање и регистрација на црквата, верска заедница и религиозна група, оди, верска заедница, црква и религиозна група, за регулирање на црквите, верските заедници и религиозните групи, оди, верските заедници, црквите и религиозните групи, како и начините за стекнување и распоредување со приходите на црквите, верските заедници и религиозните групи, оди, верските заедници, црквите и религиозните групи.

III. Содржина на Законот

При изработување на текстот на новиот Закон се обезбедил демократска процедура, со најширока консултација околу неговиот текст со постојните верски заедници и религиозни групи и граѓанските здружења заинтересирани за оваа проблематика.

Во поглед на содржината на Законот, треба да се каже дека некои прашања бев регулирани и со доегашниот Закон за верските заедници и религиозните групи. Меѓутоа, со новиот Закон се предвидени нови мети при истражувањето на верските заедници и нови граници."
Пред се, се предлаза промена на називот на Законот (Закон за правната положба на црквите, верске заедници и религиозна група, алтернативен). Закон за правната положба на верска заедници, цркве и религиозна група што значи усогласување со реалното постојање на црквите ком на тој начин, се издвојуваат, во терминоложката и суштинска смисла, од останатите облици на верско друштвување.

Во поглед на правното статус на црквите, версите заедници и религиозните групи, односно верските заедници, црквите и религиозните групи, најзначајна новина е дека тој статус се стекнува со регистрација во надлежен суд со воведување на единствен судски регистар а не, како што беше досега, со регистрација при државниот орган надлежен за прашањата на односите со верските заедници и религиозните групи.

Со предложенот закон поврзано се уредуваат прашањата околу вршењето на верските обреди, при што една од новините е прешеването на верска практика и во установен како што се балансира, домашните деди и за старци лица, армиските и политичките институции, заетери и сл. Со Законот се регулира и начинот на вршењето на тие верски обреди.

Овој закон го регулира прашањето на и на верската поука и на образовните дејности на црквите, верските заедници и религиозните групи, односно верските заедници, црквите и религиозните групи, но не и прашањето на верската поука во световните институции, кои се регулираат со посебни закони. Новина е дека црквите, верските заедници и религиозните групи, односно верските заедници, црквите и религиозните групи имаат право да освојат граѓански образовни институции од сите степени на образование, освен од основното образование.

Во поглед на приходите на црквите, верските заедници и религиозните групи, односно верските заедници, црквите и религиозните групи, покрај веке постојаните новини на стекнување на и распоредување со тие приходи, се овозможува и регистрирање и на стопанската дејност, но која подлежи на даноочни обрски утврдени со други прописи.

Социјалното, пензиското, инвалдиското и здравственото опекување на верските службеници се смест дека не припаѓа под одредбите.
на овој закон и таа проблематика би требало да се регулира со посебни прописи.

Предложениот текст на Законот не содржи казнени одредби, што е, исто така, неприлично. Именно, во поглед на санкциите, законот, всушност, упатува на примената на соодветните кривични и прекривични прописи.

IV. Финансиски средства

За спроведување на овој закон не се потребни финансиски средства од буџетот на Република Македонија.

V. Иготнување на Законот

Имајќи го предвид фактот дека остварувањето на овој закон на верисковедна еден од темелните предности на нашиот правен поредок. Комисијата за односи со вериските заедници и религиозни групи спроведе најдемократска процедура при изготвувањето на предложенот законски текст:

- Заради внимавање на најдекватните законски решенија биле обезбедени експертска помош, при што без консултувања слични законоодреди во познавање од Мексик, Хрватска, Босна и Херцеговина, Србија и Црна Гора, Бугарија, Романија, Литванија, Русија, Шведска, Германија, Португал и од други земји.

- Заради репрезентативноста на кривичните, вериските заедници и религиозните групи, дадените прописи, првобитно групи и религиозните групи, се спроведени во практика, не одржани познавање со претставници на Меѓуправничкиот савет, како и дис на спроведени со их представници на религиозните групи во Република Македонија. На овие средства биле додени предности за некои конкретни решенија во законскиот текст.
- Во разгледувањето и изработката на текстот на Законот беше вклучен и т.н. неелементар сектор. Се одржа дебата за Работот на ветрила на Законот за верските заседници и религиозните групи во организацијата на НВО Европска младина на Македонија, Хелсингкиот комитет, Институтот Основно опитство и Македонскиот центар за меѓународна соработка, со учество на и на претставници на политичките партии во Република Македонија.

- Беше одржана посебна Конференцијата на тема "Слободата на религијата и уверувањето во Република Македонија" организирана од страна на Хелсингкиот комитет за човекови права.

- Дебата за репресијата во новиот Закон се одржа и во рамките на НВО саемот - Денови на верските заседници.

- Посебно треба да се одбележи тренденците работна средина со експертите на ОБСЕ од областа на остварувањето на слободата на религијата, на која беше разменети, не само мислења за суспирана на законот, туку беше и да се конкретни предлоги за регулирање на оваа материја во духот на европските определби на меѓународната и европска регулаторна област.