



Resolution 1390 (2004)¹

New Bulgarian Law on Religion known as the Confessions Act 2002

Parliamentary Assembly

1. The new Bulgarian Law on Religion, known as the Confessions Act 2002, entered into force on 1 January 2003, replacing the Denominations Act 1949, which had allowed for unfettered government interference in the internal affairs of all religious denominations. After years of protracted negotiations on various drafts, the Confessions Act 2002 was adopted at the end of December 2002.
2. The Confessions Act 2002 represents an important step forward by comparison with the Denominations Act 1949. It recognises religious freedom as a fundamental right, declares that all religions are free and equal and lays down the separation of the Church and the state. At the same time, it allows for the state and local communities to support religious activities, including through tax advantages and the provision of places of worship. Finally, it operates an important change in the role of the Directorate of Religious Affairs of the Bulgarian Council of Ministers, which is evolving from a directing and controlling organ into a chiefly advisory body whose task it is to ensure respect for religious freedom.
3. The Confessions Act 2002 has nevertheless given rise to some criticism by many religious communities – with the exception of the official Bulgarian Orthodox Church, led by Patriarch Maxim, and of the Jewish community – and by NGOs such as the Bulgarian Helsinki Committee.
4. Many religious communities regret the provisions – in particular Article 10 – which grant the Bulgarian Orthodox Church a special role and exempt it from the registration requirement which the act generally foresees as a precondition for legal personality. They fear the psychological impact of this clause which could lead to discrimination against other religions at different levels of state administration. Some practical problems have already surfaced concerning alleged factual inequalities in the tax treatment of the income sources of different religious communities, access to the teaching of religion and delays in the processing of applications for registration.
5. Some perplexity stems from the poor drafting of the act, which has caused confusion and concern among many religious groups. The key provisions governing the registration of religious institutions and the extent to which re-registration of existing institutions is required (at the central and/or local level) do indeed seem unclear. Neither the procedure to be followed (delays, appeals, adversarial nature of procedure, precise role of the Directorate of Religious Affairs) nor the substantive criteria for registration are laid down clearly in the act. Likewise, the act fails to recognise explicitly freedom of thought (that is, the right not to believe) and does not clarify the rights of believers of unregistered religious communities.
6. The formulation of the restrictions placed on religious freedoms in Article 7 of the act has also given rise to concern. In particular, the prohibition of the use of religion for “political objectives”, in conjunction with the act’s punitive provisions, could effectively exclude religious communities from important policy debates in civil society on issues such as abortion, euthanasia, cloning, family and social policies, which also have a direct relation to the values they defend.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 7 September 2004 (see [Doc. 10065](#) and corrigendum, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Contestabile).



7. The strongest doubts concern the state interference allowed for, or even operated directly by the Confessions Act 2002, in the internal affairs of religious communities. This concerns in particular the leadership quarrel between the two Bulgarian Orthodox synods led, respectively, by Patriarch Maxim and by Metropolitan Innokentii, who disputes the legitimacy of Maxim as Patriarch. The ex lege recognition of the Bulgarian Orthodox Church, as defined meticulously in Article 10, paragraph 1, exempting this institution from the usual registration procedure, which also includes a check on the legitimacy of the leadership, is generally seen as intended to settle the dispute between Maxim and Innokentii in favour of the former. The alternative synod is effectively barred from registering as a new religious institution by the prohibition against the registration of another institution using the same name and headquarters and the punitive provisions empowering the Directorate of Religious Affairs to sanction “unauthorised representatives”.

8. The Parliamentary Assembly, taking into account the case-law of the European Court of Human Rights in this field, as developed in particular in its judgments in the cases of Hasan and Chaush v. Bulgaria, Metropolitan Church of Bessarabia and Others v. Moldova, Serif v. Greece, and Kokkinakis v. Greece, considers that:

8.1. freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the European Convention on Human Rights (ECHR);

8.2. the state’s role is that of a neutral and impartial organiser of the exercise of various religions, faiths and beliefs;

8.3. religious communities may not be discriminated against, in relation to other actors of civil society; their activities “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” (see Article 9, paragraph 2, of the ECHR);

8.4. the law prescribing restrictions to religious freedom must meet the standards of clarity and predictability derived from the principle of the rule of law so as to avoid giving the executive unfettered discretion to intervene in religious affairs;

8.5. in democratic societies, the state need not take measures to ensure that religious communities remain or are brought under a unified leadership. Tensions arising in situations where a religious community becomes divided are an unavoidable consequence of pluralism. 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.

9. The Assembly therefore recommends to the Bulgarian authorities:

9.1. as regards Article 10 of the act:

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

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

9.2. as regards Article 15, paragraph 2 (no registration of an identical religious community): either to delete this provision, or to ensure its interpretation in such a way that only the strict and literal identity of names and headquarters precludes the registration of a breakaway group;

9.3. as regards Article 14 and following (registration of religious communities):

a. regarding the substantive criteria for registration: either to add an express clarification that the Sofia City Court and the Directorate of Religious Affairs may not enter into value judgments on religious beliefs or rules, or to ensure that these provisions are applied in such a way that all religious communities shall be registered as long as they provide the information foreseen in Article 17, their name and headquarters are not strictly identical with those of another religious community having applied for registration earlier, and they do not violate Article 7 as modified or interpreted in accordance with Article 9 of the ECHR;

- b.* regarding the registration procedure: to clarify the non-binding character of the opinions of the Directorate of Religious Affairs; to ensure the adversarial nature of the registration procedure, including free access to information, a fair hearing to be given to the applicant and the proper motivation of decisions;
- 9.4. as regards Article 7 (limits of religious freedom): either to change its wording to incorporate that of Article 9, paragraph 2, of the ECHR, or to ensure that it is interpreted narrowly and applied in accordance with the standards of the Convention, in particular as regards the legitimate participation of religious communities in public policy debates;
- 9.5. as regards Articles 36 et seq. (punitive provisions): to lay down in the text of the act, or ensure by way of interpretation, that the procedure to be followed for the infliction of penalties and appeals lodged against them shall fulfil the requirements of a fair trial under the rule of law.