



**Orthodox Ohrid Archbishopric
Holy Metropolis of Veles and Povardarje**

Protocol No. 83 од 07 July 2003

**To the Constitutional Court
of the Republic of Macedonia**

Request: *for reconsideration of the constitutional relevance of articles 5 and 8 of the Law on religious communities and religious groups, published in the Official Bulletin no.35, dated 23 July 1997, and contrary to the articles 19 and 96 from the Constitution of the R. Macedonia*

Respected President of the Constitutional Court of the R. Macedonia,

As a bishop of God's Church, which is a place for attaining the freedom as an ontological category, and in the name of God's congregation that by God's goodwill was given to us to guide it to the final purpose of life and existence, which is the Kingdom of God, we submit an initiative to the Constitutional Court of the R. Macedonia for reconsideration of the constitutional compliance of some of the articles of the Law on religious communities and religious groups, passed on 16 July 1997 and published in the Official Bulletin of the R. Macedonia no.35 on 23 July 1997.

We deem that the articles 5 and 8 of the aforementioned Law are in discord with the Constitution of the R. Macedonia and are contrary to both the constitutional guarantee of the freedom of religious confession (art. 19 of the Constitution of R.M.) and also with the widely accepted civilisational norms of freedom of thought and ideas.

Namely, in art.5 of the Law on religious communities and religious groups it is stated that: "A foreign citizen can, at the request of a religious community, that is, a religious group, perform religious matters and religious rites **upon prior approval** by the **agency** authorised for issues concerning the religious communities and religious groups."

First, the Law is completely unclear when it addresses religious matters and religious rites as it does not define the same previously. Is it considered a religious matter and a religious rite if one says a prayer before lunch and if that prayer has been uttered by a foreign citizen visiting some family in Macedonia? Should, in this case, the same be punished with the corresponding punishment foreseen in art.29 of the same Law because he hadn't received a previous consent from the authorised **agency** to say a prayer before lunch? And in case it seems awkward, bureaucratic, and even totalitarian to be asking permission each time the foreign citizen is supposed to say a prayer before lunch at his hosts' in

Macedonia, then we pray the Constitutional Court to take into consideration the dilemma for which religious matters and religious rites is one to ask for permission?

As the Orthodox Church uses thousands of prayers that could be referred to as religious matters or religious rites, as, for example: the sanctifying of the wheat in the barns, sanctifying eggs, or honey in honeycombs, sanctifying water, sanctifying fish, meat, the holy mystery of confession, the sanctifying of oil, a prayer for the sick, a prayer upon a woman who has just given birth, blessing of a herd of sheep, blessing of a place of residence, of a ship, sanctifying of the foundations of a new building, but also, baptism, wedding, burial, even the sanctifying of the flag and weapons of the army; the dilemma is: Should one request a permission from the **agency** for all these prayers if they are performed by a foreign citizen? In other words, wouldn't it be a violation of the freedom of religious confession of the person concerned, as it would be a violation of the freedom of the foreign citizen who is supposed to be able to express his religious feelings in any part of the world, and as he should be permitted in Macedonia to say a simple Lord have mercy, as well as against the freedom of his host in Macedonia to whom, on the other hand, the rights to freedom of religious confession are guaranteed by article 19 of the Constitution of R.M. where it is precisely stated: "one is guaranteed the free and public, individual or in community with others, confession of faith". It is impossible that the Constitution of R.M. does not also apply to foreigners when they are on the territory of R.M.

It is evident that the law did not foresee the different applications of the aforementioned article in circumstances of prayer in public places belonging to some religious community or places in private property. The evidence to support this claim is article 19 of the same Law which the Constitutional Court recently abolished as unconstitutional. Namely, the article foresaw that religious matters and religious rites can be performed in other rooms and places accessible to the citizens, but only after the approval of the agency. By abolishing article 19, automatically the need to ask for permission for the foreign citizens so that they would be able to perform religious matters and rites in places mentioned in that article was also abolished. Then, to what cases would article 5 apply, in fact, could it be applied at all if it is contrary to the constitutional guarantee of freedom of religious confession?

So, it is left exclusively to the will of the agency and the inclination that it has towards certain religious communities or religious groups, whether it will issue a permit to a foreign citizen to take part in certain religious matters in the R. Macedonia. On top of all that, recently, this Article of the Law became a reason for an international dispute, because based on this Article of the Law, the Ministry of internal affairs of the R. M., founds its ban for letting priests from Serbia, Greece or Bulgaria to enter Macedonia. By all means this is a total distortion even of the existing legislation, which does not forbid priests from other countries to enter Macedonia, but if it comes to that, it forbids the performing of religious matters without authorization. However, the unconstitutional nature of the aforementioned article from the Law gives motivation to the Government to exceed its authority.

The abovementioned article is also contrary to the article 96 of the Constitution of R.M. because it clearly limits the actions of the bodies of Government to the frame of the Constitution. Because we consider it to be against the Constitution for foreign citizens to ask for permission to practise religious matters in R. Macedonia, hence, we reckon it to be contrary to article 96 of the Constitution that the Commission for relations with the religious communities and other religious groups, as a governmental agency, should issue such permits.

Also, we ask for constitutional reconsideration of article 8 from the Law for religious communities and other religious groups which makes the restriction that "For one confession there can be only one religious community." We find the same to be opposing to article 19 from the Constitution of the R. Macedonia.

With what criterion for freedom of the religious confession does article 8 of the Law correspond, if someone else, and that is the **agency**, decides who can be a religious community, and who can't? Furthermore, nowhere in the Law itself is there a given criterion as to what constitutes a

religious community, and what makes a religious group? If it is done according to the number of members then it is discrimination. If it is done according to the preferences that the President of the **agency** has towards certain religious confessions, then again, it is discrimination. If, on the other hand, religious communities are only those religions mentioned in the Constitution of R. Macedonia, then it is utterly negligent to overlook that if there is a freedom of religious confession then there is a possibility for any of those religious confessions to separate, as was the case with the Islamic religious community a couple of years ago, and as is lately with the Orthodox Church. Without much theorizing and because the question of the constitutionality of the aforementioned article already has a practical aspect we ask: What will be the criterion to determine who makes a religious community, is it the Macedonian Orthodox Church or the Ohrid Archbishopric, which would eventually apply for registration with the **agency**, when both of these consider themselves to be Orthodox Churches? Does anyone have the right to judge, may it even be the President of the Commission for relations with the religious communities and religious groups, who is more Orthodox from the both? In ignorance of the Moslem religion one can easily perceive all Muslims equally, although there are intolerable differences between Muslim Sunni and Muslim Shiite. Also, in ignorance of Christian denominations, one can easily file them in the same group. But there can be many differences. The dilemma is as follows: What criterion does the **agency** have in deciding whom to privilege and whom to subordinate when the matter concerns exclusively religious issues, and, more importantly, does the **agency** have any right at all, following the division that could occur in a religious community, to treat one side as a religious community and the other only as a religious group, or, even worse, to refuse to even register it?

The Law is unclear whether the **agency** would, according to art.8, register the Ohrid Archbishopric in case it requests to be registered as an Orthodox Church? The answer could be that there already exists one Orthodox Church, and no other can be registered. This would be in disagreement with the constitutional declaration on the freedom of religious confession. If, on the other hand, art.8 is not interpreted so that it would mean that a religious community that came to be upon division of an existing religious community could not be registered at all by the **agency**, but that it should be registered in such a case, according to art.9 which refers to registering religious groups, then we find that art.8 of the Law is in discord with the Constitutional declaration on the freedom of religious confession.

Namely, if the entire Macedonian Orthodox Church accepted the Nis agreement, which foresaw a change of the name of the Macedonian Orthodox Church into Ohrid Archbishopric, and only a minority separated, and because this minority wouldn't have changed anything from its recent registration in the **agency** and would have kept the name Macedonian Orthodox Church, by which article would the Ohrid Archbishopric have been registered, according to art.8, as a religious community or, according to art.9, as a religious group? May the **agency** that registers religious communities and religious groups use whatever measure it wishes it will be acting against the Constitution, because the sole differentiation between religious communities and religious groups is contrary to the Constitution of R. Macedonia. The gradation of religious communities and religious groups is a multilayered discrimination based on religious grounds. For this exact reason, in order not to act contrary to the basic declarations on the freedom of the religious confession, the new European Constitution will not mention any religion. It is unjust that someone is privileged and another discriminated on religious grounds. In this exact context, the case with art.8 of the Law, which concerns the impossibility to register two religious communities of the same denomination, is the most inconceivable and discordant with the Constitution and therefore we ask the same to be reconsidered.

Finally, we also consider it to be discriminatory and unconstitutional that this Law does not foresee a body or a person to whom one can appeal in case the **agency** refuses to register a certain religious community or a religious group. A right to appeal is considered only in case of a refusal to register a religious school (art.25), but not in the case of refusal to register a religious community, that

is, a religious group. One gets the impression that the registration of the same depends solely on the self-will of the **agency** and his decision is absolute and without a legal remedy. This is only a confirmation that the abovementioned Law is no less totalitarian than its preceding law on the religious communities, approved in the post-totalitarian times in the former SFRY.

Applicant of the request:

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Metropolitan of Veles and Povardarje
and Exarch of Ohrid