



**KONRAD
ADENAUER
STIFTUNG**

HANDBOOK ON THE RIGHTS OF RELIGIOUS COMMUNITIES AND THE FREEDOM OF RELIGION IN NORTH MACEDONIA

ALEKSANDAR SPASENOVSKI



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ALEKSANDAR SPASENOVSKI

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Author:

Aleksandar Spasenovski, Assistant professor at the Faculty of Law "Iustinianus Primus", "Ss. Cyril and Methodius" University in Skopje

Book reviewers:

Vasko Naumovski, Assistant professor at the Faculty of Law "Iustinianus Primus", "Ss. Cyril and Methodius" University in Skopje

Vladimir Bozinovski, Assistant professor at the Faculty of Law "Iustinianus Primus", "Ss. Cyril and Methodius" University in Skopje

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Konrad-Adenauer-Stiftung e.V.
Klingelhöferstr. 23
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Rule of Law Programme South East Europe
Konrad-Adenauer-Stiftung e.V.
Strada Franzelarilor nr. 5
020785 Bucharest,
Romania
T: +40 21 302 02 63
F: +40 21 323 31 27
E-mail: office.rspsoe@kas.de
Website: www.kas.de/rlpsee

Faculty of Law "Iustinianus Primus" Skopje
Goce Delčev 9b, 1000 Skopje
Republic of North Macedonia

Tel.: (+389) (0) 2 311 72 44

Fax: (+389) (0) 2 322 75 49

Website: www.pf.ukim.edu.mk

Coordination:

Hartmut Rank, Director, Rule of Law Programme South East Europe

Translation:

Emilija Tomovska-Bojkovska

Computer preparation and press:

Vincent Graphics

Blagoja Stefkovski 16, 1000 Skopje

Republic of North Macedonia

Tel./Fax: (+389) (0) 2 270 04 55

E-mail: info@vinsentgrafika.mk

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PREFACE

PREFACE

The protection and guarantee to freely choose religious beliefs, the right not to affiliate with any religion or belief, and the possibility to practice religious beliefs undisturbed in religious communities are the basic elements of the right to freedom of religion in democratic constitutions. Religious freedom is one of the most fundamental human rights and, in order to be realized, requires a separation between the state and religious institutions. The extent to which religious freedom is protected and guaranteed also always reveals something about the character of society and the state. In other words: If religious freedom in all its facets is not implemented and guaranteed in a community or state, this is at the same time an expression of a lack of human rights and thus a lack of constitutional values.

The promotion and protection of human rights has always been one of the core missions of the Konrad Adenauer Foundation, which is a German Christian democratic foundation. In the crisis-ridden Balkan region, the Rule of Law Programme for South-East Europe of the Konrad Adenauer Foundation has set itself the aim of continuously communicating the importance and necessity of human rights as an integral part of a constitutional state. Religion is an ever-present and sensitive issue in the Balkans with its post-socialist, multi-confessional societies and states and the tensions that arise within a country and as well between the individual countries as a result.

As a handbook, this publication provides a detailed and valuable contribution to clarification and education about religious freedom and religious communities in Northern Macedonia. It not only shows how the relationship between the state and religion is structured and which (constitutional) legal provisions exist to protect religious freedom and religious communities, but also how these provisions are interpreted by the courts and ultimately implemented by state institutions. The insights gained from this handbook on the understanding of religion in North Macedonia serve to classify the young state of North Macedonia in terms of guaranteeing the right to religious freedom. In addition, the publication can and should be an impetus to stimulate interethnic and interreligious dialogue beyond North Macedonia and hence to promote exchange on religion in South-East Europe. Eventually, communication and tolerance go hand in hand and are thus the prerequisite for guaranteeing religious freedom as an extraordinarily important human right.

We would like to thank Aleksandar Spasenovski of the Faculty of Law "Iustinianus Primus" at the University "St. Cyril and Methodius" in Skopje for the intensive and productive cooperation and hope that all interested readers will have an enriching reading.

Hartmut Rank, LL.M.

Head of the
KAS Rule of Law Programme for
South-East Europe

Stanislav Splavnic, LL.M.

Project Coordinator
KAS Rule of Law Programme for
South-East Europe

INTRODUCTION

INTRODUCTION

The separation of the Socialist Republic of Macedonia from the Socialist Federal Republic of Yugoslavia¹ (SFRY) took place against the background of major tectonic shifts in the former socialist and communist European states during the last decades of the 20th century,² as a result of a series of internal political, economic, and social conditions and circumstances.

With regard to the SFRY, these processes **brought to the surface some conservative myths of the constituent nations, which, in the process of transition of the constitutional and political systems, established new top priorities on the basis of these premises: national states with democratic order, free and competitive entrepreneurship, market economy and commerce, as well as political and social pluralism in accordance with the standards of the developed Western European democracies.**³

Having in mind the opposing constitutional concepts, the one that was falling apart and the one that was to be created, and under the pressure of the major global trends, the forceful collapse of Yugoslavia was initiated, which resulted in the

1 The collapse of the SFRY is characterized by a series of military conflicts that took place on the territory of this state, with the exception of Macedonia, which gained its independence peacefully. The wars were marked by fierce ethnic conflicts between the Yugoslav People's Army and Slovenians in Slovenia; between Croats and Serbs in Croatia; between Serbs, Croats and Bosniaks in Bosnia and Herzegovina, and between Serbs and Albanians in Kosovo. These bloody conflicts, which were a result of the dissolution of the SFRY, ended with the signing of the Dayton Peace Agreement in 1995. After the collapse of the SFRY, five new states were created: Slovenia, Croatia, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, and the Federal Republic of Yugoslavia (which included Serbia and Montenegro). On 21 May 2006, as a result of a referendum, Montenegro became an independent state, and therefore, so did Serbia. On 17 February 2008, members of the Kosovo Parliament passed the Declaration of Independence. Yugoslavia's wars are considered one of the worst armed conflicts on the European continent since the end of the Second World War, due to which the UN established the International Criminal Tribunal for Former Yugoslavia, which initiated war crimes proceedings against a large number of participants in these military conflicts (See Petar Radan, *Breakout of Yugoslavia and International Law*, Routledge, September 21, 2001; Henry H. Perritt, *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan*, Cambridge University Press, Cambridge, 2010).

2 As a result of people's uprisings across the countries of Eastern Europe, the decline of communism began. These events started in Poland in 1989, and continued in Hungary, East Germany, Bulgaria, Czechoslovakia and Romania. The Soviet Union collapsed in 1991, as a result of the Russian Federation and 14 other Soviet Republics proclaiming their independence. Between 1990 and 1992, the system of state power also collapsed in Albania and the SFRY. These processes had influenced other socialist states outside the European continent, such as Cambodia, Ethiopia and Mongolia, which also rejected the communist system of state regulation (See Bartłomiej Kaminski, *The Collapse Of State Socialism*, Princeton University Press, Princeton, New Jersey, 1991).

3 See Carole Rogel, *The Breakup of Yugoslavia and its Aftermath*, Greenwood Press, 2004.

formation of today's Republic of North Macedonia⁴ as a sovereign, independent and democratic state, which promised full observance of the common democratic principles of international law as contained in the acts of the United Nations⁵ and the documents of the other international, European and regional organisations.

By establishing a new constitutional, legal and political order, the Republic of North Macedonia was to respond to the challenges of the new age.

The system that was set up with the adoption of the Constitution on 17 November 1991⁶ projected North Macedonia as a civic and democratic state, with the rule of law as a crucial principle, and human rights, civil freedom and national equality being guaranteed.⁷

With regard to the relations towards religious communities and the guarantee of human rights and freedoms, the Republic of North Macedonia developed a model based on the following:

-
- 4 Macedonia's process of attaining independence during the dissolution of the then SFRY began in the course of 1990. On 20 September 1990, the Parliament of the Socialist Republic of Macedonia adopted 25 amendments to the Constitution that initiated the first changes to the constitutional and legal system (Decision on the Adoption of Amendments LVII - LXXXI to the Constitution of the Socialist Republic of Macedonia, Amendments to the Constitution of the Socialist Republic of Macedonia, Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 28, Skopje, 21.9.1990, pp. 506-511). On 24 September 1990, the President of the Assembly called the first democratic multi-party elections, which took place on 11 November of the same year, and the Macedonian Assembly was constituted on 8 January 1991. Furthermore, on 27 January 1991, the Members of the Assembly elected the first President of the Republic, Kiro Gligorov, and on 20 March 1991, the first expert Government, led by Nikola Kljusev, was elected. In the meantime, on 25 January 1991, the Members of the Assembly adopted the Declaration on Sovereignty of Macedonia (Declaration on the Sovereignty of the Socialist Republic of Macedonia, Assembly of the Socialist Republic of Macedonia, No. 08-220-1). On 7 June 1991, the Constitutional Amendment LXXXII was adopted, and thus the term "Socialist" was deleted from the name of the SRM (Decision on the Promulgation of Amendments LXXXII to LXXXV to the Constitution of the Socialist Republic of Macedonia, Amendments to the Constitution of the Socialist Republic of Macedonia, Official Gazette of the Republic of Macedonia, XLVII, No. 27, Skopje, 11.6.1991, p. 357). On 7 May 1991, the President of the Republic of Macedonia submitted a proposal on the adoption of a new democratic Constitution to the Members of the Assembly, which was enacted on 17 November 1991, preceded by the referendum on independence, based on the will of the people for Macedonia to be a sovereign and independent state, adopted by the Assembly on 17 September 1991 (Declaration on the Occasion of the Will of the People for Macedonia to be a Sovereign and Independent State, Expressed by Plebiscite, Assembly of the Republic of Macedonia, No. 08-3786, 17.9.1991). Finally, on 19 December 1991, with the adoption of the Declaration on International Recognition of the Republic of Macedonia, the process of international recognition of the already established Macedonian state began (Declaration on International Recognition of the Republic of Macedonia, Assembly of the Republic of Macedonia, No. 08-5099, 19.12.1991).
- 5 See: Brad K. Blitz, *War and Change in the Balkans: Nationalism, Conflict and Cooperation*, Chapter 9: Andrew Rosos, *Disintegration of Yugoslavia: Macedonia's Independence and Stability in the Balkans*, Cambridge University Press, Cambridge 2006, 118. Declaration on the Occasion of the Will of the People for Macedonia to be a Sovereign and Independent State, Expressed by Plebiscite, Assembly of the Republic of Macedonia, No. 08-3786, Skopje, 17.09.1991.
- 6 Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Year: XLVII, No. 52, Skopje, 1991, (pp. 805-815).
- 7 See: Gerhard Robbers, *Encyclopaedia of World Constitutions*, Igor Spirovski (author), Macedonia, VB Hermitage, (p. 551-555).

1. international Western European standards;
2. the traditions of the majority population, which is affiliated to Orthodox Christianity; and
3. the actual religious landscape.

The challenge for the Macedonian model of relations with the religious organisations the guarantee of religious rights and freedoms arises from the need to create a balance among the three above-mentioned factors.

The international Western European standards incorporated in the North Macedonia constitutional and judicial system are, in fact, values that originate from the theory of natural rights in the 17th and 18th century, the Renaissance,⁸ the Enlightenment,⁹ and the Protestant Reformation, and are thus part of the history of the West European countries and North America.¹⁰

According to these values, the human rights and freedoms are seen as a secular version of the Judeo-Christian ethics, while the relations between the state and religious organisations are seen through the prism of the model of their separation.¹¹

In accordance with these values and ideas, the American Declaration of Independence¹² was adopted in 1776, the Declaration on the Rights of the Man and the Citizen¹³ was adopted in revolutionary France in 1789, and the American Bill of Rights¹⁴ was adopted in 1791. These documents are considered the cornerstones of the contemporary system of human rights and freedoms, within which the religious rights and freedoms play a crucial role.

During the development of contemporary constitutionality, these values found their place in the constitutions of the Western European states, as well as in numerous other international acts, particularly in the UN Universal Declaration on Human Rights from 1948,¹⁵ as well as in the documents of the Council of Europe, NATO, and the former European Communities, i.e. today's European Union.

8 See: The Renaissance, A Very Short Introduction, Oxford University Press, Oxford, 2006.

9 See: Martin Fitzpatrick et al., The Enlightenment World, Routledge, New York, 2004.

10 See: Stathis N. Kalyvas, Religion and Democratization: Belgium and Algeria, Estudio/Working Paper 107, 1997, and Sabine C. Carey et.al., The Politics of Human Rights: The Quest for Dignity, Cambridge University Press, Cambridge, 2010 (p. 16).

11 See: Micheline Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press, 2008, (p. 64).

12 Declaration of Independence, (archives.gov), 7.3.2018.

13 Declaration of the Rights of Man and of the Citizen, (hrccr.org), 7.3.2018.

14 Bill of Rights, (archives.gov), 7.3.2018.

15 Universal Declaration of Human Rights, (un.org), 7.3.2018.

In the documents of these organisations, the issues incorporated into the legislation of the nation states, as well as other conventions and agreements, are further elaborated.¹⁶

Generally speaking, the Macedonian model of secularism uses the experience **of the traditions of Orthodox Christianity, which the majority of the population is familiar with, as well as of the other Orthodox Churches that refer to the Byzantine Empire as the model of an ideal state.**¹⁷

The Byzantine model rests upon a system of **unity (“symphony”) between religious and political power.**¹⁸

The Emperor, the leader of the Empire, was vested with spiritual as well as worldly power.¹⁹ The Orthodox Church was not restricted to spiritual activities, but also played a role as part of the worldly empire.²⁰

According to a rule, a state could not be considered completely functional if the Church was not fully connected to it. Hence, the jurisdiction of the Orthodox Church was applied within the state boundaries, and if the latter were to be expanded, one would naturally expect the boundaries of the Church to do so, too,²¹ and vice versa: if the jurisdiction of the Church was expanded, naturally, political tendencies for changes of the state boundaries would surface.²²

Whenever Orthodox peoples were enslaved, it was the mission of the Church to hold the fort, so that the state could later be renewed in the territory that was under its jurisdiction.

With regard to religious rights and freedoms, the Byzantine Empire, which was an Orthodox state model, recognised Orthodox Christians as a constitutive element of its statehood. Namely, the main condition for a person to gain citizen status and full capacity in the Byzantine Empire was to be an Orthodox Christian.²³

16 See: Blandine Chelini-Pont, Religion and Society in Europe, Conference: “Law and Religion in Transitional Societies”, Norway, 2006.

17 See: John Meyendorff, The Byzantine Legacy in the Orthodox Church, St Vladimir’s Seminary Press, Crestwood-New York, 1982.

18 Pedro Ramet, Eastern Christianity and Politics in the Twentieth Century, Duke University Press, 1988, pp. 37-58.

19 Pedro Ramet, Eastern Christianity and Politics in the Twentieth Century, op.cit., p. 40.

20 See: Mile Bogović, State and Church in Serbian Orthodoxy, Centre for political research (cpi.hr), 7.3.2018.

21 See: Mile Bogović, State and Church in Serbian Orthodoxy, op.cit.

22 Ibid

23 See: Philip Schaff, David Schley Schaff, History of the Christian Church, Charles Scribner’s Sons, New York, 1910.

While today's international standards developed under the strong influence of Catholic and Protestant tradition, in which, from the very beginning, the concept of separation between spiritual and worldly power was set out, thus paving the way to pluralism, the Orthodox European East rested upon the unity of church and government, i.e. a monolithic coexistence of church and state, as well as collectivism.²⁴

The population of the Republic of North Macedonia **is not homogeneous with regard to religion.**

Apart from the Orthodox Church, citizens are affiliated to a number of other confessions, such as Islam, Catholicism, Protestantism, Judaism, etc.²⁵

This religious pluralism in North Macedonia has additionally shaped the state's model of relations towards the religious organisations, as well as the character of the religious rights and freedoms.

In the spirit of the Western European and international standards, the historical traditions of Orthodox Christianity, as well as religious pluralism, the state provides several guarantees for practising and fostering minority confessions.

The Republic of North Macedonia's practical postulates with regard to religious organisations and religious freedom are based on the following:

1. the Western European spiritual heritage, according to which state power is separate from religious power, and the principle of secularism is accepted as a principle of non-interference of state institutions in the responsibilities of religious organisations, and vice versa (secularism is also expressed in the constitutional prohibition of any involvement or interference of religious organisations and communities in matters that are within the state's responsibility);
2. the guarantees provided for the exercise of citizens' religious rights and freedoms, based on Western European standards;
3. the traditions of Orthodox Christianity in the light of the legacy of the Byzantine Empire (it should be emphasized that the Orthodox Church with its historical and spiritual heritage holds a primary position within the system);
4. the heterogeneous religious landscape, based on the provided guarantees of free existence and activities for the Islamic community, the Catholic Church, the Protestant churches, the Jewish community, and other religious organisations.

²⁴ Mile Bogović, *State and Church in Serbian Orthodoxy*, op.cit., p. 89.

²⁵ According to the results of the 2002 census, 64.7% of the population stated that they were Orthodox Christians, 33.3% Muslims, 0.34% Catholics, and 1.5% that they were affiliated to other religions (stat.gov.mk), 7.3.2018.

Since the Republic of North Macedonia attained independence, the ideological and political pillars of its model of secularism have not always functioned in full harmony and cohesion. This conclusion can be drawn from the nature of the legal regulations that have been adopted, which we will discuss below.

Namely, as noted, **the nature of the legal provisions has been largely influenced by the ruling parties' ideological positions or matrices of activity.**

Thus, **the parties, as it were, of the left wing advocate a model of pronounced secularism, according to which the state should develop only a general attitude towards religious organisations and communities, while the, so to speak, right wing parties strive towards a less pronounced secularism, and, in the framework of the general attitude towards religious organisations, endeavour to strengthen the status of the Macedonian Orthodox Church.**

On the other hand, the parties of the ethnic communities emphasise the role and importance of the Islamic Religious Community in the case a special status should be offered to the Macedonian Orthodox, within the framework of the concept of separation between the state and religious organisations as defined in the Constitution.

This fact points to the conclusion that, in the Republic of North Macedonia, there is still no unanimity regarding how to find a perfect balance between the three factors that determine the state model of relations with religious organisations and, also, the freedom of religion.

Furthermore, in accordance with the aims of this handbook, we will present an overview of the most important features of the constitutional and legal system of the Republic of North Macedonia regarding the status of religious organisations and the freedom of religion.

First of all, we will review the constitutional and legal framework regarding the bodies and institutions that deal with this highly important issue.



**THE CONSTITUTION OF
THE REPUBLIC OF NORTH
MACEDONIA, THE STATUS
OF THE RELIGIONS AND
THE FREEDOM OF RELIGION**

1. THE CONSTITUTION OF THE REPUBLIC OF NORTH MACEDONIA, THE STATUS OF THE RELIGIONS AND THE FREEDOM OF RELIGION

The Constitution of the Republic of North Macedonia,²⁶ adopted on 17 November 1991, sets the basic framework for the relations between the state and religious organisations, as well as the limits of religious liberty. While the Constitution was being adopted and at the occasion of later amendments, a great many proposals on how to regulate these issues in the best possible way were made.

The signing of the Ohrid Framework Agreement in 2001 led to a series of amendments to the Constitution, which induced further changes to the character of the Macedonian model of secularism.

The original text of the Constitution, before the Ohrid Framework Agreement was signed, defined the relations between the state and religious organisations as well as the boundaries of religious liberty by means of provisions on the following issues:

1. Equality and freedom, as provided in Article 9, paragraph 1, and Article 16, paragraph 1

Article 9 guarantees equality in terms of sex, race, colour of skin, national and social origin, property and social status, as well as political and religious beliefs. Article 16, paragraph 1, guarantees freedom of personal conviction, conscience, thought and public expression of thought, especially concerning religious conviction and its expression within the system.

2. Freedom of religion, as provided in Article 19

According to Article 19, freedom of religious confession is guaranteed (paragraph 1), and citizens are granted the right to express their faith freely and publicly, individually or with others (paragraph 2). On the basis of these two general paragraphs, the Constitution then defines the reality of religious life, providing that the Macedonian Orthodox Church and other religious communities and groups are

²⁶ *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

separate from the state (paragraph 3), and that they are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law (paragraph 4).

As a consequence of the Ohrid Framework Agreement, Article 19 was amended in 2001 (Amendment VII),²⁷ namely by adding the Islamic Religious Community in North Macedonia, the Catholic Church, the Evangelical Methodist Church, and the Jewish Community to the Macedonian Orthodox Church in paragraphs 3 and 4.

Thus, today, the provisions read as follows:

The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and the other religious communities and groups are separate from the state and equal before the law.

The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and the other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

The Constitution guarantees the broadest freedom of religion, whereas the position of the Macedonian Orthodox Church is pointed out.²⁸ The latter is mentioned first and separated from the other religious communities by the words “as well as”.

3. Minority rights and freedoms, as provided in Article 48, paragraphs 1,2,3 and 4

According to Article 48 of the original Constitution text, members of different ethnic groups had the right to freely express, foster and develop their identity (paragraph 1), which undoubtedly includes religious identity, even though the wording denotes the broadest sense of the term, without listing different types of identity.

In the next paragraph, the Republic of North Macedonia guaranteed the protection of ethnic, cultural, linguistic and religious identity to all citizens, regardless of their ethnic background, which can be realised by means of the right to establish institutions for culture and art, as well as scholarly and other associations (paragraph 3).

²⁷ *Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII to the Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, LVII, No. 91, Skopje, 20.11.2001, pp. 5019-5021.

²⁸ For further information, see: Gordana Siljanovska, *Democracy in Multiethnic and Multicultural Society: between Demos and Ethnos*, Macedonia in Globalisation, Public Scholarly Publications, New York, 2004.

With the adoption of Amendment VIII in 2001, these same rights and guarantees continued to apply, while the subjects were now referred to as *"members of the communities"*.

4. Fundamental rights and freedoms, as provided in Article 50, Article 110, point 3, and Article 20, paragraph 3

According to these provisions, every citizen may invoke the protection of rights and freedoms as determined by the Constitution, by a procedure based upon the principles of priority and urgency (Article 50) before the Constitutional Court of North Macedonia (Article 110, point 3). As a further guarantee, Article 20, paragraph 3 states that the programmes and activities of political parties and other associations of citizens may not be directed at the violent destruction of the constitutional order of the Republic, nor at the encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance.

5. Restrictions to the rights and freedoms, as stated in Article 54

Article 54 deals with the restriction of the rights and freedoms of the individual and the citizen during states of war or emergency in accordance with the provisions of the Constitution (paragraphs 1 and 2). The next two paragraphs state that the restriction of rights and freedoms may not discriminate the citizens on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status (paragraph 3), and that such restriction may not be applied to the right to life, the ban on torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, nor to the freedom of personal conviction, conscience, thought and religious confession (paragraph 4).

With these paragraphs, the Constitution actually defines the boundaries concerning the Macedonian model of relations towards religious organisations and the freedom of religion.

The above-mentioned constitutional provisions lead to the conclusion that the Republic of North Macedonia has set up a broad concept of equality among citizens by guaranteeing the respective rights, based, among others, on independent religious self-definition of the citizens.

The state also offers a broad guarantee of freedom of religion, allowing its citizens to freely express their religion, individually or with others. It allows the religious communities to establish religious schools, as well as social and charitable institutions, by way of a procedure regulated by law.

The religious organisations within which religion is expressed are divided into three groups: the first group refers to the Macedonian Orthodox Church, the second one comprises the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church, and the Jewish Community, while “*other religious communities and religious groups*” refers to the third group, including all other, minor religious organisations. This gradation is not intended to determine different scopes or types of rights and freedoms, but rather reflects historical, state-building and symbolic aspects that are crucial for the character of the religious identity of the Macedonian state, which was largely shaped by Orthodox Christian heritage.

Besides the general guarantees, the Constitution also provides other, special guarantees with regard to organisations of religious minorities and the development and fostering of their religious and overall identity.

Religious rights and freedoms are subject to protection by the state by means of the Constitutional Court.

Finally, the state also provides the possibility of restricting the rights and freedoms of the individual and the citizen during states of war or emergency. However, such restrictions may not be discriminatory based on religion, among others, and the restriction of rights and freedoms may not be applied to the freedom of religious confession.

1.1. OTHER CONSTITUTIONAL CONCEPTS

When the Constitution of the Republic of North Macedonia was being adopted, some other constitutional concepts for defining the relations between the state and religious organisations and the freedom of religion were discussed, too. Some of them were exposed in the debates during the adoption in 1991, as well as during the negotiations on the adoption of the Ohrid Framework Agreement in 2001.

In 1991, when the Assembly was discussing the content of the first pluralistic Constitution of the Republic of North Macedonia, a great number of amendments were proposed. We would like to single out one characteristic proposal, according to which a new Article 1 should have been added to the actual Article 1,²⁹ which was suggested to read:

29 Jordan Boškov, Member of the Assembly from VMRO-DPMNE, *Amendment 1 to the Draft Constitution of the Republic of Macedonia*, Archive of the Assembly of the Republic of Macedonia, 41/4506, 7.11.1991.

The Republic of Macedonia is blessed by God.

The official religion is Orthodox Christianity.

The author of this amendment gave the following reason for his proposal: *“Whether acknowledged or not, God has created the world, and all human doing is blessed by God”*.³⁰ In this vein, he argued that the second paragraph of the proposed Article 1 should also point at the *“Orthodox tradition which the very existence of today’s Macedonian nation is based on.”*³¹

During the debates at the Assembly, the opposite point of view was also expressed, stressing the principle of secularism and the need to separate the state from religious organisations, against the proposed amendment. The argument was based on the fact that mentioning only Orthodox Christianity did not correspond with North Macedonia reality.³² Eventually, the proposed amendment did not attain the required number of votes and was rejected.

During the debates on the Constitution, three characteristic amendments to Article 19 were proposed, concerning the freedom of religion and the status of religious organisations. The fiercest controversies were evoked by paragraph 3:

The Macedonian Orthodox Church and all other religious communities and groups are separate from the state. They are equal before the law.

This paragraph was proposed to be amended as follows:³³

The autocephalous Macedonian Orthodox Church, which continues the traditions and the workings of the Ohrid Archbishopric, holds a special status and is subject to special public interest.

As for the reason for bringing this amendment forward, it was argued that *“the Macedonian Orthodox Church is of enormous historical significance for the existence of the Macedonian nation. It has played and still plays an important role in the spiritual*

30 Ibid.

31 Ibid.

32 25th session of the Assembly of the Republic of Macedonia, Stenographic notes, 9.11.1991, pp. 157-159.

33 Todor Petrov, independent Member of the Assembly, *Amendment XX to the Draft Constitution of the Republic of Macedonia*, Archive of the Assembly of the Republic of North Macedonia, 6.11.1991.

persistence of the Macedonians”³⁴ and that “stressing the special position of the Macedonian Orthodox Church among the religious organisations is also due to the fact that their seats are outside the territory of the Republic of Macedonia and that they refer to major religious groups, while the Macedonian Orthodox Church has its seat in the country and is the national church of the Macedonian people”³⁵

It was for entirely contrary reasons that the next amendment to Article 19 was proposed.³⁶ Paragraph 3 was proposed to read as follows:

The Macedonian Orthodox Church and the Islamic Religious Community are separate from the state and are equal before the law.

The author argued that he proposed this amendment in order to “*secure equal status for all religious organisations within the state*”.³⁷

Taking into account the multifaceted religious landscape in North Macedonia, we can see that the author proposed this amendment with the aim to provide a privileged position for the two largest religious communities of the country, instead of including all significant ones.

Finally, the third proposed amendment of Article 19 envisioned an entirely new approach:³⁸

The religious communities and religious groups are separate from the state and are equal before the law.

The need for adopting this amendment was argued as follows: “*The special position of the Macedonian Orthodox Church in the struggle for emancipation of the Macedonian people should not be stressed within the Constitution, but rather in another bill. The Constitution should merely define the general relations between the state and the religions.*”³⁹

34 Ibid.

35 Ibid.

36 Muhamed Halilij, Member of the Assembly from PDP, Amendment II to the Draft Constitution of the Republic of Macedonia, Archive of the Assembly of the Republic of North Macedonia, 41/4460, 6.11.1991.

37 Ibid.

38 SDSM Parliamentary Group, *Amendment II to the Draft Constitution of the Republic of Macedonia*, Archive of the Assembly of the Republic of North Macedonia, 41/4495, 7.11.1991.

39 Ibid.

None of the three proposed amendments attained the required number of votes, so that the original text was maintained.

When the Ohrid Framework Agreement was signed in 2001, Article 19 once more became subject of debates on the Constitution.⁴⁰ During the negotiations in Ohrid, a new text for paragraphs 3 and 4 of Article 19 had been agreed on (Amendment VII),⁴¹ however, a completely different text was proposed to the Assembly. The text was adopted and is still part of the Constitution:

The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and the other religious communities and groups..."

In the proposed amendment to Article 19, which had been submitted during the drafting of the Framework Agreement, apart from the Macedonian Orthodox Church, only the Islamic Religious Community and the Catholic Church were mentioned:

The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church and the other religious communities and groups..."

The change in the agreed text of Article 19 was fiercely discussed during the debate at the Assembly, which, once again, demonstrated the different positions of the political parties on the issue of relations between the state and religious organisations and groups.

According to some of the parties, *"mentioning the Evangelical Methodist Church in the Constitution represents a misuse of authority by the President of the Republic of Macedonia"*,⁴² who was a member of that church then, since *"there are religious communities with a larger number of members, and they are not mentioned in the Constitution."*⁴³

40 *Framework Agreement*, Government of the Republic of Macedonia, Secretariat for the Implementation of the Framework Agreement (siofa.gov.mk), 7.3.2018.

41 Ibid.

42 Nikola Popovski, Member of the Assembly from SDSM, *86th session of the Assembly of the Republic of Macedonia, fifth prolongation, Steganographic notes*, (sobranie.mk), 7.3.2018, pp. 15-16.

43 Ibid.

Another parliamentary group expressed their disapproval of Amendment VII for the wording *as well as* after the mention of the Macedonian Orthodox Church, followed by the larger religious organisations. They considered this sentence construction to “*put the other religious organisations in an unequal position*”,⁴⁴ thereby referring, first and foremost, to the Islamic Religious Community.

Yet another parliamentary group also opposed Amendment VII, arguing that “*apart from the Macedonian Orthodox Church, no religious organisations should be mentioned by name, since Macedonia is an Orthodox state, so that the Orthodox Church is privileged and plays a dominant role in it.*”⁴⁵

This overview of the proposed amendments and of the amended Constitution in its final version of 2001 excellently reflects the different political parties' positions with regard to restricting the principle of secularism. We can hence conclude that the adopted amendments represent a combination of the three factors that define the Macedonian model of relations towards the religious organisations, even though the balance among them was notably shifted in the direction of actual reality. The Macedonian Orthodox Church was recognised as first among equals: the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church and the Jewish Community, as well as the other, smaller religious communities and groups.

44 Ismet Ramadani, Member of the Assembly from PDP, *86th session of the Assembly of the Republic of Macedonia, fifth prolongation, Steganographic notes*, (sobranie.mk), 7.3.2018, pp. 16-17.

45 Tomislav Petrovski, Member of the Assembly from VMRO-DPMNO, *86th session of the Assembly of the Republic of Macedonia, fifth prolongation, Steganographic notes*, (sobranie.mk), 7.3.2018, pp. 20-21.



2

**THE LAW ON THE LEGAL STATUS
OF CHURCHES, RELIGIOUS
COMMUNITIES AND
RELIGIOUS GROUPS**

2. THE LAW ON THE LEGAL STATUS OF CHURCHES, RELIGIOUS COMMUNITIES AND RELIGIOUS GROUPS

The first law to regulate in detail the relations between the state and religious organisations as well as the freedom of religion in the Republic of North Macedonia after its independence was adopted in July 1997.⁴⁶

*The reasons for adopting such a law lay in the processes of transformation of society and the political system according to democratic principles, taking into account that seven years into its independence, the Republic of Macedonia still had a law on the legal status of religious communities from socialist 1977.*⁴⁷

With the new law, *Article 19 of the Constitution was made operational*⁴⁸ with respect to the state's relations towards religious organisations, as well as other provisions from the Constitution, mainly concerning the issue of protecting human rights and freedoms.

The aim of the law was to *unify the relations in the area of religions in the Republic of Macedonia in compliance with the constitutional principles, as well as with the latest achievements of civilisation and international standards*, since the provisions of the then valid law on the legal status of religious communities from 1977 were burdened with ideological elements that did not correspond with the new democratic reality.⁴⁹

After the adoption of the Law on Religious Communities and Groups, three applications to abolish some of its provisions were lodged with the Constitutional Court, namely:

- » In 1998,⁵⁰ several protest groups lodged an application to evaluate the compliance with the Constitution regarding eight articles of the Law. The Constitutional Court gave a positive answer on six articles and a negative one on two, i.e. rejected the application.

46 *Law on Religious Communities and Groups*, Official Gazette of the Republic of Macedonia, LIII, No. 35, Skopje, 23.7.1997, pp. 1426-1429.

47 *Law on the Legal Status of Religious Communities*, Official Gazette of the Socialist Republic of Macedonia, XXXIII, No. 39, Skopje, 14.11.1977, pp. 860-862.

48 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

49 *Proposal to adopt the Law on Religious Communities and Groups, reasons for adoption*, Archive of the Assembly of the Republic of North Macedonia, 313/1, 31.1.1997.

50 Constitutional Court of the Republic of North Macedonia, *Resolution No. 223/1997-1-0*, 28.10.1998.

- » In 1999,⁵¹ a nongovernmental organisation lodged an application proposing to evaluate the compliance with the Constitution of two articles of the Law. The Constitutional Court gave a positive answer.
- » In 2004,⁵² a natural person lodged an application proposing to evaluate the compliance with the Constitution of two articles of the Law. The Constitutional Court's answer was negative, i.e. the application was rejected.

From the above-mentioned, we see that **out of the 37 articles of the Law on Religious Communities and Groups, 12 were contested, and 8 out of them were found inconsistent with the Constitution by the judges of the Constitutional Court and thus abolished**, while four articles were found consistent, i.e. the application to abolish them was rejected, so that they remain part of the Law.

The applications that were lodged and the resolutions on abolishing eight articles of the Law led to an actual loss of its primary significance, i.e. it became practically inapplicable.

Hence, after the first ten years of independence, the Republic of North Macedonia had still not succeeded in establishing a satisfactory regulation in this area.

Ten years after the first law had entered into force,⁵³ a second one was adopted,⁵⁴ with the aim of more detailed regulation concerning the relations of the Republic of North Macedonia towards the religious organisations and the freedom of religion.

The Law on the Legal Status of Churches, Religious Communities and Religious Groups was adopted because the former law was inapplicable, mainly because of the two resolutions of the Constitutional Court that had led to the abolition of some of its key articles.

The Law on the Legal Status of Churches, Religious Communities and Religious Groups consists of 37 articles in five separate chapters.

The **first chapter** of the Law on the Legal Status of Churches, Religious Communities and Religious Groups comprises general provisions in 8 articles, structured as follows:

51 Constitutional Court of the Republic of North Macedonia, *Resolution No. 114/1999-1-0*, 9.9.1999.

52 Constitutional Court of the Republic of North Macedonia, *Resolution No. 10/2004*, 12.5.2004.

53 *Law on Religious Communities and Groups*, Official Gazette of the Republic of Macedonia, LIII, No. 35, op.cit.

54 *Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No. 113, Skopje, 20.9.2007, pp. 1-4.

1. The subject of the Law is defined (Article 1, paragraph 1) and the constitutional provision on separation of the state and religious organisations is confirmed (Article 1, paragraph 2).
2. The categories “*church, religious community and religious group*” are defined as voluntary communities of natural persons who, based on their religious beliefs and the sources of their teachings, exercise the freedom of religion, united in their faith and identity, expressed in identical forms of worship, prayer, rituals and other forms of expression (Article 2, paragraph 1). **There are significant changes with regard to the former law.** Namely, no difference is made between the categories “religious community” and “religious group”, rather, the same definition is applied. Furthermore, the provision that a religion can be represented by only one religious community is not incorporated into the new law.
3. The category “*cleric*” is defined: a person in the service of a religious group they are a member of, based on their own religious beliefs, who carries out religious, ritual, educational, organisational and charitable activities according to the norms of the highest authority of their registered religious organisation, in compliance with the Constitution, the laws and the legal provisions of the Republic of North Macedonia (Article 2, paragraph 2).
4. The citizens’ rights and freedoms with regard to religion are specified:
 1. The right to freedom of conviction, conscience and thought, which includes the freedom of religious expression, alone or with others (Article 3).
 2. Religious discrimination is prohibited (Article 4, paragraph 1).
 3. Religious belief does not relieve the citizens of their duties according to the Constitution, laws and other provisions, if not otherwise regulated in other laws or provisions (Article 4, paragraph 2).
5. The rights of the religious organisations are specified:
 1. Religious organisations have the right to free internal organisation of coordination bodies, hierarchy and competencies, to appoint persons to represent them, and to adopt acts regarding the above mentioned (Article 5).
 2. Religious organisations carry out their activities in accordance with the legal provisions of the state, international declarations and conventions, as well as with the freedom of religion and the freedom of religious expression (Article 7, paragraph 1).
6. The relation of the state towards religious organisations is specified:
 1. The state respects the identity of the religious organisations, it establishes relations of continuous dialogue with them and develops forms of continuous cooperation (Article 6).

2. In accordance with their duties and authorisations, the state bodies create conditions for the religious organisations to carry out their activities unhampered (Article 7, paragraph 2).
7. The conditions and circumstances under which the freedom of religious expression and expression of belief can be restricted are specified. Namely, this can be done only by law, if deemed indispensable on behalf of public safety, order, health, moral, or the protection of the rights and freedoms of other citizens (Article 8).

In the **second chapter** of the Law, the legal status of religious organisations is described. Its nine articles tackle the question how a religious organisation can achieve the status of a legal subject. To this end, two basic rules are established:

1. The name and the official attributes of religious organisations have to be different from the names and attributes of already registered ones (Article 10, paragraph 1).
2. The word *Macedonia*, its derivations and translations, as well as the state flag and the coat of arms can be part of the name and attributes of a religious organisation, if used in a way that emphasises the reputation and dignity of the Republic of Macedonia (Article 10, paragraph 2). The Ministry of Justice has to give its written consent to the use of the name *Macedonia* (Article 10, paragraph 3).

The **third chapter** of the Law deals with issues concerning worship, prayer and ritual. According to the Law, religious organisations carry out these forms of activities on religious premises, such as churches, mosques, houses of prayer, synagogues, on cemeteries, as well as other objects which are property of the religious organisations (Article 18, paragraph 1), as well as on other premises and public spaces (Article 18, paragraph 2). Religious activities can be organised and exercised by a cleric or another person authorised by the religious organisation (Article 18, paragraph 3).

Any kind of feigned representation of a cleric is forbidden by the Law, as well as misuse of religious attire and attributes of the registered religious organisations (Article 18, paragraph 5).

The **fourth chapter** of the Law deals with questions of religious teachings and educational activities. Religious organisations are guaranteed the right to exercise educational activities (Article 21, paragraph 1) on the premises they use for rituals, as well as on other public or private premises, as long as they do not breach public peace and order (Article 21, paragraph 2).

According to the Law, religious organisations have the right to establish religious educational institutions at all levels except primary education, institutions for training of clerics, as well as housing for pupils and students of those institutions (Article 22, paragraph 1). The religious organisations' institutions are equal to other educational institutions, and their pupils and students enjoy the same rights and duties (Article 22, paragraph 2).

Teaching at religious organisations can be exercised by citizens of the Republic of North Macedonia (Article 25, paragraph 1), however, by way of exception, if the religious organisations need appropriate staff, a foreign citizen can be a teacher, in accordance with the provisions on the residence of foreign citizens and upon consent from the Commission for Relations with Religious Communities and Groups (Article 25, paragraph 2).

According to the Law, religious organisations are independent in their management of religious and other educational institutions as well as the housing for their students and pupils (Article 26, paragraph 1). The person in charge has the duty to provide the Ministry of Education and Science with all data required for inspection of their activities, as well as the duty to eliminate possible shortcomings within a period of time determined by the Ministry (Article 26, paragraph 2).

The issue of religious instruction at educational institutions who are entitled to carry out religious instruction is also regulated by the Law (Article 27, paragraph 1). For drafting the curriculum and programme for an optional subject from the field of religious instruction, the religious organisations can be consulted via the Commission for Relations with Religious Communities and Groups (Article 27, paragraph 2).

Religious instruction as an optional subject can be taught by persons who fulfil the foreseen conditions (Article 28). Pupils under the age of 15 can take religious instruction classes only upon consent from their parents or legal guardians (Article 29).

The **fifth chapter** of the Law deals with the revenues of religious organisations. The latter can be the result of self-financing, private philanthropy, donations and other forms of financing (Article 32). The religious organisations independently administer their finances in accordance with the law and their own internal provisions (Article 33, paragraph 1). The financing and the spending of financial means are conducted in compliance with the regulation on non-profit organisations and organisations of public interest (Article 33, paragraph 2).

The **sixth chapter** of the Law contains transitional and final provisions, including the deadlines for the adoption of by-laws (Article 34), the duties of the Commission for Relations with Religious Communities and Groups concerning data on already registered religious organisations (Article 35), and the entry into force of the Law (Article 37).

2.1 OTHER LEGAL CONCEPTS

During the debate at the Assembly of the Republic of North Macedonia on the Law on the Legal Status of Churches, Religious Communities and Religious Groups, numerous amendments were proposed, two of which we would like to single out because of their relevance with regard to the topic of this handbook.

In the proposed amendments, two articles were added to the Law (Article 7a after Article 7⁵⁵ and Article 33a after Article 33⁵⁶), with which the authors of the proposal anticipated four new situations:

1. A cleric may not be called to testify on facts and circumstances that he has heard about during confession (Draft Article 7a, paragraph 1⁵⁷).
2. If a cleric is imprisoned by a competent authority, he/she has the duty to inform the competent authority within his/her religious organisation (Draft Article 7a, paragraph 2⁵⁸).
3. The Republic of North Macedonia protects the religious attire, its parts, as well as the attributes, the status and the dignity of clerics in a way that emphasises the reputation of the religious organisation (Draft Article 7a, paragraph 3).
4. The amendment included the possibility for the state to answer for the health and disability insurance and pension fund for clerics of religious organisations (Draft Article 33a, paragraph 1⁵⁹) in proportion with the number of members of the religious organisation (Draft Article 33a, paragraph 2⁶⁰).

55 Aleksandar Spasenovski, together with the parliamentary group of VMRO-DPMNE and DPA, *Amendment adding the new Article 7a to the Law on the Legal Status of Churches, Religious Communities and Religious Groups*, 3230/3, 31.8.2007.

56 Aleksandar Spasenovski, together with the parliamentary group of VMRO-DPMNE and DPA, *Amendment adding the new Article 33a to the Law on the Legal Status of Churches, Religious Communities and Religious Groups*, 3230/2, 31.8.2007.

57 Aleksandar Spasenovski, together with the parliamentary group of VMRO-DPMNE and DPA, *Amendment adding the new Article 7a to the Law on the Legal Status of Churches, Religious Communities and Religious Groups*, op.cit.

58 Ibid.

59 Aleksandar Spasenovski, together with the parliamentary group of VMRO-DPMNE and DPA, *Amendment adding the new Article 33a to the Law on the Legal Status of Churches, Religious Communities and Religious Groups*, op.cit.

60 Ibid.

The authors mentioned two main reasons for their proposed amendments:

1. Strengthening the freedom of religion as a basic constitutional value and freedom,⁶¹ and
2. Strengthening the autonomy of religious organisations.⁶²

The opponents of the amendments believed that the proposed issues should be regulated by other acts, rather than by law. Also, they thought that adopting them could lead to major duties for the state, and that it was not clear whether it would be able to fulfil them.⁶³

As had been the case during the adoption of the Constitution as well as the adoption of the Law on Religious Communities and Groups, the different positions of the political parties on the boundaries of secularism in the Republic of North Macedonia were once again exposed.

At the end, the two amendments did not achieve the required majority of votes and were hence not added to the Law on the Legal Status of Churches, Religious Communities and Religious Groups.

2.2 DECISIONS AND RESOLUTIONS OF THE CONSTITUTIONAL COURT

In 2009, less than two years after the adoption of the Law on the Legal Status of Churches, Religious Communities and Religious Groups, an application⁶⁴ to evaluate the compliance of Article 4, paragraph 2,⁶⁵ and Articles 27,⁶⁶ 28⁶⁷ and 29⁶⁸

61 Ibid.

62 Ibid.

63 67. Session of the Assembly of the Republic of Macedonia, *Stenographic notes*, 5.9.2007, pp. 16-17.

64 Constitutional Court of the Republic of North Macedonia, *Resolution No. 104/2009-0-0*, 23.6.2010.

65 Article 4, paragraph 2 of the Law on the Legal Status of Churches, Religious Communities and Religious Groups: "Religious belief does not relieve the citizens of their duties according to the Constitution, laws and other provisions, if not otherwise regulated in other laws or provisions" (*Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No.113, op.cit.).

66 Article 27 of the Law on the Legal Status of Churches, Religious Communities and Religious Groups: "Religious instruction can be organised at educational institutions as an optional subject in accordance with the law. For drafting the curriculum and programme for an optional subject from the field of religious instruction, churches, religious organisations and religious groups can be consulted via the competent institution for affairs related to the relations between the state and the religious organisations" (*Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No.113, op.cit.).

67 Article 28 of the Law on the Legal Status of Churches, Religious Communities and Religious Groups: "Religious instruction as an optional subject can be taught by persons who fulfil the conditions foreseen for this aim" (*Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No.113, op.cit.).

68 Article 29 of the Law on the Legal Status of Churches, Religious Communities and Religious Groups: "Pupils under the age of 15 can take religious instruction classes as an optional subject upon consent from their parents or legal guardians" (*Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No.113, op.cit.).

with the Constitution of the Republic of North Macedonia was lodged with the Constitutional Court.

With regard to Article 4, paragraph 2, the Constitutional Court gave a negative answer, i.e. rejected the application on that part, but in the case of Articles 27, 28 and 29, which deal with questions concerning religious instruction at public schools, the judges decided to initiate the procedure of evaluation of compliance with the Constitution.

As a result of that evaluation, the decision⁶⁹ to abolish the respective articles was adopted (22.9.2019), based on their inconsistency with the Constitution. The judges of the Constitutional Court stated that Articles 27, 28 and 29 violated the academic and neutral character of tuition typical for public state education, and that, according to them, the state was involved in religious instruction, which was contrary to the constitutional principle of separation between state and church.

69 Constitutional Court of the Republic of North Macedonia, *Resolution No. 104/2009-0-1*, 22.9.2010.

A large, stylized number '3' is the central focus, filled with a fine, light blue hatched pattern. It is set against a white background with teal and dark blue geometric shapes in the corners. A horizontal teal line is positioned below the text.

3

**OTHER ACTS THAT SPECIFY
THE STATUS OF RELIGIONS
AND THE FREEDOM OF RELIGION
IN THE REPUBLIC OF
NORTH MACEDONIA**

3. OTHER ACTS THAT SPECIFY THE STATUS OF RELIGIONS AND THE FREEDOM OF RELIGION IN THE REPUBLIC OF NORTH MACEDONIA

Besides the constitutional and legal provisions analysed above, **the Republic of North Macedonia's approach towards the status of religious organisations and towards exercising the freedom of religion is also specified in other normative acts, which have been adopted over the years. They contribute to defining the character of the North Macedonia pluralistic model of secularism.**

Below, we will discuss the following:

- » acts that legally regulate the issue of proving religious affiliation,
- » acts on returning real estate property to religious organisations in the process of denationalisation,
- » acts on the protection against religious discrimination,
- » conscientious objection,
- » religious instruction during primary education,
- » religious blessings at public schools,
- » the status of institutions of tertiary education of religious organisations,
- » state celebration of religious holidays,
- » the status of the acts of religious organisations within the legal system of the Republic of North Macedonia,
- » acts that regulate the state support of the Macedonian Orthodox Church in its struggle for autocephaly.

3.1. PROOF OF RELIGIOUS AFFILIATION

The Constitution of the Republic of North Macedonia, as well as the legal provisions that have resulted from it, constitute the legal framework for the relations between the state and religious organisations and for exercising the freedom of religion.

As we can see from the above discussed, **there are no clear and precise legal provisions on the question how the citizens of the Republic of North Macedonia can prove their religious affiliation in case this is required.**

In this respect, the Constitution of the Republic of North Macedonia⁷⁰ guarantees the citizens the respective rights without defining specific criteria to this aim.

In the Law on Religious Communities and Groups of 1997⁷¹ and the Law on the Legal Status of Churches, Religious Communities and Religious Groups of 2007,⁷² the logic of the Constitution has been merely basically elaborated, defining only the rights and duties of the citizens.

In July 2000, the Constitutional Court of the Republic of North Macedonia answered a request by Vasko Koteski for protection against discrimination based on religious affiliation, induced by a ruling of the Court of Appeal in Bitola, and gave instructions on how citizens can legally prove their religious affiliation.⁷³

According to the resolution of the Constitutional Court,⁷⁴ the nature of the case is as follows: Vasko Koteski was absent from his work place on 29 January and 7 April 1998, the two major Islamic holidays in accordance with the Law on Holidays of the Republic of North Macedonia.⁷⁵

Koteski justified his behaviour before the legal authorities with having converted to Islam and had concluded that those holidays apply to him, too, as legal holidays, so that he should not be subject to legal repercussions for not having attended work on those two days.

Nevertheless, his employer, as well as, later, the judges of the Court of Appeal, did not accept his claim and hence considered his absence from work unjustified, and accordingly applied sanctions.

In its reaction to the request, the Constitutional Court posed the question whether affiliation or non-affiliation to Islam, or to any other religion, could be legally proven.

Koteski verbally declared his affiliation to Islam and stated that he did not need to prove his religious affiliation himself, and neither was anyone entitled to ask him to prove it, and that there was no basis for supplying evidence to its proof.

70 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

71 *Law on Religious Communities and Groups*, Official Gazette of the Republic of Macedonia, LIII, No. 35, op.cit.

72 *Ibid.*

73 Constitutional Court of the Republic of North Macedonia, *Resolution No. 220/1999-0-0*, 12.7.2000.

74 Constitutional Court of the Republic of North Macedonia, *Resolution No. 220/1999-0-0*, op.cit.

75 *Law on Public Holidays of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, VXIII, No. 18, Skopje, 15.2.2007, pp. 4-5.

The Court of Appeal had held that Koteski's religious affiliation could not be proven by objective facts, so that it concluded that the statement that he had converted to Islam had only been made in order to justify his absence from work, and nothing more than that.

Based on these facts, in its reaction to Koteski's request, the Constitutional Court abided by the following two criteria:

1. The rule of law is a basic value of the constitutional order of the Republic of North Macedonia, which has to be understood as prevalence of objective legal norms over subjective will in the exercise of the rights and freedoms of citizens as guaranteed by the Constitution.
2. According to the statements of religious organisations, there are objective criteria for determining a citizen's affiliation to Christianity or Islam.

The judges of the Constitutional Court concluded that objective facts for determining a person's religious affiliation have to be defined.

To this aim, they analysed Koteski's statements and concluded that his religious beliefs did not correspond to Islam. On these grounds, the Constitutional Court reached the conclusion that the ruling of the Court of Appeal in Bitola had not been discriminatory against Vasko Koteski based on his religious affiliation.

From the above mentioned, we can see that, **in the Republic of North Macedonia, citizens have to be able to prove their religious affiliation by means of objective facts, rather than by mere statement or declaration.** Such objective facts can be:

1. verbal statements or declarations that show knowledge of the basic theological values of the respective religion;
2. evidence in the form of documents or other acts issued by the respective religious organisation, stating that the person in question is affiliated to them;
3. other forms of material evidence, which undisputedly show that the person in question is affiliated to the respective religion.

3.2. RETURN OF PROPERTY (DENATIONALISATION)

One of the crucial factors that define the relations of the Republic of North Macedonia towards religious organisations is the question of returning property to religious communities and organisations (denationalisation).

When North Macedonia was part of the Socialist Federal Republic of Yugoslavia, the state as well as the Socialist Republic of Macedonia carried out processes of nationalisation of church property. These processes brought about serious problems for religious organisations and premises.

When the North Macedonia became an independent and democratic state, denationalisation of property became one of the priorities, in order to make amends for this historical injustice.

The first Law on Denationalisation was adopted on 29 April 1998.⁷⁶ Religious organisations were thereby excluded from the denationalisation process, because Article 1⁷⁷ stipulated that property would be returned only to natural persons who are citizens of the Republic of North Macedonia.

This condition was corrected in the Law on Changes and Amendments to the Law on Denationalisation as of 20.4.2000,⁷⁸ which included tangible changes. Namely, in Article 1a, the scope of denationalisation was extended, among others, to religious organisations. Article 1a stipulated that religious organisations should be returned their entire property. If this was not possible, natural persons, as well as religious temples, monasteries and vakafs which had been nationalised after 2 August 1944, should be provided with an appropriate compensation, if the nationalisation had taken place based on

1. laws pursuant to which property had been confiscated or limited,
2. provisions on confiscation or expropriation of property for the purpose of public benefit i.e. public interest, if the conditions for returning the property are not met in accordance with the regulations on expropriation, or
3. no legal basis.

Article 1b of the Law was of special importance, since it defined the categories “religious temple” (Christian church or house of prayer, Islamic mosque or Jewish synagogue) and “religious vakaf” (inalienable property for religious and humane goals).

Chapter IV “Special Provisions” is important with regard to religious organisations, since it regulates the return of property to Jews from North Macedonia. Subject of denationalisation is the property of Jews from North Macedonia who were deported

⁷⁶ *Law on Denationalisation*, Official Gazette of the Republic of Macedonia, LIV, No. 20, 29.4.1998, pp. 1086-1091.

⁷⁷ *Ibid.*

⁷⁸ *Law on the Changes and Amendments to the Law on Denationalisation*, Official Gazette of the Republic of Macedonia, LVI, No. 31, 20.4.2000, pp. 1828-1830.

to concentration camps, did not survive the pogrom and do not have successors (Article 63a).

The denationalisation authority officially initiates the procedure of returning property or compensation upon receiving information about the existence of such property. This procedure may involve the Jewish Community in the Republic of North Macedonia (Article 63b).

According to the Law, the property is returned, i.e. the compensation paid to the Holocaust Fund of Macedonian Jews, a legal entity led by a managing board, which is comprised of an equal number of representatives appointed by the Government of the Republic of North Macedonia and the Jewish Community (Article 63c).

Article 63d of the Law stipulates that the Fund's financial means are earmarked for building a Holocaust House of Macedonian Jews.

With the adoption of the changes to the Law on Denationalisation in 2000, the Republic of North Macedonia finally made amends for the historical injustice towards, among others, the religious organisations. **The return of property based on this law is considered a significant factor for determining the new democratic reality within the state.** Although the injustice inflicted during the time of the socialist system could not be entirely made up for, the Republic of North Macedonia is considered to have closed a bitter chapter of its recent history by completing democratisation processes, as well as by the denationalisation of religious organisations' property.

3.3. PROTECTION AGAINST RELIGIOUS DISCRIMINATION

In the Constitution, the fundamental human and citizen rights and freedoms are defined, as acknowledged in international law and confirmed by the highest legal act in the state as fundamental values of the constitutional order.

The fundamental human and citizen rights and freedoms are of central importance within the normative part of the Constitution. For the aims of the present work, Article 9⁷⁹ is crucial, which stipulates that all citizens are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.

79 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

The Constitution stipulates that the rights and freedoms can only be restricted during states of war or emergency, whereas such restrictions may not discriminate the citizens on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status

Protection against discrimination based on affiliation to a religious organisation or on religious beliefs is regulated in various laws, which can be divided into two groups:

1. laws that establish the general framework for protection against discrimination, and
2. laws that define discrimination based on affiliation to a religious organisation or on religious belief in detail.

The general framework for protection against discrimination, including discrimination on religious grounds, is determined in the Law on Prevention of and Protection against Discrimination,⁸⁰ which was adopted in April 2010. By this law, the states provides prevention of and protection against discrimination (Article 1) equally for all legal entities and natural persons (Article 2). Based on the Law, the following is prohibited:

1. direct and indirect discrimination,
2. call for and incitement to discrimination,
3. assistance in discriminatory treatment.

The protection against and prevention of discrimination applies to all citizens, regardless of their sex, race, colour of skin, gender, belonging to a marginalised group, ethnic origin, language, citizenship, social background, beliefs, education, political affiliation, personal or social status, mental or physical impediment, age, family or marital status, property status, health condition, or any other grounds anticipated by a law or a ratified international agreement, including religion and religious beliefs. (Article 3)

According to Article 4, the Law shall be applied not only by natural persons, but also by state authorities, bodies of the local self-government units, legal entities with public authorisations, as well as other legal entities.

The Law describes different types of discrimination. For our purposes, the following are significant:

⁸⁰ *Law on Prevention of and Protection against Discrimination*, Official Gazette of the Republic of Macedonia, LXVI, No. 50, Skopje, 13.4.2010, pp. 54-66.

- » *Direct discrimination*: any unfavourable treatment, differentiation, exclusion or limitation which results or may result in deprivation, violation or limitation of the equal enjoyment of the human rights and fundamental freedoms (Article 6, paragraph 1).
- » *Indirect discrimination*: placement of a person or a group in an unfavourable position compared to other persons by adopting apparently neutral provisions, criteria, or by accepting certain practices, unless such provisions, criteria or practices result from a justified aim, while the means for achievement of the referred aim are appropriate and necessary (Article 6, paragraph 2).
- » *Harassment and humiliating treatment*: violation of the dignity of a person or a group of persons that results from a discriminatory ground and is aimed at or results in violation of the dignity of a particular person or creation of an intimidating, hostile, humiliating or offensive environment, approach or practice (Article 7, paragraph 1).
- » *Call for and incitement to discrimination*: any activity on the basis of which a person or a group directly or indirectly calls for, encourages, gives directions or incites another person or group to discriminate (Article 9).
- » *Victimisation*: unfavourable behaviour towards a person, bearing harmful consequences as a result of the activities they undertook in order to protect against discrimination (Article 10).
- » *Severe forms of discrimination*: the discrimination inflicted on a certain person on multiple discriminatory grounds (multiple discrimination), discrimination inflicted several times (repeated discrimination), discrimination being inflicted for a longer period (extended discrimination) or discrimination, the consequences of which severely affect the discriminated person (Article 12).

The Law includes provisions regarding exceptions to discrimination, whereas the following are of special importance for our purposes:

1. the different treatment of persons that are not nationals of the Republic of North Macedonia, pertaining to the freedoms and rights provided for by the Constitution, the laws and the international agreements accessed by the Republic of North Macedonia, which directly derive from the nationality of the Republic of North Macedonia (Article 14, indent 1);
2. the different treatment of persons on the basis of religion, belief, sex or other characteristics related to an occupation carried out in religious institutions or organisations when, according to the nature of the relevant occupation or activity, or due to the requirements under which the religion is exercised, the belief, sex or other characteristics represent an essential and decisive requirement from the point of view of the institution or the organisation,

- when the aim is legitimate, and the requirement does not exceed the necessary level for its accomplishment (Article 14, indent 3);
3. the different treatment of persons based on religion, belief, sex or other characteristics with regard to education and training for the aims of an occupation related to a specific religion (Article 14, indent 4);
 4. if the members and bodies of churches and religious communities, citizens' organisations, political parties, trade unions and other organisations that are registered in accordance with the Constitution and the laws act in accordance with their doctrine, convictions or beliefs and/or the aims determined in their statute, programmes and/or regulations (Article 14, indent 5);
 5. the regulation of marriage, unwed partnership and family exclusively as a union of different sexes, i.e. a man and a woman (Article 14, indent 6);
 6. the exercise of the constitutionally guaranteed principle of freedom of speech, public appearance, opinion and public information (Article 14, indent 7);
 7. measures for protection of special features and identities of the persons belonging to ethnic, religious or linguistic minorities and their right to foster and develop their own identity, individually or with other members of their group, as well as stimulate conditions for promotion of that identity (Article 15, indent 8).

In addition to this system of protection against discrimination, the Law contains provisions that provide the legal basis for the establishment of the Commission for Protection against Discrimination, which is responsible for the implementation of the provisions of the Law.

Out of the separate laws of the Republic of North Macedonia that provide protection of citizens against discrimination, especially based on religious affiliation, we would like to point out the following acts:

» The Criminal code,⁸¹ where the issue of non-discrimination, based, i.a., on religious affiliation or belief is referred to in three articles:

1. According to 137 in chapter 15, which deals with crimes against the rights and freedoms of the individual and the citizen, any person who, based on sex, race, colour of skin, class, national or social origin, political affiliation, property and social status, language, or any other personal feature or condition, including religious belief, causes deprivation or limitation of others with regard to their human and citizen rights as determined in the Constitution of the Republic

⁸¹ *Criminal Code*, Official Gazette of the Republic of Macedonia, LII, No. 37, Skopje, 29.7.1996, pp.1522-1574.

of North Macedonia, a law or a ratified international agreement, or who, based on such grounds, provides privileged treatment to certain citizens contrary to the Constitution of the Republic of North Macedonia, a law or a ratified international agreement, shall be sentenced to imprisonment of three months to three years.

2. According to Article 319 in chapter 28, which deals with crimes against the state, any person who, by force, maltreatment, endangering the security or mocking of the national, ethnic, religious or other symbols, by damaging other people's objects, by destroying monuments or desecrating graves, or in any other way causes or excites hatred, discord or intolerance on the grounds of race, ethnicity, or religion, shall be sentenced to imprisonment of one to five years.
3. According to Article 403 in chapter 44, which deals with crimes against humanity and international law, any person who, with the intent to completely or partially eliminate any national, ethnic, racial or religious group, orders the murder, infliction of serious bodily injury or serious harm to the physical or mental health of members of the group, or any person who orders coercive relocation of the group, for it to be placed under such living conditions as to bring about its complete or partial extermination, or to apply measures that prevent birth among the members of the group, or to perform coercive relocation of the group's children to some other group, or any person who, with the same intent, commits any of the above crimes, shall be sentenced to imprisonment of at least ten years, or to life imprisonment.

» According to the *Law on Courts*,⁸² everyone is entitled to equal access before the court for protection of their rights and legal interests (Article 6). With regard to the election of judges and lay judges, there shall be no discrimination based on sex, race, colour of skin, national and social origin, property and social status, or political as well as religious beliefs (Article 43, paragraph 1).

» According to the *Law on the Public Prosecutor's Office*,⁸³ the Public Prosecutor, in the course of performing his/her functions, ensures equality of all persons before the law, regardless of sex, race, colour of skin, national or social origin, property and social status, and political as well as religious beliefs (Article 5, paragraph 2). The Law explicitly prohibits discrimination in the course of appointing Public Prosecutors, guaranteeing the principle of adequate and equitable representation (Article 43).

⁸² *Law on Courts*, Official Gazette of the Republic of Macedonia, LXII, No. 58, Skopje, 11.5.2006, pp.1-26.

⁸³ *Law on the Public Prosecutor's Office*, Official Gazette of the Republic of Macedonia, LXIII, No. 150, Skopje, 12.12.2007, pp. 41-68.

» According to the *Law on Execution of Sanctions*,⁸⁴ any discrimination on the grounds of race, colour of skin, sex, language, religion, political or other beliefs, national or social origin, kinship, property, social or other status of the person against whom sanctions are applied is prohibited. The religious feelings, personal convictions and moral norms of the person against whom sanctions are applied have to be respected (Article 4, paragraphs 2 and 3). In a similar vein, the persons in charge should carry out their duties in an honourable and impartial way, without malice or bad intention, regardless of the status, sex, race, nationality, religion and political convictions of the convicts (Article 167, paragraph 2).

» Within the *Law on Internal Affairs*,⁸⁵ in the chapter on general provisions, the category *internal affairs* is defined as including, i.a., the prevention of ethnic, racial and religious hatred and intolerance (Article 2, indent 4).

» According to the *Law on Social Protection*,⁸⁶ in the exercise of social protection rights, direct and indirect discrimination based on sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status is explicitly prohibited. This provision equally applies to social protection institutions established by the Government of the Republic of North Macedonia, the municipalities and the City of Skopje, to private social protection institutions founded by legal entities or natural persons, as well as to citizens' associations and natural persons who perform social protection tasks (Article 20).

» In the introductory part of the *Law on Political Parties*,⁸⁷ Article 3, indent 3 states that the programme and statute of political parties cannot be directed at the incitement to ethnic, racial or religious hatred or intolerance.

» The *Law on Associations and Foundations*⁸⁸ contains two provisions related to the protection against discrimination, i.a. on religious grounds. According to Article 4, paragraph 2, it is prohibited to establish an organisation if its programme and activities are directed at a violent breach of the constitutional order of the Republic of North Macedonia, incitement to and encouragement of military aggression, incitement to

84 *Law on Execution of Sanctions*, Official Gazette of the Republic of Macedonia, LXII, No. 2, Skopje, 9.1.2006, pp. 2-63.

85 *Law on Internal Affairs*, Official Gazette of the Republic of Macedonia, LXV, No. 92, Skopje, 24.7.2009, pp. 4-42.

86 *Law on Social Protection*, Official Gazette of the Republic of Macedonia, LXV, No. 79, Skopje, 24.6.2009, pp. 11-67.

87 *Law on Political Parties*, Official Gazette of the Republic of Macedonia, LX, No. 76, Skopje, 27.10.2004, pp. 1-9.

88 *Law on Associations and Foundations*, Official Gazette of the Republic of Macedonia, LXVI, No. 52, Skopje, 16.4.2010, pp. 2-26.

ethnic, racial or religious hatred or intolerance, at actions contrary to the Constitution or the law, or at violating the rights and freedoms of other persons. According to Article 65, indent 2, the activities of an already registered association or foundation can be forbidden if their work embraces, i.a., incitement to religious hatred or intolerance.

» The *Law on Labour Relations*⁸⁹ includes a provision related to the issue of non-discrimination. Namely, according to Article 6, paragraph 1, the employer may not treat an applicant for work or employee unequally on the basis on racial or ethnic origin, colour of skin, sex, age, condition of health, disability, political or religious beliefs.

» According to Article 3 of the *Law on Secondary Education*,⁹⁰ every person, under equal conditions as stipulated by the law, has the right to secondary education. Discrimination on the basis of sex, race, colour of skin, national or social origin, political belief, property and social status, as well as religious beliefs, is prohibited.

» According to Article 3 of the *Law on Culture*,⁹¹ every person enjoys the right to free artistic expression, professional as well as non-professional, as well as the right to cultural education, regardless of their age, education, ethnic origin, religious or other affiliation.

3.4. THE RIGHT TO CONSCIENTIOUS OBJECTION

The right to conscientious objection is derived from the freedom of personal conviction, conscience and thought, and religious freedom. It allows a person to be relieved of certain legal duties because they conflict with their religious, moral, philosophical or humanitarian beliefs.⁹²

Conscientious objection mainly affects the defence sphere, where, under certain circumstances, a person can request (and the state can grant) exemption from the civic duty of military service, i.e. the state can provide appropriate circumstances under which an applicant can exercise his right, but also his duty to defend the state in a way that does not conflict with his personal beliefs.⁹³

89 *Law on Labour Relations*, Official Gazette of the Republic of Macedonia, LXVI, No. 158, Skopje, 9.12.2010, pp. 144-185.

90 *Law on Secondary Education*, Official Gazette of the Republic of Macedonia, LVIII, No. 52, Skopje, 10.7.2002, pp. 10-20.

91 *Law on Culture*, Official Gazette of the Republic of Macedonia, LIX, No. 49, Skopje, 25.7.2003, pp. 16-21.

92 Constitutional Court of the Republic of North Macedonia, *Resolution No. 37/2002-0-1*, Skopje, 26.6.2002.

93 Constitutional Court of the Republic of North Macedonia, *Resolution No. 37/2002-0-1*, op.cit.

In the Republic of North Macedonia, the right to conscientious objection was introduced in the first Law on Defence in 1992⁹⁴ and reinforced in the second Law in 2001,⁹⁵ including the legal changes in 2006,⁹⁶ when compulsory military service was abolished, i.e. the concept of professional armed forces introduced.

In the meanwhile, especially after the adoption of the 2001 Law, several applications concerning conscientious objection were lodged with the Constitutional Court.

All the laws, as well as the decisions and resolutions of the Constitutional Court, shaped the concept of conscientious objection within the constitutional and legal system of the Republic of North Macedonia.

The issue of conscientious objection was rudimentarily regulated by the first Law on Defence, without being explicitly mentioned. Article 7, paragraph 1⁹⁷ stipulates that the duration of the military service with the Armed Forces is nine months, whereas paragraph 2 of the same Article⁹⁸ states that soldiers who do not want to carry arms because of religious beliefs can serve for 14 months.

Compared to the legal provisions, the definition of conscientious objection as devised by the Constitutional Court in 2001 leads to the conclusion that the practical implementation of this right is rather restricted, and that it can be exercised on the basis of religious, but not moral, philosophical or humanitarian beliefs. Apart from this, the Law does not include any provisions concerning the procedure for exercising the right to conscientious objection, a fact that must have had its impact on the practical implementation.

In the second Law on Defence, the issue of conscientious objection is dealt with in more detail. Namely, Article 7⁹⁹ stipulates that the duration of military service is nine months (paragraph 1) and that it is performed with the Armed Forces (paragraph 2), whereas Article 8 stipulates that recruits who, based on their religious or moral beliefs (conscientious objection), do not want to serve with the Armed Forces, have two alternatives:

1. to serve with the Armed Forces unarmed, or
2. to perform civil service whose duration, as in the previous Law of 1992, is 14 months.

94 *Law on Defence*, Official Gazette of the Republic of Macedonia, XLVIII, No. 8, Skopje, 15.2.1992, pp. 85-96.

95 *Law on Defence*, Official Gazette of the Republic of Macedonia, LVII, No. 42, Skopje, 1.6.2001, pp. 3128-3144.

96 *Law on Changes and Amendments to the Law on Defence*, Official Gazette of the Republic of Macedonia, LXII, No. 58, Skopje, 11.5.2006, pp. 26-29.

97 *Law on Defence*, Official Gazette of the Republic of Macedonia, XLVIII, No. 8, op.cit.

98 *Ibid.*

99 *Law on Defence*, Official Gazette of the Republic of Macedonia, LVII, No. 42, op.cit.

Article 10 of the Law states that, in order to exercise the right of conscientious objection, recruits have to submit a written request stating their reasons to the Ministry of Defence within 15 days after they receive their conscription call, which they will receive an answer to within 60 days. The recruit has the right to file a complaint against the decision of the Ministry of Defence with the Government of the Republic of North Macedonia's competent commission.

In the second Law on Defence, the scope and very procedure of conscientious objection are defined in more detail. However, the scope is reduced to the recruits only, so that it does not apply to any other members of the Armed Forces of the Republic of North Macedonia.

This fact was among the reasons for at least seven applications lodged with the Constitutional Court between 2002 and 2004, related to the provisions that regulate the right to conscientious objections, one out of which¹⁰⁰ the judges declared themselves in favour of.

The latter was submitted against Article 10, paragraph 1 of the Law, which reads:

“A recruit who wants to perform service in accordance with Article 8 of this law submits a request to the Ministry of Defence within 15 after receipt of the conscription call, stating his reasons and how he wants to perform the service.”

In its resolution on the application, the Constitutional Court determined the restrictions to the right to conscientious objection, referring to those Articles of the Constitution that deal with the issue of human rights and freedoms, especially Article 8, indent 1, according to which the basic human and citizen rights and freedoms as acknowledged by international law and stated in the Constitution are part of the fundamental values which the constitutional order of the state rests upon; Article 16, paragraph 1, in which the freedom of conviction, conscience and thought as well as public expression of thought are guaranteed; Article 19, paragraphs 1 and 2, in which the freedom of religion and the freedom of religious expression, alone, with others or in public are guaranteed; and Article 54, paragraphs 1 and 3, which states that the human and citizen rights and freedoms can only be restricted in the cases specified in the Constitution, and that the restriction of the rights and freedoms cannot be discriminatory based on sex, race, colour of skin, language, religion, national or social origin, or property or social status.

100 Constitutional Court of the Republic of North Macedonia, *Decision No. 37/2002-0-0*, 12,9,2002.

Based on the constitutional provisions above, the Constitutional Court devised four criteria for the legal understanding of the meaning and scope of the right to conscientious objection within the constitutional and legal system of the Republic of North Macedonia:

1. Conscientious objection is a derived right, which emanates from the freedom of belief, conscience and thought and the freedom of religion.
2. By means of conscientious objection, a person who enjoys this right can be relieved of certain legal duties because their performance conflicts with his religious, moral, philosophical or humanitarian beliefs.
3. In the sphere of defence, conscientious objection occurs when a person, even under strict conditions, requests, and can be granted by the state, to be relieved from the civic duty of military service, which does not mean they are fully acquitted of this duty.
4. Conscientious objection is an external manifestation of the freedom of thought, conscience and religion, whereas this right includes the freedom to change one's beliefs and religion. Hence, undoubtedly, this freedom includes creation, change and abandoning personal views, as well as moral or religious beliefs. What at one time seems acceptable to a person's conscience and beliefs is not necessarily fixed and can be subject to modifications and changes in the course of time.

Based on this legal framework, and having in mind the wording of the disputed Article 10, the Constitutional Court concluded that the right to conscientious objection was granted only to recruits, but not to conscripts, soldiers or reserve conscripts.

The judges at the Constitutional Court came to the conclusion that the legal provision defines the freedom of conscience and belief expressed in the right to conscientious objection as something unchangeable, because the law binds its exercise to a period of time after which it cannot be exercised anymore.

The Constitutional Court adopted the position that this represents a restriction of the right, because the objection can be made only once in one's life, which is why it decided to abolish Article 10, provision 1 of the Law on Defence.

As a result of the changes to the Law on Defence adopted by the Assembly of the Republic of North Macedonia in 2006,¹⁰¹ military service was abolished, i.e. the concept of professional armed forces was introduced.

101 *Law on Changes and Amendments to the Law on Defence*, Official Gazette of the Republic of Macedonia, LXII, No. 58, op.cit.

Thus, the area which the right to conscientious objection applies to diminished considerably (with mainly recruits resorting to it), but did not disappear altogether, bearing in mind that the Law on Defence also covers the issue of mobilisation. Moreover, the decision of the Constitutional Court stipulates that the right to conscientious objection can also be exercised in other cases.

It remains unknown how the right to conscientious objection, which emanates from the above mentioned constitutional and legal provisions and could, in fact, also be applied to other cases, especially the case of mobilisation in the context of Article 28 of the Constitution, which states that the defence of the Republic of North Macedonia is the right and duty of every citizen.

3.5. RELIGIOUS INSTRUCTION

In the context of the continuing extensive debate on the boundaries of secularism, the discussion of **religious instruction at state primary schools is one of the major stumbling blocks.**

The basis for regulating the position of the Republic of North Macedonia on the issue of religious instruction at primary schools is provided by the Constitution, where Article 44 stipulates that primary education is compulsory and free, and Article 45, that citizens have the right to establish private schools at all levels of education, with the exception of primary education, under the conditions determined by law. These constitutional provisions are underpinned with the laws on primary education that have been adopted over the years.

Since the Republic of North Macedonia gained independence, the regulation of the issue has been accompanied by legal uncertainty, resulting in several attempts at introducing religious instruction.

In chronological order, **five phases** can be identified:

1. from 1991 to 2002: religious instruction is not a subject at primary schools
2. from 2002 to 2003: religious instruction is a subject at primary schools
3. from 2003 to 2008: religious instruction is, again, not a subject at primary schools
4. from 2008 to 2009: religious instruction is introduced again
5. since 2009: religious instruction is not a subject at primary schools, but a form of religious education is introduced.

The first phase is based on the first Law on primary Education, adopted in 1995.¹⁰² Its Article 13 names two explicit bans at primary schools:

1. Religious and political organisation is prohibited; and
2. religious instruction is prohibited.

This condition was changed in 2002, when the Minister of Education issued a decree to introduce religious instruction as an optional subject in third grade of primary school.¹⁰³

One year later, in November 2003, the Constitutional Court of the Republic of North Macedonia, based on a citizen's application, adopted the decision to abolish the *Decision of the Minister of Education*,¹⁰⁴ thus initiating the third phase, during which religious instruction was, again, not taught at primary schools.

The Constitutional Court also adopted a decision by which it, for the first time, engaged in practical interpretation of the constitutional and legal provisions on the issue of religious instruction.

An analysis of the decision allows at least three interpretations:

1. The state cannot impose any kind of religious activity on its citizens.
2. The state must retain neutrality in order for its citizens to freely determine whether or not to affiliate to a certain religion, whether to practice it or not, and whether to participate in religious rituals or not, which includes the freedom of citizens to decide whether to study the holy scriptures of the religion they are affiliated to, as well as of other religious groups.
3. Citizens have the possibility to engage in all mentioned activities regarding the determination of religious affiliation and the acquaintance with the beliefs of any religious group by studying their scriptures within the religious communities and outside of them, but not within state bodies and public institutions such as primary schools.

Following the decision of the Constitutional Court, the Assembly of the Republic of North Macedonia adopted a new Law on Primary Education in 2008.¹⁰⁵ Its Article 26 stipulates that religious instruction can be introduced as an optional subject in

102 *Law on Primary Education*, Official Gazette of the Republic of Macedonia, LI, No. 44, Skopje, 20.9.1995, pp. 1129-1137.

103 Ministry of Education and Science of the Republic of North Macedonia, *Decision No. 10-2858/1*, Skopje, 3.10.2002.

104 Constitutional Court of the Republic of North Macedonia, *Decision No. 42/2003-0-0*, Skopje, 5.11.2003.

105 *Law on Primary Education*, Official Gazette of the Republic of Macedonia, LXIV, No.103, Skopje, 19.8.2008, pp. 3-44.

elementary schools. According to the transitional and final provisions of the law, Article 26 would come into force on 1 September 2008, the first day of the new school year.

This decision marked the beginning of the fourth phase, with religious instruction being introduced by law instead of by decree, as had been the case before.

In April 2009, the Constitutional Court of the Republic of North Macedonia discussed the application of a political party¹⁰⁶ to evaluate the compliance of Article 26 of the Law on Primary Education¹⁰⁷ with the Constitution and adopted a Decision,¹⁰⁸ based on which Article 26 was abolished, i.e. religious instruction at elementary schools was, again, prohibited. This Decision marks the beginning of the fifth phase.

According to the opinion of the Constitutional Court, the abolition of Article 26 was based on the following grounds:

1. All citizens are equal in their rights and freedoms.
2. All citizens are guaranteed freedom of religious expression.
3. All religious communities and groups are equal before the law and separate from the state.
4. The religious communities and groups are free to establish religious schools and other social and charitable institutions.
5. The freedom to be affiliated to a certain religion includes the right not to be affiliated to nor to study any religion.
6. There is no state religion, nor is any religion privileged on any grounds whatsoever.
7. The citizens have the freedom to congregate in order to practice their beliefs, based on programmes and activities that are not be directed, i.a., at religious hatred or intolerance.

By its considerations on religious instruction, the Constitutional Court specified the legal interpretation regarding the boundaries of secularism in the education system of the Republic of North Macedonia. According to the judges, introducing religious instruction in primary education violates the academic and neutral character of tuition typical for public state education and involves the state in organising religious tuition, which is contradictory to the constitutional principle of separation between state and church.

106 Constitutional Court of the Republic of North Macedonia, *Decision No. 202/2008-0-0*, Skopje, 11.2.2009.

107 *Law on Primary Education*, Official Gazette of the Republic of Macedonia, LXIV, No.103, op.cit.

108 Constitutional Court of the Republic of North Macedonia, *Decision No. 202-2008-0-1*, Skopje, 15.4.2009.

At the same time, the Constitutional Court accentuated the freedom of religious institutions to establish religious schools as guaranteed by the Constitution.

From the decision of the Constitutional Court, we can conclude that **the Republic of North Macedonia is a secular state, which provides religious neutrality of education, and that it is not allowed to take on responsibilities that are in the scope of religious communities and groups.**

According to the opinion of the Constitutional Court, the study of specific aspects of a religion is the exclusive responsibility of the religious communities and groups, rather than public educational institutions.

On the other hand, this does not mean that the state is not allowed to introduce a subject at primary schools which would include the study of different religions from a secular (neutral) point of view. In accordance with this fact, and based on Article 25, paragraph 1, of the Law on Primary Education,¹⁰⁹ which states that the Minister of Education confirms the concept for primary education which serves as a base for curricula and study programmes, *Ethics of the Religions* was introduced as an optional subject for fifth grade pupils. This subject covers the study of ethic aspects of the religions recognised in the Constitution of the Republic of North Macedonia.¹¹⁰

During the recent history of the Republic of North Macedonia, **the scope of secularity in the sphere of religious instruction at primary schools has been subject to various shifts.** It looks as if **the Republic of North Macedonia, after thirty years of independence, has finally reached a balance, with the state having made concessions to the citizens who find it necessary to study religions during primary education, but in a way that does not jeopardise the concept of separation between state and religious organisations laid down in the Constitution.**

3.6. RELIGIOUS BLESSING AT PUBLIC SCHOOLS

In August 1999, the then Minister of Education submitted a notification¹¹¹ to all headmasters of primary schools that they should invite clerics to issue blessings to the beginning of the new school year. This notification and the respective decree were subject to evaluation of compliance with the Constitution by the Constitutional Court.

109 *Law on Primary Education*, Official Gazette of the Republic of Macedonia, LXIV, No.103, op.cit.

110 Bureau for the Development of Education in the Republic of North Macedonia, *Curriculum for the subject "Ethics of the Religions" for the fifth grade of 8 year primary education* (bro.gov.mk), 2.2.2012.

111 *Ministry of Education of the Republic of North Macedonia*, Notification No. 10-3445/1, Skopje, 24.8.1999.

Even though the case was already before the Constitutional Court, the educational institutions followed the notification and, according to the religious structure of their pupils, had the new school year blessed by clerics from the Macedonian Orthodox Church or the Islamic Religious Community, the two largest religious organisations, but not from other registered ones.

At that time, Article 19 of the Constitution mentioned only the Macedonian Orthodox Church explicitly, so that it remains unclear why the Minister decided to invite representatives of that Church and of the Islamic Religious Community, but not of all the other registered religious organisations.

Upon application by a non-governmental organisation, the Constitutional Court evaluated the compliance with the Constitution of the Minister of Education's decree.¹¹² The non-governmental organisation disputed it as inconsistent with the Constitution for at least three reasons:

1. Pupils at primary and secondary schools are exposed to religious activity without consent from their parents.
2. The freedom of conviction and religion of persons affiliated to other religions or not affiliated to any religion at all is violated, since blessings are issued only by representatives of the Macedonian Orthodox Church and the Islamic Religious Community.
3. The separation of state and religions.

In April 2000, the Constitutional Court adopted the decision to cancel the Minister's decree,¹¹³ whereby it established additional rules regarding the guarantee of the state's secularity. Namely, the judges referred to Article 19 of the Constitution, which states that religious communities are separate from the state. Their analysis of the Minister's decree resulted in the following conclusions:

1. By the decree, religious activity at primary and secondary schools was introduced.
2. Religious activity was introduced by order of a state body.

The Constitutional Court came to five conclusions regarding the issue of separation between the state and religious communities. Namely, based on the principle of separation, the state is not allowed to:

1. interfere in questions of religion;

112 Constitutional Court of the Republic of North Macedonia, *Decision No. 195/1999-1-0*, Skopje, 1.3.2000.

113 Constitutional Court of the Republic of North Macedonia, *Decision No. 195/1999-0-0*, Skopje, 19.4.2000.

2. incite determination in favour of a certain religion or religion as a whole;
3. hamper the expression of religion;
4. impose religious conformism, religious activities or religious rituals as a socially desired behaviour; and accordingly
5. request or order religious activities, at any place and in any form whatsoever..

With its decision, the Constitutional Court confirmed that the **state is neutral with regard to religion and that it does not have the right to organise religious activities at public schools, nor anywhere else.**

Although the practice of religious blessing at the beginning of the school year was banned, some other practices have been observed over the years, especially clerics issuing a certain kind of blessing during events organised around the construction of new buildings by the state or local authorities.

Hence, it remains uncertain whether such proceedings represent a violation of the Constitutional Court's decision or whether they do not pertain to the category of religious blessing.

3.7. THE STATUS OF INSTITUTIONS OF TERTIARY EDUCATION OF RELIGIOUS ORGANISATIONS

In the Republic of North Macedonia, only the Macedonian Orthodox Church and the Islamic Religious Community maintain institutions of tertiary education. With regard to the question of their legal status, there have been two phases:

1. up to 2008: the status of tertiary education institutions of religious organisations differs from the status of the other public institutions of tertiary education,
2. as of 2008: tertiary education institutions of religious organisations and other public institutions of tertiary education have equal status.

The second phase is divided from the first one by the **Law on Institutions of Tertiary Education of Religious Communities**,¹¹⁴ adopted in 2008.

During the first phase, the state did not recognise the diplomas issued by tertiary education institutions of religious organisations, and their students did not have the same rights and duties as their colleagues at recognised universities, neither did their graduates or postgraduates.

¹¹⁴ *Law on Institutions of Tertiary Education of Religious Communities*, Official Gazette of the Republic of Macedonia, LXIV, No. 81, Skopje, 7.7.2008, pp. 6-8.

In a nutshell, the state had interpreted the principle of separation between state and religious organisations very strictly, not recognising any rights, duties or status of institutions of tertiary education that would go beyond the religious organisations that had established them.

The adoption of the Law on Institutions of Tertiary Education of Religious Communities marks the beginning of the second phase. According to Article 1, the religious communities' institutions of tertiary education, namely the St. Clement of Ohrid Faculty of Theology and the Faculty of Islamic Science, have the status of public-private non-profit institutions of tertiary education, in accordance with the Law on Higher Education,¹¹⁵ which provided them with the required legal status.

The key clause of Article 1 is the term *public-private non-profit institution of tertiary education*, which, in Article 2, point 26, of the Law on Higher Education is defined as an institution of tertiary education established by a non-profit foundation by means of public funds of domestic or foreign origin, which generates essential public goods and is in the interest of the public. Any funds gained by these institutions may be directed at higher education only, because they neither generate nor allocate profit.

The above provision allows for the conclusion that religious organisations were thus assigned to the group of non-profit foundations that act in the interest of the public, which is the basis for their right to establish institutions of tertiary education.

Therefore, according to Article 26 of the Law on Higher Education, non-profit foundations (as well as other domestic and foreign natural persons and legal entities) have the right to establish public-private non-profit institutions of tertiary education upon approval from the Government of the Republic of North Macedonia.

The Law on Institutions of Tertiary Education of Religious Communities also states that the St. Clement of Ohrid Faculty of Theology and the Faculty of Islamic Science have the right to offer tertiary education in the form of graduate, postgraduate and doctoral studies, as well as to engage in science and research activities in the sphere of theological and Islamic sciences, in accordance with the Law on Higher Education (Article 2). They also have the right as to be part of state universities as associated members, in accordance with the provisions of the Law on Higher Education (Article 4). The term *associated member*, according to Article 2, point

115 *Law on Higher Education*, Official Gazette of the Republic of Macedonia, LXIV, No. 35, Skopje, 14.3.2008, pp. 1-67.

19, of the Law on Higher Education, refers to institutions whose main activity is functionally connected to tertiary education.

Finally, article 7 of the Law on Institutions of Tertiary Education of Religious Communities stipulates that the St. Clement of Ohrid Faculty of Theology and the Faculty of Islamic Science be financed, i.a., from the state Budget . According to Article 8, the students of those two faculties enjoy the same rights and duties as the students of public universities.

After the adoption of the Law on Institutions of Tertiary Education of Religious Communities, the statutes of Ss. Cyril and Methodius University in Skopje and the State University in Tetovo were changed, according to the provisions of the Law on Higher Education, so that the St. Clement of Ohrid Faculty of Theology became part of Ss. Cyril and Methodius University, while the Faculty of Islamic Science became part of the State University in Tetovo. Thus, the two institutions of tertiary education completed the process of gaining the status of a legal entity.

However, that process did not go unnoticed, and the reactions it provoked culminated in an application which a group of professors lodged with the Constitutional Court, proposing to evaluate the compliance with the Constitution of the provisions of the Statute of Ss. Cyril and Methodius University regarding the inclusion of the St. Clement of Ohrid Faculty of Theology.¹¹⁶

According to the professors who lodged the application, the procedure was inconsistent with the Constitution for two reasons:

1. it led to the interference of a privately established religious entity in the decisions of the Senate of Ss. Cyril and Methodius University, a secular state university, and
2. one religious institution was thereby privileged with regard to other religious entities, mainly because it was now financed by the state, which represented a discrimination of other religious entities, contrary to Article 19 of the Constitution, which states that all religious entities are equal before the law.¹¹⁷

With regard to the first part of the application, the Constitutional Court assumed the position that defining the competences of associated members on important issues regarding the activities and decision-making of the Senate in the Statute of the University does not violate the autonomy of the university as defined in the Law

116 Constitutional Court of the Republic of North Macedonia, *Decision No.172/2009-0-0*, Skopje, 23.12.2009.

117 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

on Higher Education. Hence, the Court stated that it was in compliance with Article 46 of the Constitution, which guarantees the autonomy of universities.

With regard to the second part of the application, which deals with the funding of the Faculty of Theology, the judges at the Constitutional Court asserted that the Law on Institutions of Tertiary Education of Religious Communities states that funds for financing the activities of the Faculty of Theology, apart from the founders' funds, are provided from the Budget of the Republic of North Macedonia, which means that the Law determines that the Faculty of Theology shall also be financed from the state budget, regardless of whether it has gained the status of an associated member of the University.

Hence, the Constitutional Court did not accept the application, i.e. decided not to evaluate the compliance with the Constitution of the respective articles of the Statute of Ss. Cyril and Methodius University.

After the opponents had exhausted this legal opportunity, the institutions of tertiary education of the religious communities reached the required legal status, so that the scope of secularism was shifted in favour of the religious organisations.

3.8. STATE CELEBRATION OF RELIGIOUS HOLIDAYS

The state's position on the celebration of religious holidays is a crucial question for the analysis of the system of relations between the state and religious organisations and the exercise of freedom of religion. In the independent Republic of North Macedonia, this issue was first regulated with the Law on Holidays, adopted in 1998,¹¹⁸ according to which holidays were divided into two categories:

1. *state holidays* (Article 2), and
2. *holidays which are non-working days* (Article 4).

The category of state holidays did not include any holidays of religious character, while the second category comprised, for the first time, five religious holidays:

- » Christmas Day and Easter Monday for Christians,
- » the first day of the Festival of Breaking the Fast at the end of Ramadan (*Ramazan Bajram*) and the first day of the Festival of the Sacrifice (*Kurban Bajram*) for Muslims,
- » Yom Kippur for Jews.

118 *Law on Holidays of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, LIV, No. 21, Skopje, 8.5.1998, p. 1214.

With the Law on Holidays as of 1998, the Republic of North Macedonia became part of those states that celebrate the most important holidays of the two largest religious groups, Orthodox Christianity and Islam, and also Judaism.

Taking into account the number of members of the religious groups as the main criteria, the law failed to regulate the celebration of holidays of other religious groups with a relatively high number of members, such as Catholics, whose number in the Republic of North Macedonia exceeds the number of Jews. Apart from this shortcoming, the Law was the first one to introduce the celebration of religious holidays after the independence of the Republic of North Macedonia and the replacement of the socialist order.

With the changes to the Law on Holidays in 2007,¹¹⁹ the newly-reached balance between the state and the religions shifted. Now, holidays were split into three categories:

1. *state holidays* (Article 1, paragraph 1),
2. *holidays* (Article 1, paragraph 2), and
3. *holidays which are non-working days* (Article 2).

Two religious holidays linked to Orthodox Christianity, the majority religion, were introduced as state holidays of the Republic of North Macedonia (category 1), namely the 24th of May, Saints Cyril and Methodius, the Slavonic Enlighteners' Day, and the 8th of December, the Day of St. Clement of Ohrid.

The second category of holidays of the Republic of North Macedonia now included the following religious holidays: Christmas Day (celebrated on the 7th of January, according to the Julian calendar), Easter Monday (Orthodox Easter, according to the Julian calendar), as well as Ramazan Bajram (the first day of the Festival of Breaking the Fast).

An additional number of religious holidays was included in the third category, holidays which are non-working days, divided into two groups:

1. Christmas Eve, Epiphany (*Vodici*, celebrated on the 19th of January), Great Friday (Friday before Easter), Dormition of the Mother of God (28th of August), and Pentecost (Friday before Pentecost) for Orthodox Christians;
2. Kurban Bajram (the first day of the Festival of the Sacrifice) for Muslims; Jom Kippur for Jews; Christmas Eve, Easter Monday and All Saints' Day according

119 *Law on Changes to the Law on Holidays of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, LXIII, No. 18, Skopje, 15.2.2007, pp. 4-5.

to the Gregorian Calendar for Catholics; and Saint Sava Day (27th of January) for the Serbian community.

Based on the changes to the Law on Holidays in 2007, the state introduced 27 holidays, divided into the three categories mentioned, 15 of which were of religious character. The first category, state holidays of the Republic of North Macedonia, included two religious holidays (24th of May, Saints Cyril and Methodius Day, and 8th of December, the Day of St. Clement of Ohrid), connected to the values of Orthodox Christianity, the majority religion.

Hence, the Republic of North Macedonia, in a symbolical sense, defined itself as a state which considers Orthodox Christianity one of the pillars of its statehood, even more so since both state holidays of Orthodox origin were declared as non-working holidays for all citizens, regardless of their religion.

The second category of holidays of the Republic of North Macedonia includes three religious holidays, two of which relate to Orthodox Christianity (Christmas Day and Easter Monday) and one to Islam (Ramazan Bajram).

This category of holidays, too, symbolically reflects the structure of the Republic of North Macedonia with a predominantly Orthodox Christian population, but also takes into account Islam as the religion of the second largest population group. An argument in favour of this array is that the holidays are declared as non-working days for all citizens, regardless of their religion.

The third category, holidays which are non-working days, includes 11 religious holidays, 6 of which are Orthodox Christian (Christmas Eve, Epiphany, Great Friday, Dormition of the Mother of God, Pentecost, as well as Saint Sava Day for the Serbian community), 3 are Catholic (Christmas Eve, Easter, and All Saints' Day), one is Muslim (Kurban Bajram) and one is Jewish (Jom Kippur). Unlike the holidays of the first two categories, these days are non-working only for the religious or ethnic communities they relate to.

With the Law on Holidays and the changes to it in 2007, **the Republic of North Macedonia declared that religious context is one of the sources from which it draws its legitimacy as a state, first and foremost from Orthodox Christian values, but also from values of other religions, mainly Islam.** Bearing in mind the values of the minority religions in the Republic of North Macedonia, the Law allows the members of those religious communities to celebrate their important holidays.

The Law on Holidays, too, was accompanied by reactions, which culminated in applications to evaluate the compliance with the Constitutions being lodged with the Constitutional Court.¹²⁰

The crucial point in one of the applications was the fact that the Republic of North Macedonia provides different holidays for members of different religious communities. Thus, in 1998, a group of citizen lodged an application to evaluate the Law's compliance with the Constitution,¹²¹ because it foresees a separation of citizens based on religious affiliation and provides different treatment of citizens by defining different days for celebrating religious holidays. According to the applicants, this fact caused inequality among the citizens, because, according to their application, the disputed legal provision was inconsistent with Article 9 of the Constitution.

According to another application, Article 4 of the Law was not in compliance with Article 19, paragraph 3, of the Constitution, because defining non-working holidays for three of the religious communities in the Republic of North Macedonia, but not for the other ones, implied unequal treatment of the religious communities, resulting in them not being equal before the law.

In their Resolution,¹²² the judges of the Constitutional Court stated that the members of different religious organisations hold up different values, or believe in the same values, but with different priority. According to the judges, those differences are manifested in different expressions of religious belief, i.e. in different days for celebrating religious values, so that it is precisely the fact that different religious communities can celebrate different non-working holidays which provides equality of citizens according to their religion.

Regarding the allegation that Article 4 provided inequality between Orthodoxy, Islam and Judaism, on the one side, and the other religious communities, on the other, the Constitutional Court held that the application did not call into question that the three religious groups celebrated their holidays, but required the right for the other religious groups to celebrate their holidays, too. This would have meant for the Court to supplement the disputed legal provision, which does not lie within the competence of the Constitutional Court.

120 Between 1998 and 2010, the Constitutional Court of the Republic of North Macedonia passed resolutions on three applications: *Resolution No. 122/1998-0-0*, 7.10.1998, *Resolution No. 138/2009-0-0*, 24.6.2009 and *Resolution No. No. 12/2010-0-0*, 3.9.2011.

121 Constitutional Court of the Republic of North Macedonia, *Resolution No. 122/1998-0-0*, op.cit.

122 Constitutional Court of the Republic of North Macedonia, *Resolution No. 122/1998-0-0*, op.cit.

In 2009¹²³ and 2010,¹²⁴ respectively, another two applications were lodged with the Constitutional Court, which were also rejected with the explanation that the judges had already commented on the matter in 1998.

3.9. THE STATUS OF THE ACTS OF RELIGIOUS ORGANISATIONS

The status of the acts of religious organisations within the legal system of the Republic of North Macedonia is based on the resolutions of the Constitutional Court as of 1996¹²⁵ and 2000,¹²⁶ respectively.

The resolutions result from two applications lodged with the Court to declare as inconsistent with the Constitution some parts of the Constitution of the Macedonian Orthodox Church, as well as other provisions of the same religious organisation, which, analogously, can be considered as directed at the acts of the other religious organisations in the Republic of North Macedonia, too.

In the first application, lodged in 1996, protection of the rights and freedoms of women was demanded. The applicant claimed that women were discriminated in church weddings, since the respective ritual resulted in a mental trauma for women, because the priest preached that men and women were equal, but that women always had to subordinate to men.

According to the applicant, such preaching was contrary to the legal norms of the state, because they denied the rights of women as guaranteed by the Constitution. The applicants also claimed that the Macedonian Orthodox Church generated inequality between men and women, based on the fact that it allowed for men to enter churches without headgear, while women could only enter with their hair covered, decently dressed and without make-up.

The second application was lodged with the Constitutional Court in 1999 by one citizen, in the name of a group of parents of monks and nuns. The applicants claimed that they were denied the right to be taken care of by their children in the case of illness, infirmity and old age, based on the canonic rule that forbids any contact of monks and nuns with their parents, which was applied within the Macedonian Orthodox Church.

123 Constitutional Court of the Republic of North Macedonia, *Decision No.138/2009-0-0*, op.cit.

124 Constitutional Court of the Republic of North Macedonia, *Decision No.12/2010-0-0*, op.cit.

125 Constitutional Court of the Republic of North Macedonia, *Decision No.32/1996-0-0*, Skopje, 14.2.1996.

126 Constitutional Court of the Republic of North Macedonia, *Decision No.176/1999-0-0*, Skopje, 17.5.2000.

Apart from that, the applicants claimed that the Macedonian Orthodox Church does not have the right to establish other units, especially "social units" such as monasteries, since the only form of social unit recognised in the Constitution is the family, which enjoys appropriate protection. According to the applicants, by declaring itself owner of social units, the Macedonian Orthodox Church also declares itself owner of human beings and thus deprives monks and nuns, i.e. the children of the applicants, of the right to freedom, thought and its public expression, the freedom of speech, public appearance and public information, the right to freedom and privacy of correspondence, the right to exercise a public mandate, the right to submit petitions to state bodies, the right to free movement in the territory of the Republic of North Macedonia, the right to participate in the defence of the state, the right to property and inheritance, the right to paid leave, to social insurance, to health protection, as well as other rights. Considering their children who are monks and nuns to be held as slaves, the applicants also invoked the Slavery Convention, which states that for a person to be considered a slave, it is irrelevant whether they have consented voluntarily to live under such conditions or whether they are minors or adults.

Both applications were rejected as unfounded by the Constitutional Court, which quoted Article 19 of the Constitution and the Law on Citizen Associations and Foundations,¹²⁷ drawing the following conclusions:

1. The Church, as well as principles and norms originating from religious scriptures, are separate from the state and its legal order, i.e. it does not lie within the competence of the state to evaluate those scriptures with regard to the Constitution, nor to decide whether or not, based on them, a believer is discriminated, having in mind the constitutional provision on freedom of religion.
2. The Constitutional Court assessed that it does not lie within its competence to decide on the requests of the applicants, since they did not demand protection of rights of freedoms violated by a legal act that was adopted or an action that was committed by a state body, nor protection against discrimination based on religious affiliation committed by a state body.
3. The Macedonian Orthodox Church (as well as all other religious organisations) has its own organisation, which independently regulates and manages its activities.
4. The freedom of religion means that believers are free to choose how they want to exercise their religion, which is a strictly personal matter, i.e. part of a person's privacy. This means that every citizen has the right to belong to any religious community and to follow its teachings, or not to belong to any religious community whatsoever.

¹²⁷ *Law on Citizen Associations and Foundations*, Official Gazette of the Republic of Macedonia, LIV, No. 31, Skopje, 2.7.1998, pp. 1724-1731.

5. The provision that religion is a personal matter also defines the relation of religious organisation towards the state. Namely, according to the Constitution, the Macedonian Orthodox Church, like all other religious organisations, is separate from the state. At the same time, religious organisations are equal and share an equal right to carry out their activities and rituals, and they are subject to equal treatment by the state in accordance with the Constitution and the law, which means that there cannot be a state religion which would be privileged and controlled by the state.
6. The Macedonian Orthodox Church is neither a citizen association nor any kind of institutionalised association of believers, i.e. the Macedonian Orthodox Church and the other religious organisations represent forms of expressing one's faith, alone or with others, and are thus not organised according to the Law on Citizen Associations and Foundations.
7. Since the Macedonian Orthodox Church is not a citizen association, but rather a certain form of congregation of citizens in order to express their faith, the Constitutional Court deems that the constitution of the Macedonian Orthodox Church cannot be subject to its evaluation.

3.10. THE STATE'S SUPPORT TO THE MACEDONIAN ORTHODOX CHURCH IN ITS STRUGGLE FOR AUTOCEPHALY

Ever since the Republic of North Macedonia became an independent state, its institutions have often adopted a **paternal attitude towards the Macedonian Orthodox Church, especially concerning its efforts for recognition by the other Orthodox Churches worldwide and thus accomplish legitimacy and legality.**

From a formal point of view, this policy culminated in the adoption of the *Declaration of Support for the Autocephaly of the Macedonian Orthodox Church* by the Assembly in 2004.¹²⁸

This declaration was adopted at a time when a bishop and several clerics had left the Macedonian Orthodox Church and founded their own religious organisation, which was then recognised worldwide by the Orthodox Churches. Ever since, it has been vying with the Macedonian Orthodox Church for the favour of Orthodox Christians in the Republic of Macedonia. However, **the difference is that the Macedonian Orthodox Church possesses legitimacy in the Republic of North Macedonia, since it is a registered legal entity, which the other organisation is not. On the**

¹²⁸ *Declaration of Support for the Autocephaly of the Macedonian Orthodox Church*, Official Gazette of the Republic of Macedonia, LX, No. 4, Skopje, 2.2.2004, p. 3.

other hand, the Macedonian Orthodox Church does not possess legitimacy among the worldwide Orthodox Churches, since it is not recognised, which, in contrast, is the case with the other religious organisation.

Adopting the Declaration directed attention at Article 9, paragraph 2, of the Constitution, which states that the Macedonian Orthodox Church, like all other religious communities and organisations, is separate from the state. However, according to Article 69, paragraph 2, the Assembly has the right¹²⁹ to adopt decisions, declarations, resolutions, recommendations and conclusions within its competences.

The authors of the proposal to adopt the Declaration followed the logic of Article 19 in its entirety, which determines the **Macedonian Orthodox Church as a constitutional category, since it is explicitly mentioned in the Constitution, from which they deduce the right to adopt legal acts related to the Macedonian Orthodox Church.**

By adopting the Declaration, the Assembly expressed its support and recognition regarding the Macedonian Orthodox Church's declaration of autocephaly as of 18.7.1967. Apart from that, the Assembly granted support to the Macedonian Orthodox Church concerning three issues:

1. maintenance of internal unity,
2. recognition of its name, Macedonian Orthodox Church, and
3. recognition of autocephaly.

At its session in 2004, the highest body of the Macedonian Orthodox Church, the Clergy and People's Synod, adopted a resolution in which, among other issues, it expressed its gratitude to the Assembly for having adopted the Declaration.¹³⁰

The Declaration led to the establishment of at least four new circumstances:

1. The state **provides legal legitimacy to an internal act of a religious organisation**, namely to the declaration of autocephaly, which, according to legal provisions, does not have legal effect outside of the Macedonian Orthodox Church.
2. **Regarding the activities of religious organisations, the state challenges the principle of separation** by granting support and expressing preparedness

¹²⁹ Ibid.


¹³⁰ *Resolution of the Clergy and People's Synod of the Macedonian Orthodox Church*, 12.11.2004, (mpc.org.mk), 10.3.2018.

to help regarding the international activities of the Macedonian Orthodox Church for recognition of its legitimacy by the other Orthodox Churches.

3. The principle of separation is breached against the background of internal developments of the Macedonian Orthodox Church after the establishment of a non-recognised religious organisation (which is vying with the Macedonian Orthodox Church for the favour of Orthodox Christians), with the state supporting the maintenance of internal unity of the Macedonian Orthodox Church, i.e. the prevention of transition of believers.
4. With regard to human rights, the state demonstrates that the only religious organisation that operates in the interests of Orthodox Christians in the Republic of Macedonia is the Macedonian Orthodox Church, because it is a registered legal entity, which means that Orthodox Christians can satisfy their religious needs in its framework exclusively.

With regard to the Macedonian model of relations between the state and religious organisations, the Declaration discloses the legacy of the Byzantine Empire (contrary to international Western European standards and the fact that the Republic of North Macedonia is not a homogeneous state in religious terms), which is based on a system of unity between secular and religious power, or in this case, as it were, the Republic of North Macedonia and the Macedonian Orthodox Church.

Thus, we have seen once again, as we have from other cases described in this chapter, that there is no unanimity in the Republic of North Macedonia concerning the balance of the factors that define the model of relations between the state and religious organisations and, hence, the freedom of religion.



4

THE INSTITUTIONAL FRAMEWORK

4. THE INSTITUTIONAL FRAMEWORK

The model of secularism in the Republic of North Macedonia, as in any other democratic state, is based on a network of institutions, which, according to their competences, have their legal mechanisms for its overall implementation. The state institutions that are concerned with the relations between the state and the religious organisations can be divided into three groups:

1. bodies whose work is primarily focused on the relations between the state and the religious organisations: the Commission for Relations with Religious Communities and Groups;
2. institutions not only concerned with the question of relations between the state and religious organisations, but also, among others, with religious rights and freedoms: the Constitutional Court;¹³¹
3. bodies whose range of competences includes issues related to exercising, among others, religious rights and freedoms: the Standing Inquiry Committee for the Protection of Civil Rights and Freedoms, the Ombudsman, and the Commission for Protection against Discrimination.

In the following, the activities of the above institutions will be described in more detail.

4.1. THE COMMISSION FOR RELATIONS WITH RELIGIOUS COMMUNITIES AND GROUPS

Commissions for relations with religious communities as intermediaries between the state and religious organisations were already established in the Socialist Republic of Macedonia.¹³² However, their approach to the question of autonomy of the religious organisations, as well as to the issue of religious freedom was, indeed, different from today.

The field of responsibility of the Commission for Relations with Religious Communities and Groups is regulated by the following acts:

131 On the role of constitutional courts in the democratisation of formerly socialist and communist states, see: James T. Richardson, *Religion, Constitutional Courts, and Democracy in Former Communist Countries*, *The Annals of the American Academy*, January 2006, pp. 129-137.

132 The first commission for relations with religious communities was established in 1945, based on the Decree on establishing a state commission for religious issues (*Decree on Establishing a Commission for Religious Issues*, Official Gazette of the Socialist Federal Republic of Yugoslavia, I, No. 62, Belgrade, 21.8.1945, p. 589).

1. the Constitution,
2. the Law on the Legal Status of Churches, Religious Communities and Religious Groups,
3. the Law on the Organisation and Operation of the State Administration.

Article 19 of the Constitutions states that the Macedonian Orthodox Church, as well as the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church, and the other religious communities and groups are separate from the state and equal before the law.

The Law on the Organisation and Operation of the State Administration refers to the Constitution in its Article 29, which stipulates that a commission for relations with religious communities and groups be in place as a separate state administration body with the status of a legal entity.¹³³

Article 29 also determines two areas of responsibility of the Commission for Relations with Religious Communities and Groups:

1. the legal status of religious communities and groups;
2. the relations between the state and religious communities and groups.

Further duties are defined in the Law on the Legal Status of Churches, Religious Communities and Religious Groups,¹³⁴ adopted in 2007:

1. According to Article 35, the Commission provides the Basic Court II in Skopje with the data and documentation on all religious organisations listed in the register in accordance with the provisions of the Law on Religious Communities and Groups from 1997¹³⁵ within 60 days after the adoption of the Law.
2. According to Article 7, paragraph 2, the state institutions, within the scope of their competences and authorisations, establish conditions so that churches, religious communities and groups can engage in their activities unhampered. Since the Commission is an intermediary body between the state and the religious organisations, all procedures concerning institutions that are considered to act contrary to the above provision are directed at it.
3. According to Article 9, paragraph 2, the Commission keeps evidence of all registered religious organisations.

133 *Law on the Organisation and Operation of the State Administration*, Official Gazette of the Republic of Macedonia, LVI, No. 58, Skopje, 21.7.2000, pp. 3984-3991.

134 *Law on the Legal Status of Churches, Religious Communities and Religious Groups*, Official Gazette of the Republic of Macedonia, LXIII, No. 113, op.cit.

135 *Law on Religious Communities and Groups*, Official Gazette of the Republic of Macedonia, LIII, No. 35, op.cit.

4. According to Article 23, the Commission, observing certain proceedings, communicates with religious organisations concerning all issues related to the establishment of religious educational institutions.
5. According to Article 25, the Commission, in accordance with the provisions on the residence of foreign citizens, authorises the religious organisations to employ foreign citizens to teach at their educational institutions, organised by them.

Apart from the above mentioned, the scope of competences of the Commission used to include consulting religious organisations in the name of the Republic of North Macedonia on the preparation of the curricula for religious instruction. This was the case from 2007, when the Law on the Legal Status of Churches, Religious Communities and Religious Organisations was adopted, until 2010, when Article 27 of the Constitution was abolished¹³⁶ upon the Decision of the Constitutional Court.¹³⁷

4.2. THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA

Ever since the North Macedonia attained independence, the Constitutional Court has adopted several decisions related to the protection of the religious rights and freedoms of citizens, as well as the relations between the state and religious organisations as defined in the Constitution, upon application lodged by natural persons and legal entities, as well as on its own initiative.

The Constitutional Court has played a significant role in defining the framework and the boundaries of the Macedonian model of secularism.

Chapter IV of the Constitution of the Republic of North Macedonia deals with the Constitutional Court,¹³⁸ which is defined as a state institution responsible for the protection of the state's compliance with the Constitution and the law (Article 108). With regard to the scope of the present study, the Constitutional Court's duties are the following:

1. to protect the human and citizen rights and freedoms with regard to the freedom of conviction, conscience, thought and public expression of thought, political association and activity, as well as to the prohibition of discrimination among citizens on the grounds of sex, race, religion or national, social or political affiliation (Article 110, indent 3);

136 *Law on the Legal Status of Churches, Religious Communities and Religious Organisations*, Official Gazette of the Republic of Macedonia, LXIII, No. 113, op.cit.

137 Constitutional Court of the Republic of North Macedonia, *Decision No. 104/2009-0-1*, op.cit.

138 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

2. to decide on the following:

- » the compliance of laws with the Constitution according to Article 110, indent 1, and especially, having in mind the purpose of this handbook, the compliance of laws with Article 19, which guarantees the freedom of religion and states that religious organisations are separate from the state and that they can establish religious educational, social and charitable institutions in accordance with the law;
- » the compliance of other regulations and of collective agreements with the Constitution and the law (Article 110, indent 2); and
- » the compliance of programmes and statutes of political parties and associations of citizens with the Constitution and the law (Article 110, indent 7).

Based on Article 113 of the Constitution, the Constitutional Court exercises its duties according to an internal act, i.e. the Rules of Procedure.¹³⁹

4.3. THE STANDING INQUIRY COMMITTEE FOR THE PROTECTION OF CIVIL RIGHTS AND FREEDOMS

According to Article 61 of the Constitution,¹⁴⁰ the Assembly is a representative body of the citizens, and the legislative body of the state. According to Article 76, paragraph 1, the Assembly establishes permanent and temporary working bodies, among which is the Standing Inquiry Committee for the Protection of Civil Rights and Freedoms.

Article 76, paragraph 2, stipulates that a standing inquiring committee for the protection of civil rights and freedoms be set up, which leads to the conclusion that the Standing Inquiry Committee is of far greater importance and legitimacy than the other working bodies of the Assembly, whose establishment is not foreseen by the Constitution.

This fact shows that the citizens' rights and freedoms occupy an important position in the Constitution, including religious rights and freedoms, since human rights and freedoms represent one of the fundamental pillars of North Macedonia statehood.

139 See the *Rules of Procedure of the Constitutional Court of the Republic of Macedonia*, Constitutional Court of the Republic of Macedonia, Skopje, (ustavensud.mk), 10.3.2018.

140 *Constitution of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, XLVII, No. 52, op.cit.

The Standing Inquiry Committee for the Protection of Civil Rights and Freedoms, like the other working bodies, meets in sessions. Its responsibilities are the following:¹⁴¹

1. to examine fundamental questions and to make proposals and give opinions on the implementation of the provisions of the Constitution, the law, as well as other regulations and acts concerning the exercise and protection of civil rights and freedoms;
2. whenever identified, to indicate the need to adopt laws and other provisions and acts in order to better protect citizens' rights and freedoms;
3. to follow up, examine and analyse the implementation of ratified international acts that regulate the protection of citizens' rights and freedoms;
4. to read the letters from citizens and, accordingly, to form a position on them;
5. to cooperate with scientific and professional organisations concerned with the protection of civil rights and freedoms;
6. to cooperate with foreign and international organisations and institutions from the field of protection of civil rights and freedoms; as well as
7. to react to other questions related to the protection of citizen's rights and freedoms.

In the course of performing its duties, the Standing Inquiry Committee for the Protection of Civil Rights and Freedoms cannot carry out investigations or perform other judicial functions, however, its findings can serve as a basis for initiating a procedure for determining the responsibility of persons who hold public offices.

4.4. THE OMBUDSMAN

According to Article 77 of the Constitution, the Assembly elects the Ombudsman, whose duty it is to protect the constitutional and legal rights of the citizens in case of violation by state administration bodies or other bodies and organisations with public authorisations.

Amendment XI to Article 77 of the Constitution introduced two changes regarding the following issues:

1. The way of election: the Ombudsman is elected with a majority of votes of the total number of Assembly members, while a majority of the votes of the total number of members who represent the Republic of North Macedonia's non-majority communities must also be attained.

¹⁴¹ Assembly of the Republic of North Macedonia, *Standing Inquiry Committee for the Protection of Civil Rights and Freedoms* (sobranie.mk), 10.3.2018.

2. The range of responsibilities: the Ombudsman was vested with additional responsibilities concerning the protection of the principle of non-discrimination and the equitable and appropriate representation of the communities within state institutions and local self-government units.

In the Law on the Ombudsman,¹⁴² the provisions of the Constitution are further elaborated.

4.5. THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

The *Law on Prevention of and Protection against Discrimination*¹⁴³ represents the general framework concerning protection against discrimination in the Republic of North Macedonia, providing prevention of and protection against discrimination for legal entities and natural persons, regardless of their sex, race, colour of skin, gender, belonging to a marginalised group, ethnic origin, language, citizenship, social background, beliefs, education, political affiliation, personal or social status, mental or physical impediment, age, family or marital status, property status, health condition, or any other grounds anticipated by a law or a ratified international agreement, including religion and religious beliefs (Article 3).

The implementation of law lies in the competence of the Commission for the Protection against Discrimination, which, according to Article 16, is an independent and autonomous body and a legal entity, which operates in accordance with the responsibilities determined by law. According to Article 17, the Commission consists of seven members, which are appointed by the Assembly of the Republic of North Macedonia and have the right to be re-elected once.

142 See *Law on the Ombudsman*, Official Gazette of the Republic of Macedonia, LIX, No. 60, Skopje, 22.9.2003, pp. 9-14.

143 *Law on Prevention of and Protection against Discrimination*, Official Gazette of the Republic of Macedonia LXVI, No. 50, op.cit.

FINAL CONCLUSIONS

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When the Republic of North Macedonia declared itself independent from the other Yugoslav Republics and was established as an independent, sovereign and democratic state, the aim of the Macedonians and other citizens living in the respective territory to have their own state was fulfilled. With the independence, the socialist period was discontinued and the development of a new democratic order began, with new political institutions and new democratic values. These processes took place gradually, by means of a “democratic transition” that also affected the protection and guarantee of human rights and freedoms.

Unlike in the previous period, human rights and freedoms were now regulated in an authentic way by implementing the respective recognised Western European standards. These standards were incorporated in the Constitution of the Republic of North Macedonia, which breathed new vigour into the issues related to the status and position of religious organisations, as well as guarantees for the exercise of religious freedoms and rights.

With this new constitutional, legal and political order, the Republic of North Macedonia was to respond to the challenges of the new era. Regarding the relations with the religious organisations and the guarantees concerning religious rights and freedoms, North Macedonia’s model rests upon both international Western European standards and the traditions of the majority population, affiliated to Orthodox Christianity. Apart from the majority traditions, North Macedonia takes into account religious pluralism as a basis for creating the national identity of the state. The challenge for the Macedonian model of relations with religious organisations and the guaranteed religious rights and freedoms has been directly related to the ability of state factors to find an appropriate balance between the different elements. The Macedonian model of secularism has created specific relations among the religious organisations, as well as between the latter and the state, while the unhampered exercise of religious freedom is provided.

At the same time, the secular model of relations between the state and religious organisations is not only based on the values that stem from Western European heritage, but also from traditional relations of autochthonous character.

The Macedonian principle of secularism is a constitutional principle that, directly and unambiguously, determines the boundaries of non-interference by state

institutions and bodies in the responsibilities of religious organisations, and vice versa, i.e. religious organisations are not allowed to be involved in the state's responsibilities.

The Constitution of the Republic of North Macedonia provides guarantees for the exercise of religious rights and freedoms for the citizens, based on universal and Western European standards.

At the same time, the traditions, customs, and unwritten rules of behaviour of the majority population who are Orthodox Christians and thus associated to the Byzantine Empire, the Orthodox Church, as well as its historical and spiritual heritage are paramount in determining the pattern of secularity in the Republic of North Macedonia.

Naturally, in the core of this autochthonous model, the plurality of the religious landscape is ensured by determining and protecting the guarantees for the activities of the other religious organisations: the Islamic Religious Community, the Catholic Church, the Protestant churches, the Jewish Community, and other religious organisations.

Taking into account the historical and political circumstances, as well as today's Constitution, the Macedonian model of relations with religious organisations can be defined as something between the model of state religion and the model of secularism, because, with regard to historical state-building, as well as in a symbolic sense, the Orthodox Church stands separate from the other religious organisations, while the basic scope of rights, as well as the guarantees for freedom of religion, are at the level of European democratic standards.

This fact is also confirmed by the hypothesis presented at the beginning of this handbook, according to which the democratic character of the Republic of North Macedonia can be determined based on the practical implementation of the standards regarding the position of the state towards the religions, as well as based on the degree of implementation of the freedom of religion. The emphasis on a certain religion with regard to the others does not necessarily point at a democratic deficit of the Republic of North Macedonia.

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The Macedonian model of secularism is based on secularity of the institutions, as well as the non-theocratic character of the state. Clerics cannot be state leaders, and the state cannot interfere in the election of clerics or the internal affairs of religious organisations.

However, on the other hand, we must keep in mind that secularism cannot be inflicted on the citizens or shape their inner feelings with regard to religious organisations and groups by means of its position within the official legal system. The separation of religious and political power is guaranteed in the Constitution and elaborated in more detail in the respective laws, however, the personal feelings and the religious affiliation of citizens can hardly be modelled according to the limits of those legal provisions.

The feelings towards and the affiliation to religious organisations are much more influenced by the citizens' living environments, with their unwritten rules and codes of behaviour, than by legal provisions. Thus, customs and habits, traditions and conventions remain strong and often escape the concept of secularity, unbiddenly interfering in and shaking up the relations provided by law.

