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NONKA TODOROVA

Legal Framework of State-Church Relationships in Serbia and Montenegro, Macedonia, and Bulgaria Today: Between European Standards and National Continuity

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NONKA TODOROVA

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1. 1. Introduction

1.1 1.1 Significance of the problem and definition of the task

The democratization of relationships between state and Church in Serbia and Montenegro, Macedonia, and Bulgaria is taking place in the context of the topical political process of accession of these countries to the European Union. Although this process is at a different stage for each of the three countries (Bulgaria is the most advanced, having signed, on April 25, 2005, an Agreement for Accession to the European Union in January 2007), in all cases democratization requires changes and development in two basic directions:

- harmonizing legislature on state-Church relationships with the international legal tools and the European legal standards;
- forming a favorable social context for adequate and effective operation of the relevant laws.

My analysis and recommendations will be focused on the first direction, for:

- dynamic and important changes are currently taking place with regard to it;
- comparative analysis of the state and problems of this process in all three countries that I am studying, would be useful as a means of mutually "checking our compasses" and obtaining additional information and arguments on disputed issues in the current legislative process.

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1.2. Comparative picture of the current state of the legal framework of state-Church relationships in the countries being studied: all is yet to be done

In all three countries modern democratic constitutions have been adopted, which guarantee equal civil rights and liberties with regard to thought, conscience, religion, association; also guaranteed is the equality of national minorities and of religious communities. However, the legislature regulating relationships between state and Church, which is meant to give a concrete and effective legal framework of the general constitutional assertions, is at a different stages for each of the countries:

- Since 1993, when the Law on the Legal Situation of Religious Communities in the Republic of Serbia was annulled; there is a dangerous legal vacuum with regard to the relationships between state and religious communities: since 2002, three draft laws have been worked out and presented for discussion; they met with criticism on the part of small religious communities, national and international human rights organizations, and even some of the traditional churches; currently an improved version is being prepared of the draft "Law on Freedom of Belief, Churches, Religious Communities and Religious Associations" of July 2004.

- Since 1997, a Law on Religious Communities and Religious Groups was passed in the Republic of Macedonia, the basic articles of which were rejected by the Constitutional Court as unconstitutional and not in harmony with international legal tools in this sphere. This fact makes the law inadequate as a regulatory tool; currently a new draft law is being worked out.

- Since 2002 there is an operative Religious Denominations Act in the Republic of Bulgaria, which takes into account the basic European standards and international legal tools, but which has periodically been criticized on separate points by some parties and human rights organizations and by the structures of the European Commission, which implies that this law will evolve and be perfected in the future.

The aim of the current analysis is: 1/ to highlight the disparities between separate article of the /draft/ laws and: a/ general constitutional principles; b/ other articles of these same /draft/ laws; c/ international legal tools; d/ practices and trends in most European countries; 2/ to reveal the causes of these contradictions; 3/ to offer recommendations for removing these contradictions.

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1.3. The European legal identity/standard and the international legal instruments regarding the Church-state relationships: freedom, equality, fraternity

The basic legal acts and documents that establish the principles of state-Church relations in developed democracies are the following:

1/Universal Declaration of Human Rights /1948/, art.18; 2/International Covenant on Civil and Political Rights of the United Nations /1976/, art.18; 3/ European Convention for the Protection of Human Rights and Fundamental Freedoms /1953/, art.9: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

In assuming the freedom of religion to be a core principle of European legal identity with regard to state-Church relationships, the international documents in this sphere affirm the rights of separate countries to take into account in their legislature their national and cultural specificity: Art. 22 of the Charter of Fundamental Rights of the EU; Amsterdam treaty Declaration N11 on the status of Churches and non-confessional organisations.

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2. Serbia: a Difficult Evolution From a Dangerous Legal Vacuum to a Democratic Law

The 2004 Draft Law on Freedom of Belief, Churches, Religious Communities and Religious Associations:

2.1. Equality of Religious Communities and a Privileged Status

On July 6, 2004 the Ministry for Religious Affairs of the Republic of Serbia presented before the public a new " Law on Freedom of Belief, Churches, Religious Communities and Religious Associations". Although overall it continued the democratic line of the draft law of 2002, both in this first version and in the second one of September 2004, prepared in response to criticisms, there are a number of problems.

The most debated and disputable points in this law are:

Article 4, which has particularly been the target of criticisms and discussions. It gives a legally privileged status to several churches and religious communities: the Serbian Orthodox Church, the Islamic Community, the Roman Catholic Church, the Jewish Community, the Evangelical Christian Churches of the Augsburg Confession, and the Reformed Christian Church. Although art. 5 of the draft law guarantees equality of rights and liberties for all Churches and religious communities, among the privileges of the so-called traditional Churches is the right to introduce religious teaching in state schools financed by the state. The Charter of Human and Minority Rights and Civil Liberties, passed several months after the Constitution as its inseparable part , stipulates in art. 27 that religious communities are equal in rights and separate from the state. At the same time the "traditional Church" status is accepted by the specialists as compatible with the European legal standards and practice.

According to art. 63, religious associations that have been legally recognized are automatically entered in the Register, whereby their status of legal entities is confirmed. The Register of Religious Communities is kept by the Ministry of Religious Affairs. In some European countries the registration of religious communities is a function of the courts of law, which assures greater impartiality and objectivity, providing, of course, that the level of democratic culture of the country is such as to guarantee the independence of the judiciary.

In September 2004 the Ministry of Religious Affairs proposed a new, third draft law "On Religious Organizations", in which the rights and liberties of the various categories of religious communities are dealt with together, synthetically, not separately; their equal standing is stressed. The category of "religious organizations" implies the common traits of religious communities, but their separation and distinction into types remain in this draft law as well, and even more clearly and categorically than in the previous two variants.

The causes of these problems and contradictions lie in the complicated, ambiguous stand of the legislator: 1/ the necessity of taking into account the European legal tools in this sphere, which have been adopted by the country; 2/ the need to provide legal continuity with the national legislature that has existed until now; 3/ the need to take into account the social context, the historical and current positions and authority of the separate confessions.
Although privileged status has likewise been given to certain so-called state or national churches in other countries as well, there is a trend towards reduction of the relative weight of state Churches and towards granting greater rights to other confessions; in recent years this tendency has become evident in Sweden and Finland, in Italy, Spain, and Portugal.

Recommendation: **To proceed gradually, concurrently with the overall democratic development of society, to standardizing the rights of religious communities. In order to achieve equal rights and limit the basis for conflict between the separate religious communities, confessional religious teaching in state schools should gradually be transformed into non-confessional, which is the trend in most European countries.**

2.2. The State Standard: Obligatory Legal Status

The obligatory character of obtaining legal status by religious organizations and their inscription in the Register as a condition for performing religious, cultural, educational and other activities in the analyzed draft laws could also be interpreted as forms of restriction and regulation on the part of the state. In some European countries, (both western and eastern), more flexible alternatives are available: the obtaining or not of legal status by a religious organization is a matter of choice and preference of that organization. The positive point is that, according to art. 64, a religious community has the possibility of registering as a civil association according to the respective law.

Recommendation: **to go on gradually from obligatory to optional legal status of the religious communities.**

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2.3. Conditions for Acquiring Legal Status: "Monopoly" vs. "Market"

The Section IX of the Draft Law lists the documents required for registration of the new religious associations: name, address, status, basic principles of the religious doctrine, etc., which were also demanded by the 2002 draft law, but with one important exception. The earlier draft law required a minimal number of 10 members for granting legal status of the associations, while the 2004 draft law requires 1000 members, a change that was also seriously criticized by the smaller religious communities.

The requirement for such a large number of members as a condition for obtaining legal status is not in keeping with the prevalent practice in European countries, where not more than 10-15 members is the minimum. A high membership barrier restricts the possibility for smaller religious communities, for new religious movements, to acquire legal status, especially when combined with the requirement for obligatory legal status as a condition for performing religious activities. Thereby this regulation stands in contradiction with the above-mentioned legal principles of equality of religious communities. Quite a few countries, west and east European, set no requirements at all concerning the number of members.

Article 69 stipulates that the term for making the decision regarding the registration is 60 days, and there is a 30-day term for making the needed additions to the incomplete registration. This is an improvement on the previous draft law, where the term was 90 days. But a term that is closer to European standards and more widely applied is 30 days.

Recommendation: **With regard to the requirement for a minimal membership of a religious organization as a condition for acquiring legal status, to decrease the minimum down to what is customary for most European countries, or to completely eliminate this requirement. In the documents necessary for applying, the one concerning the fundamental principles of the religious doctrine should be eliminated, inasmuch as the object of assessment and the possible sanction should be the actual activity, not the ideas of a given religious community. The term for obtaining an answer concerning an application for registration should be decreased from 60 to 30 days, which is the term in most European countries. The organ of registration should gradually shift from the state to the judiciary.**

2.4. Motives for Dissolution of the Religious Community: Importance of the Context

Art. 72 defines the cases where the legal entity status of the religious association is annulled: when that association violates public order, when it acts against the family and morality, when it instigates national or racial hostility, when it represents a menace to the spiritual integrity and mental health of persons.

This formulation is comparatively close to article 9 ECHR /entered into force on March 2004 in Serbia and Montenegro/ with its paragraph 2 stipulating that "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

At the same time the social-political context is decisive in interpreting these concepts and with regard to the risk of the state's abusing them in order to limit the autonomy of religious communities. Moreover, it would be more adequate if the violations connected with health should be sanctioned: 1/ according to the Law on Health; 2/ as individual, not group violations, otherwise it would amount to imputing collective guilt.

Recommendation: **The practice of revoking the right of existence of a given religious community should be considered an exceptional, extreme measure inasmuch as it falls under the definition of seeking collective guilt. Interpreting the conditions under which the annulment is possible depends on the democratic culture of a society, and so it is necessary to formulate them more clearly. Violations of the law, connected with such general categories as "spiritual integrity" and "mental health" should be the object of sanctions of the law on health.**

This slow and painful evolution is a result of the complex situation in which legislators must work in present-day Serbia. They have to move between the Scylla of European imperatives and standards, presented in the criticisms by NGOs and by small religious communities, and the Charybdis of internal political circumstances, mass attitudes, the real social authority and social status of some of the religious communities, the national legal continuity, and xenophobic attitudes.
According to the actual recent information, the latest discussions and changes in the Draft Law are in the context of the future of Serbia as a European member.

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3. Macedonia: from the Invalidated Law to a New Democratic Draft Law

The Law on Religious Communities and Religious Groups, published in issue 35 of the Official Gazette of the Republic of Macedonia on July 23, 1997, "regulates the position of the religious communities, their foundation and operation, religious instruction and religious schools as a form of realization of religious freedom and faith expression" (Art. 1). Articles 2 and 4 of the Law guarantee the freedom of religious communities and groups in carrying out their religious activities, and the freedom of citizens to participate or not to participate in a religious community or group.

Part Two of the Law deals with the status and rights of religious communities and religious groups, a problem that was subsequently debated in society and on which the Constitutional Court of the Republic of Macedonia took a stand on several occasions.

Although the law set itself democratic and peaceful goals, it contains quite a few problematic points that are in contradiction with the Constitution of the Republic of Macedonia and with international legal tools.

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3.1. The State Standard: Obligatory Legal Status

Art. 3, paragraph 1 states that, "In the Republic of Macedonia only a registered religious community or group can perform religious activities and services." Acquiring legal status as an obligatory requirement in order to perform religious, cultural, educational and other activity is a form of restriction and regulation on the part of the state. This assessment is confirmed by the practices and decisions of similar cases on the part of the European Court for Human Rights.

Recommendation: **To pass gradually from obligatory to optional legal status of religious communities. To afford the alternative /as in the Serbian and Bulgarian laws/ for religious communities to acquire legal status as civic associations as well under the respective law.**

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3.2. Conditions for Acquiring Legal Status: "Monopoly" vs. "Market"

Art. 10 defines that "A religious group with headquarters in the Republic of Macedonia, must be established by at least 50 adult citizens of the Republic of Macedonia, permanently residing in the Republic." The requirement as to the minimal number of 50 members for registration obviously represents an obstacle to obtaining legal status for many Protestant Churches, whose members vary in number from 5 to 50. The requirement for such a large number of members as a condition for obtaining legal status is not in harmony with the prevalent practice in European countries, where the required minimum is no more than 10-15 members.

Art.11 /2/ requires detailed information to be given when applying for registration, about the founders of the religious group, its goals, a description of the quarters where it performs its religious activity, and data about its leaders and representatives. Art. 13 and 14 confirm the need for registration for obtaining the status of a legal entity.

The importance of these regulations has been confirmed by the Constitutional Court of the Republic of Macedonia several times: several of them (3, 10, 11, 13, 14, and 22) were invalidated at the sessions of the Constitutional Court on December 23 and 24, 1998. The Court was appealed to by the Christian Baptist Church, the Evangelical Church, the Evangelic-Congregational Church and the Christian Pentecostal Church.

Recommendation: **Decreasing the minimal membership requirement for registration of a religious community to the number customary in most European countries or dropping this requirement altogether. To set a specific term for responding to an application for registration, preferably up to 30 days, as in most European countries. To provide the possibility for reapplying when registration is denied after the requirements of the registering organ have been met. To plan a**

gradual reorientation of the registration function from the state to the courts of law.

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3.3 Freedom and Public/state Interest; a Philosophical Problem

Art. 19 makes the performance of religious activities outside locations specially meant for this purpose, dependent on the consent of the Ministry of the Interior and the Commission on Relations of Religious Communities and Groups: "Religious rituals and religious activities may be performed in other facilities and places accessible to the people as well, with permission of the authority in charge of internal affairs, and previous opinion of the authority in charge of religious affairs.".

Art. 21 allows that religious meetings be prohibited when there is a risk to health, public order, security, and the property of citizens. The categories of security, property, peace are formulated quite generally, which permits their random interpretation in the context of an undeveloped democracy. Art. 22 and art. 23 also restrict the rights of religious communities and groups: they give the state the right to interfere in construction work and in the change of the status of a religious community. At the initiative of the Helsinki Committee on Human Rights, the Constitutional Court of Macedonia, at its sessions of October 20 and November 10, annulled articles 19 and 23 of the Law.

These points in the Macedonian Law are incompatible with art. 9, par. 1 of the Constitution of the Republic of Macedonia, which stipulates that citizens are equal in their rights and freedoms, with article 19, par. 1, which guarantees the freedom of religious confessions, with art. 20, par. 1, which guarantees the freedom of association for pursuing various interests, while according to par. 3 of that article, the activities of citizens and parties cannot be aimed at provoking military aggression or the kindling of national, racial or religious hatred and intolerance. The grounds for the invalidation of some articles of the law by the Constitutional Court of Macedonia refer also to art. 18 and 29 of the Universal Declaration on Human Rights and Fundamental Freedoms.

Recommendations: **To pass towards a flexible regime of permission and support, not control and prohibition, on issues related to the religious, educational, cultural, construction activities of religious communities. This demands a change of philosophy with regard to them: they should be considered "innocent till proved guilty" rather than "guilty till proved innocent". Current debates on the question of introducing religious education in public schools should be oriented to non-confessional education in order to achieve equal standing of religions and limit the field of conflict between separate religious communities, which is the trend in most European countries.**

To all appearances, after the decision of the Court, the Law cannot serve as an effective tool for regulating this complex and delicate matter. The public and the authorities responsible for legislature in this field are considering and discussing several variants of a new, better, and more modern law.

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4. Bulgaria: a Functioning, Democratic, but Criticized Law

4.1. Freedom of religious convictions and the equality of religious confessions before the law: general principles

The new democratic constitution, adopted on July 13, 1991, recognised the equality under law of all citizens, without "any constraints on the rights and privileges, based on race, nationality, ethnos, sex, origin, religion, education, personal or social status, or property status, convictions, political affiliations." /art. 6, paragraph 2/. The new Religious Denominations Act passed by the Parliament on December 20, 2002 /supported strongly by the ruling party NDSV /National Movement Simeon II/, provided a legal framework for this article of the Constitution. The Law asserts the right of every person to freedom of conscience and faith, as well as equality under the law, regardless of religious affiliation and convictions and supports mutual understanding, tolerance and respect on issues regarding the freedom of conscience and faith. / Preamble/. In "General Provisions" of the Law, the legislator establishes that "The right to religious freedom is fundamental, absolute, subjective, personal, and inviolable" /art. 2. par.1/. One of the positive features of the Bulgarian law, compared with those of Serbia and Macedonia, is that the emphasis is on individual, not only on collective rights and freedoms of religious beliefs and activities.

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42.2. The Legal Status of Religious Communities: the Road to Freedom

Another positive feature, in conformity with European standards, is the fact that in the Law, acquiring legal status by a religious community is not indicated as an obligatory condition for carrying out religious activity. But the religious communities that have acquired such status, referred to in the law as "religious institutions", enjoy a wider range of freedoms: " to own property" /art.21/, "to produce and sell goods" /art.22/, "to own and maintain cemeteries" /art.24/, to take profit from the "distribution of the state subsidy" /art 28/, "may establish medical, social and educational institutions" /art. 30/, etc.

Recommendations: **To decrease the obligatory link between legal status of a religious community and the performance of activities for which legal status is not a necessary condition: cultural, educational, charity; to permit the possibility of extending the distribution of state subsidies to unregistered religious communities as well. In the Law the possibility of religious communities to be registered according to the law of civic associations should be explicitly formulated.**

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4.3. Conditions for acquiring legal status: toward independence with regard to the judicial authorities

Art. 15(1) states that the registration of religious communities as legal entities is carried out by the Municipal Court of Sofia. Chapter 6 of the Law regulates the role of the state – the Council of Ministers and its administrative division, the Directorate on Religious Denominations, for carrying out state policy in the field of the right of religious confession. The required registration documents include a presentation of "religious beliefs and religious practice" /art.17/2/. The advantage of the law, showing its alignment with European standards, is the absence of a requirement for minimal membership as a condition for registration of the religious community.

Recommendation: **It would be in the spirit of European legal standards to indicate the exact term in which the competent organs must answer an application for**

registration – usually 30 days – and to allow the renewal of a rejected application after the recommendations of the registering organ, presented in writing, are fulfilled. If there is a positive fact, the registration of the religious communities should be the obligation of the court; relieving the Directorate on Religious Denominations of some functions in this process (art. 35) would support the democratic trend toward limiting the intervention of the state: giving expert opinion on registration, examining signals and complaints of citizens as to the violation of their religious rights, etc. In the documents required for registration of the religious community, the element "presenting religious beliefs and religious practice" should be dropped, inasmuch as their assessment is not in the competence of the registering organ.

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4.4. Conditions for depriving of legal status: the state is in its place after all!

Art. 7(1) states that "The freedom of religion shall not be directed against the national security, public order, public health and morals or the rights and freedoms of persons under the jurisdiction of the Republic of Bulgaria."; (2) "Religious communities and institutions as well as religious beliefs shall not be used for political purposes";5). Religious communities and institutions cannot include in their activities juveniles, except with the explicit agreement of the parents or guardians. Minors can be included in activities of religious communities and institutions except for the explicit disagreement of their parents or guardians.

According to art. 8(1) "If the requirements of Art. 7 are violated the right to religious freedom may be restricted by: 1/ Terminating the dissemination of a particular publication; 2/Terminating publishing activity; 3/ Restricting public events; 4/Canceling the registration of an educational, health or social institution; 5/ Canceling activity for 6 months; 6/Canceling the legal entity status of a religious denomination".

Recommendations: **The category "national security" should be dropped from art. 7/1/, as it does not correspond to the formulation of ECHR 9/2/, ratified on September 1992. The sanctions envisaged for violation of the requirements of art. 7 impute collective guilt and concern the public activity of the religious community. In the Macedonian law, for instance, most of the sanctions are monetary fines. Although no abuses of these legal rules have been established, the practice of abolishing a given religious community should be resorted to as en extreme and exceptional measure, inasmuch as it falls under the definition of imputing collective guilt. The interpretation of the conditions under which abolishment is possible depends on the democratic culture of society, hence a clearer and more precise formulation is needed.**

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4.5. Privileged status: national and/or political interest

Art. 10 /1/ of the law states: "Eastern Orthodoxy is the traditional denomination in the Republic of Bulgaria. It has played a historic role in Bulgaria's statehood and has current meaning in its political life. Its spokesperson and representative is the autocephalous Bulgarian Orthodox Church… (2) The Bulgarian Orthodox Church is a legal entity… 3/ No Act or secondary legislature shall use Paragraphs 1 and 2 as grounds to grant privileges or any advantages."

Criticism was based on the interpretation of this article whereby the law itself assigns legal status to the Bulgarian Orthodox Church and to one of the two opposed synods, that headed by Patriarch Maxim, rather than the other. In this way the intervention of

the state in the internal division of the Bulgarian Orthodox Church was criticized. Although privileged status is attached to certain so-called state and national Churches in other European countries as well, there is a trend towards reduction of the relative weight of state Churches and towards granting greater rights to other confessions.

The fact that the Bulgarian Orthodox Church is given legal status ex lege, unlike other religious communities, which must register over again (even though by a court confirmation of their already obtained legal status) is in contradiction with art. 4 /1/ "Religious denominations shall be free and equal…", and art. 4/2/" State interference in the internal organization of self-governed religious institutions shall not be permitted." Moreover, by granting legal status ex lege, the legislator gives their due to art. 10/1/ of the law and to the Art 13/2 of the Bulgarian Constitution, in which it is stated that Orthodoxy is a traditional religion for the Republic of Bulgaria.

Due to this, the European Commission recommenced temporarily monitoring the religious rights in Bulgaria. The matter was referred by a group of parliamentary deputies to the Constitution Court; the latter examined at two of its sessions whether the Law on Confessions was constitutional or not; at its session of July 15, 2003 the members of the Court voted not to support the demand of a group of parliamentary deputies and thereby confirmed the Law as constitutional.

A proof of the dependence of the legal sphere on the social context was the fact that the law proved powerless to put an end to the division in the Bulgarian Orthodox Church, which has been provoked and sustained by the political division of society and by the weakness of the Church as an institution. The controversial events of the last week of July, 2004 – the conflict between the "legal" /as defined according to the Law/ and the "illegal" synods over the property issue and the way the matter was "resolved", i.e. by police force, have confirmed this observation.

As a result of these events, the Parliamentary Assembly of Europe voted a resolution recommending: 1/the standardizing of the way of obtaining legal status for all religious communities; 2/ non-intervention of the state in the internal affairs of religious communities.

Recommendation: **The constitutional idea of the quality of citizens with respect to their religious convictions should be confirmed and all religious communities must be placed under identical conditions for acquiring legal status. The leadership of the Bulgarian Orthodox Church should be chosen on the basis of its internal laws and regulations.**

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4.6. Forthcoming developments of the law

It is probable that under the coming new government and the new parliament elected in the forthcoming elections, the Religious Denominations Act will be changed. Proposals for amendments and additions have already been put forward in the present parliament. What direction these amendments will take will depend on the balance of the political forces in parliament and on the positive signs for the future of the European Union. For the time being European legal standards, tools and practices, serve as the basic framework of values and motivating force for legislation in this sphere.

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Conclusion

This is where the deeper meaning and philosophy of our analysis of national legal texts lies: they are not only components of a universal, global, and standardized legal universe, but are embedded in a specific social context and the people involved, the balance between people generate the texts. Moreover, even if the texts of the laws were to be literally adopted and copied from the developed democratic countries, still the question of the application of these texts would remain with so much the greater weight, the question of their acceptance as an organic part of the respective culture, rather than as abstract and socially powerless elements of the legal universe. Hence the democratization of legal texts should be a harmonious part of the democratization of society in its politics, economy, mentality and in the behaviour of its citizens. And this is a much slower and more difficult process.

In addition the pressure of European legal standards, tools, and practices as a fundamental framework of values and motivation is an element of this necessary and difficult evolution. The success and future of the frail buds of democracy in the delicate sphere of religion, will depend on the future of the European Union.

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