

ABOUT THE ORGANIZATION (OSCE)

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33

UKRAINE	149
Abstract	149

UZBEKISTAN 194

REGARDING THE STUDY

Consistent with the mission of the Directorate to provide objective research services to the United States Congress, the reports endeavor to present an unbiased overview of a sensitive subject. The inclusion of any reference to a particular religious group or controversy is not intended to diminish the significance of unmentioned religious groups or other issues, or to convey any value judgment concerning any particular religious creed. The intent of the Directorate is solely to present as objective an overview as possible for this subject based on the applicable law, illustrative instances of publicized controversies, and the Commission's prescribed topical outline.

David M. Sale,
Director of Legal Research

(17) The participating States recognize that the exercise of the above mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia*, through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those con-

.,evesure
c o n 8 d o m o f

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

As a group, Austrians do not have very intense feelings about religion. Most Roman Catholics are seasonal Catholics who go to Church on major holidays. Only 17 percent attend church services regularly.¹² Austrian

tional complaint can be lodged by anyone directly affected by a civil rights infringement.

In its Article 15, the same fundamental law grants the following to recognized religious communities:

Any church or religious community that has been recognized according to law shall be entitled to the communal and public exercise of its religion, shall regulate and administer its internal affairs autonomously, shall remain in the possession and enjoyment of its institutions, foundations, and funds that are designated for religious, educational, or charitable purposes, while being bound, however, like any society, by the general statutory laws of the state.

This provision is the basis for distinguishing between internal church matters in which the religious commu-

The Constitutional Court has interpreted Article 63 of the Treaty in a case involving proselytizing,⁵¹ holding that such conduct is permitted by recognized and non-recognized religious communities alike, albeit subject to limitations of the Road Traffic Act.⁵² According to the Court, it is permissible for anyone to offer publications for sale or to give them away and to call out the name of the publication in doing so. The Court, however, upheld the Road Traffic Act's restrictions on the addressing of pedestrians by requiring a permit for such non-traffic-related use of the roads. The Court reasoned that this restriction was a legitimate exception of public order within the meaning of Article 63 of the Treaty of St. Germain.

Courts have held that Austria had violated the Convention's Articles 8 (governmental interference) and 14 (discrimination on account of religion) in the Hoffmann case in which a divorced mother had complained that the Austrian Courts denied her the custody over her children on the grounds of her being a Jehovah's Witness.⁵⁷

Guarantees of religious liberty are also contained in Article 6 of the State Treaty of Vienna of 1955,⁵⁸ a

1933,⁶⁵ that of the Lutheran Protestants on the Protestant Act of 1961,⁶⁶

mitted any felonies or any lesser offenses with a pecuniary motive. For these reasons, the government can also insist on the removal of an appointed minister.

Protestant Church,⁹² the Old Catholic Church,⁹³ and the Jewish Community.⁹⁴ These compensatory enactments provided restitution in kind (for the Catholics), a lump-sum payment (for the Jews), and annual fixed payments as well as annual payments of the salaries of specified numbers of church personnel for all four religions. The annual payments have been adjusted periodically for inflation.

For the Catholics, Protestants and Old Catholics, the Nazi legislation of 1939 introduced the church tax, a levy that the churches impose on their members.⁹⁵ This tax can be enforced through civil law suits, but individuals can avoid future tax liabilities by leaving the church. For the Catholic Church, this tax replaced the heretofore existing governmental defray-

8. EDUCATION

The teachings of the recognized religions are taught in the public schools at the primary and secondary school level. The government pays for the instruction, including the salaries of the teachers. The content of the instruction is provided by each religious community who also

for members of such groups who feel victimized or want to leave the group. This mandate was carried out by the Federal Ministry for Environment, Youth, and Family, which published an informational brochure about sects in 1996.¹⁰⁹

In 1998, the observation of sects was put on a statutory basis through enactment of the Act on the Creation of an Agency for the Documentation and Information of Issues concerning Sects.¹¹⁰ The thereby newly-created Federal Agency for Issues Pertaining to Sects (Agency) enjoys, according to legislative intent, a certain degree

VII. IMPORTANT ISSUES

BIBLIOGRAPHY

Books and Articles in English

Austria, Annual Report on International Religious Freedom for 1999 (U.S. Dept. of State, Washington, DC., Sept. 1999).

F. Kessler,

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

FRANCE

ABSTRACT

France recognizes freedom of religion at an individual as well as a collective level, and religious groups are free to organize themselves. This freedom may be subject only to such limitations as are prescribed by law and as are necessary to protect public safety or order or the fundamental rights of others. State-church relations have evolved from confrontation at the beginning of the century to cooperation today with the various religious beliefs

In the mid-1950s France was forced to leave several of its colonies. French troops left Vietnam in 1954 after a series of military defeats. Tunisia and Morocco were next in 1955, and in 1956 there was the Suez debacle. The pullouts led to grave conflicts between the military leadership and the politicians at home. The conflict between the military and the politicians worsened when the army occupied Government House in Algiers and set up a Committee of Public Safety, warning the President not to capitulate to the Algerian independence forces.

When the Algerian-based troops occupied Corsica, the security forces sent from France to counter them capitulated without a fight. The leader of the rebellion called for De Gaulle to take

Although not integrated into the hierarchy of courts, the Council does carry authority in its inter-

The principle of freedom of religion is primarily stated in Article 9²⁴ of the Convention and Article 2 of the first protocol. France ratified the Convention in May 1974;

guaranteed. This fact sometimes implies an obligation upon the state to deliver the necessary tools to

- Religious associations, including churches, enjoy an extremely favorable tax regime. Enterprises

B. Congregations

The legal status of congregations is covered by some of the provisions of the 1901 Law which have been extensively modified by Law No. 505 dated April 8, 1942.⁶¹ This status has been ex-

sects phenomenon and better coordination among the ministries to fight the practices of sects that infringe the fundamental rights and freedoms of the individual. The new commission will look into sects' financial and fiscal situations, their economic activities, and their relationship with other economic and financial circles. In addition, it will inform the public of the dangers that some sects present and will contribute to the information and the training of civil servants charged with monitoring them.⁷¹

The directorate (*conseil d'orientation*) of the commission met for the first time on January 26, 1999. It is

to wear their head scarves in class. The Education Ministry sent a mediator, who since 1994 has handled all conflicts over head scarves, to negotiate an agreement. The girls' parents rejected a compromise requiring the girls to remove their head scarves during science courses and physical education for reasons of safety

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

GERMANY

ABSTRACT

Freedom of religion is guaranteed by constitutional provisions and by Germany's membership in international agreements. The major traditional religions are corporations of public law and they cooperate with the government on matters such as education and welfare. The status of the smaller and newer religions varies. Most of them are non-profit associations, but some of them have corporate status in some of the German states. Currently the main problem appears to be the status of Islam. Another issue under discussion is the German practice of observing religious groups with allegedly dangerous teachings or practices.

INTRODUCTION

A. History of Religious Freedom in Germany

In the Middle Ages, there was a struggle for power between the Catholic Church and the secular rulers in Germany and growing dissatisfaction with the established Catholic Church. The Reformation culminated in the creation of the Lutheran Protestant Church in the sixteenth century, but extension of

increase in the number of persons who do not practice any religion and in the number of believers in smaller and, for Germany, newer religions. The number of Muslims also has increased significantly, due to the large number of guest workers and refugees from the Middle East.³

I. LEGAL AND CONSTITUTIONAL BACKGROUND

A. Adoption of the Current Constitution

The current German Constitution is the Basic Law of 1949. It was created in West Germany⁴ under the influence of the Allied Powers, who occupied Germany until 1955. The Basic Law purports to make Germany a democratic and federated state that grants social rights and adheres to the

E. Reputation of the Federal Constitutional Court

Protection of National Minorities,²³ which it ratified together with a statement describing the national minorities as being Danish and Sorbian people with German citizenship; in addition, Germany promises to apply the Convention to three other ethnic groups with German citizenship: the Friesians, the Sinti, and the Roma.²⁴

Germany ratified the International Covenant on Civil and Political Rights,²⁵ without the optional protocol and with several minor reservations. The complaint mechanism established in the Convention's Article 41 has been applicable for Germany since 1991.²⁶

It appears that Germany has not been condemned by any international tribunal for violating

tional legislation of the states.⁴³ Some of the states that were formerly in East Germany do not provide

nature of Scientology also has been pronounced by other German courts, although the practice differs from place to place, and it appears that many Scientology churches are registered as non-

BIBLIOGRAPHY

Monographs on Church-State Relations (in German)

In Germany, the relations between the religious communities and the government are a special field of law that is called church-state law (*Staatskirchenrecht*). Several treatises deal with these issues, among them:

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

GREECE

ABSTRACT

The Christian Eastern Orthodox Church has always played an influential and significant role in Greece's history. As a result, the current Constitution accords the Christian Orthodox Church the status of a "dominant" religion, while at the same time it explicitly recognizes that individuals have the right to freedom of religion and the right to practice any "known" religion without any hindrance. This report examines how the dominant position of the Orthodox Church in Greece is reconciled with the right of individuals of a different faith to exercise their religious freedom in regard to a variety of issues, such as proselytism, opening of places of worship, conscientious objection, identity cards, and religious rights of minorities.

INTRODUCTION

Throughout Greece's history, the Orthodox Church has played a key role in preserving the country's Hellenic and Christian heritage. Its historic role became even more significant after the fall of the Byzantine

I. LEGAL AND CONSTITUTIONAL BACKGROUND

Greece is a civil law country and a unitary state whose administration is organized on a decentralized basis. The historic roots of the legal system of Greece can be traced back to Byzantine-Roman Law. When Greece

decree based on a proposal by the Government. The Government may also assign administrative duties to judges.

Legislative power is exercised by the Parliament and the President of the Republic.⁹ The Parliament is

Ecumenical Patriarchate along with the other churches of the same dogma; (3) the Greek Church is autocephalous; and (4) it is self-governed. It has been asserted that the word "prevailing" or "dominant" merely refers to the fact that the majority of the Greek population is Orthodox. On the other hand, the relationship between the Church and the State has been characterized as *sui generis*, since there is no complete separation nor is there an established church.²⁴ A third opinion holds that there is a state-rule system.²⁵

The Church has its own legal personality, since according to its charter, it enjoys the status of a

1. MUFTI

The issue of the appointment of muftis has not only created friction between Muslims and the Greek Government but has also divided the Muslim community itself. Until 1991, muftis were elected in accordance with Law No. 2345/1920. Since 1991,⁵⁷

The *wagfs* of the Muslim community are regulated by the relevant provisions contained in the Treaty of Peace signed at Lausanne on July 24, 1923,⁶⁰

Minority in Western Thrace], and Law No. 2341/1995 Rythimse Thematon tou Ekpaideutikou Prosopikou Meionotikon Scholeion tes Thrakes [on Regulation of Issues Pertaining to Teachers Employed in Minority Schools in Thrace].⁶⁸ The 1995 Law provides a number of financial incentives and career opportunities to teachers who commit themselves to teach for a five- year period in

The mandatory listing of religion on identity cards outraged the Greek Jews, Catholics, Muslims, and Jehovah's Witnesses, who called for withdrawal of such a requirement. In 1993, when the new

because of his religious beliefs.⁹⁶

In implementation of the constitutional language, Law No.1763/1988 Stratologia ton Hellenon [on Conscription of Greeks]⁹⁷ requires that every Greek citizen between the ages of 20 and 50

case of the Orthodox priests, but were unlawfully detained for thirteen and twelve months respec-

¹⁰ Excerpts from "Kathemerene," *The Daily*, May 27, 1998.
¹⁰ <<http://www.dhcour.coe.fr/eng/valsamis.html>>.
¹⁰

BIBLIOGRAPHY

Georgoulis, St. *O Thesmos Tou Moufti Sten Ellenike Ennome Takse* [The Institution of Mufti in the Greek Legal Order] Athens: Sakkoulas. 210 p. An analysis of legislation pertinent to mufti under Greek law.

Theresa Papademetriou
Senior Legal Specialist
Western Law Division
Directorate of Legal Research
Law Library of Congress
October 1999
Partially updated February 2000

THE NETHERLANDS

ABSTRACT

In the Netherlands, freedom of religion found its roots in the religious wars that took place in the 16th century and which led to the first limited form of constitutional recognition of the freedom of religion in 1579. With the last major revision of the Constitution in 1983 with respect to freedom of religion, the secularization between state and church that started in the 19th century was completed. In Article 6, all discrimination based on religion or philosophy of life is forbidden. With the insertion of the term

Figures from the Netherlands censuses indicate that in 1995, 33 percent of the population was Roman Catholic, 14 percent Dutch Reformed, 7 percent Calvinist, 7 percent other, and 40 percent were of no denomination.⁴ Since 1900, large shifts in denominations have taken place. Membership of the Dutch Reformed Church has fallen by more than half, against what is nearly a sixteen-fold increase in the non-

courts nor by its own previous decisions. However, lower courts normally follow decisions of higher courts, and especially those of the Supreme Court.

The first Dutch Constitution was adopted in 1814 and modified in 1815 resulting from the annexation of Belgium by the Netherlands, with a major revision in 1840 resulting from Belgium's independence in 1830. Further significant constitutional revisions took place in 1848, 1884, 1887, 1917, 1922, 1938, 1953, 1956, 1963 and the most recent one of 1987, although further amendments were published in 1995.

The Netherlands is a constitutional monarchy with a parliamentary system. The monarch and ministers constitute the Crown. According to the Constitution, the sovereign is inviolable and should stand above the political parties. This means that the ministers are accountable to parliament and the sovereign cannot be held to account. Parliament, formally referred to as the States General, consists of two houses:

number of District Courts, each of which in turn has jurisdiction over a number of Sub-district Courts. The Supreme Court of the Netherlands is the highest court in the country in civil and criminal matters. The Supreme Court can also pass judgement in cases that have been heard by courts in the Netherlands Antilles and Aruba. Unlike its counterpart in other countries, the Supreme Court has no power to declare a statute unconstitutional. However, like all other courts, it may not apply statutory provisions that conflict with provisions of a treaty.

by-laws.¹⁹

VII.

of Soviet domination, Poland adopted the Soviet model of separation of the State and Church, i.e. a "hostile separation."⁵

The Roman Catholic Church has gained a very strong political position during Poland's tumultuous history.⁶ As one commentator said:

Polish Constitution of April 2, 1997,¹¹ limited the role of the President, thus moving the Polish system more towards a parliamentary democracy.¹² The President shares power with the Parliament, the Prime Minister, and the Council of Ministers.

The Polish Constitution, in Article 87, identifies four generally binding sources of law in Poland:

1. The Constitution (basic law);
2. statutes;
3. international treaties issued by the President, the Prime Minister, and the Council of Ministers.

Other enactments may be published in *Dziennik Ustaw*

- (1) 1945 United Nations Charter;²⁵
- (2) 1948 Universal Declaration of Human Rights;²⁶
- (3) 1966 International Covenant on Civil and Political Rights;²⁷

Article 194. Whoever restricts anybody in his rights on account of his religious affiliation or having no religious affiliation, shall be subject to a fine, limitation of liberty, or imprisonment up to 2 (two) years.

Article 195. Whoever maliciously interferes with a public performance of a religious act of a church or other religious organization having legal status, shall be subject to a fine, limitation of liberty,

the use of administrative regulations, directives, and decisions, seemingly in contravention of existing laws. The degree of the Church's influence has varied, depending on what political parties were in power. In this respect, one may observe three periods:

1989-1993: the initial period, which immediately followed the political independence of Poland and was under the strong influence of the Catholic Church. The Church's influence during this period was also encour-

State and the freedom of conscience and religion. The Ombudsman questioned the legality of the introduction of religion into the school curriculum by an Instruction of the Minister of Education, an executive authority, without any legislative delegation. The Ombudsman claimed that introduction of religion into the school curriculum constitutes a subject matter which should be regulated by a statute, and not by an executive regulation.⁵⁹

The Commission issued a Decision on 16 January 1996 "that the treatment complained of did not attain the threshold of inhuman or degrading treatment within the meaning of Article 3 of the Convention... For these reasons, the Commission, by a majority, declares the application inadmissible."⁷⁰

BIBLIOGRAPHY

There have been many books and hundreds of Articles published on the subject of freedom of

Misztal, H., *Polskie prawo wyznaniowe* [

Articles

Rzeczypospolitej Polskiej], Dz.U. No. 41, item 254 (1997); am.: Dz.U. No. 90, item 557 (1997) (Art. 257).

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

THE RUSSIAN FEDERATION

ABSTRACT

This report presents an overview of Russian religious legislation, its compliance with the international and European standards, and the changes made by the Law on Freedom of Conscience and Religious Associations of 1997. While the new legislation makes the Law conform with the current political situation, it has added

In contrast to the 1990 USSR Law on Freedom of Conscience, the title of the 1990 Law on Freedom of Religion, which referenced the "Freedom of Religion," was broader than "freedom of conscience," thereby implying freedom to give expression to one's religious beliefs through the activities of religious organizations.⁶

In 1993, the Russian Parliament passed a new comprehensive Law on Religion. The President of Russia vetoed this Law twice and it was not reintroduced because of the dissolution of the parliament in September 1993. In 1995, revisions of the Law on Religion again came under consideration in the new Russian parliament, the State Duma. Several drafts were proposed, but they did not survive parliamentary review.

In 1997, the Law on Freedom of Religion was repealed and replaced by the new Federal Law on Freedom of Conscience and Religious Associations (1997 Law on Freedom of Conscience). Opponents of the earlier, more liberal 1990 Law on Freedom of Religion suggested that new legislation was needed to protect historical Russian faiths from the impact of missionaries from other religious groups who had entered Russia since the fall of communism and had operated under the Law on Freedom of Religion. According to the data of the Russian Federation Minis-

are not to be applied. Any subordinate legal acts affecting the rights, freedoms, and duties of a citizen may not be applied if they have not been officially published for general information.

that legal experts of the Parliamentary Assembly had discovered that the Russian legal system had certain shortcomings,¹³ it was emphasized that Russia was seen as striving toward the rule of law and that it understood the necessity of implementing laws.

Defining the major tasks that Russia had to fulfill in order to bring its legislation and politics into compliance with the European standards and requirements, the Assembly recommended to the Rus-

September 26, 1997.²³ This Law regulates the legal rights of individuals, both citizens and non-citizens, to freedom of conscience and freedom of creed, as well as the legal status of religious associations. The Law establishes that it may not be interpreted in such a way as to result in restricting

The 1998 amendments to the Law on Social Organizations prohibit keeping the amount and composition of income of a nonprofit organization secret and require public control over the budget of the organization. Because they are excluded from the jurisdiction of that law, religious organizations may hide financial information from its members. However, the registering state authorities have access to information on the financial activities of a religious organization (Art. 10.2) and may use and disclose such information if needed in order to supervise religious organizations, as prescribed by Article 25.2 of the Law.

The effects of the 1997 Law on Freedom of Conscience have been somewhat muted because the Law is implemented only episodically and half-heartedly. Federal authorities have transferred the responsibility for implementation of the Law and for punishing violations to regional administrations.

In February 1998, the Government of the Russian Federation passed a package of documents implementing the 1997 Law on Freedom of Conscience, which includes:

creditation associations that had previously existed but had not been registered by state organizations. Even though such organizations may be able to provide indirect evidence of the existence of an association, for example by means of a record of the persecution of its followers during the Soviet era, or established contacts with foreign partners, such evidence is not recognized by the authorities.

Procedures for the registration of local and centralized religious organizations may vary. It seems that the authors of the Law expect that the majority of religious associations will be registered as local organizations by judicial authorities under governments of the Russian Federation components. If centralized organizations are established, such associations may be legalized by the Russian Federation Ministry of Justice. Because the registration of juridical persons belongs to the competence of the Russian Federation subunits, one can suppose that regional authorities will impose additional requirements on the registration of religious organizations. The Statute directly states in Article 4.3 that the procedure for notifying local government agencies of the establishment of a religious group will be determined by the appropriate local regulations. Under this provision, the registration of

3. REGULATION ON THE PROCEDURE FOR OPENING MISSIONS OF FOREIGN RELIGIOUS ORGANIZATIONS IN THE RUSSIAN FEDERATION.

The Regulation on the procedure for Opening Missions of Foreign Religious Organizations in the Russian Federation provides for the opening of a foreign mission on the territory of a specific subunit or several subunits of the Russian Federation only. Excluding the possibility of establishing an independent, centralized foreign office, the Regulation allows the opening of such missions only under the auspices of a Russian religious organization that has been registered in accordance with established procedure, i.e. which has existed in Russia for more than fifteen years.

Among other restrictions provided by the 1997 Law on Freedom of Conscience, foreign missions are prohibited from becoming juridical persons. Religious activities and worship services may not be conducted in foreign missions because they do not enjoy the status of a religious association that has been established by the Law. Quantitative restrictions in regard to foreign as well as Russian employees are also imposed. The Regulation provides for restrictions in the Russian Federation

easier is the permission to register such an organization if it is present in at least two components of the Russian Federation. The Law does not determine the required number of components. The Statute on State Registration of Religious Organizations sets a firm six-month period for the registering authorities to make a decision regarding religious organizations. Article 22 of the Statute seems potentially restrictive because it requires annual submission of information from the religious organization regarding the continuation of its activity. Even a one-day delay in these annual submissions may entail a break in the counting of the 15-year period. The vagueness of this provision may result in an unregulated interpretation of this requirement by regional justice departments.

Article 4.6 of the Statute is especially uncertain. This article requires that a religious organization inform the registering authorities about the basic principles of its religion and religious practice, the history of the religion and given religious association, the methods and forms of its activity, and its position on education, family and marriage.

The same name as a religious organization must be included in the statute of the organization. It is possible that some religious organizations may

The problem of establishing and registering a religious organization is one of the most controver-

accordance with the Law, no person may interfere in the activities of a religious organization. The Council on Cooperation with the Religious Organizations has been created under the President of the Russian Federation.

B. Possibilities for Judicial Review

In order to solve existing problems in the current Russian legislation concerning religion, the constitutionality of the 1997 Law on Freedom of Conscience may be challenged in the Constitutional Court. Reportedly, several religious organizations that were denied registration are preparing materials for appeal to this court. At the same time, in the absence of other ways to amend the legislation, the Constitutional Court may be used by the Administration of the President as a tool for exclusion of

sage of the 1997 Law on Freedom of Conscience enjoy all the rights of legal entities in their given

In addition, in December 1998, the Patriarch of Moscow made two politically controversial statements. He said that even though the Orthodox Church opposes capital punishment, Russia is not ready to live without it, and he asked the Government to stop the moratorium on the death penalty. He also strongly criticized attempts to introduce an alternative military service in Russia and supported currently existing draft and military duty requirements.³⁹

Despite its own ban on clergy taking part in political life, the Russian Orthodox Church has

restricted coverage in the Russian mass media. However, following the Assembly, an anti-government speech was made by Yuri Luzhkov, who was accused by some of using the Assembly as an opportunity to appear on national television to be “blessed” by national religious leaders.⁴⁶ In his evaluation of the situation in the country, Mr. Luzhkov said that it is an illusion to believe that Russians are law abiding and that the Constitution works. Luzhkov stated that everything that had been done

Western missionaries who were trying to entice members of other faiths into their faith. Subsequently, he equated the expansion of Western churches with NATO's expansion.⁵⁰

A number of recent Russian and foreign publications conclude that the caesaropapist tradition is

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

TURKEY

ABSTRACT

Under the provisions of its Constitution, the Republic of Turkey became a secular state. After the establish-

D. Relief Available to Citizens

The Turkish Constitution⁷ provides varying avenues for relief to its citizens based on the ground of violations of rights. If the ground is an unconstitutional statute, its constitutionality may be chal-

II. CONSTITUTIONAL PROVISIONS RELEVANT TO FREEDOM OF RELIGION OR BELIEF

Several provisions of the Turkish Constitution guarantee religious freedom. Article 24 states:

III. INTERNATIONAL COMMITMENTS

Turkey, as a member state of the United Nations, adheres to the United Nation's Universal Declaration of Human Rights and the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based

Under the provisions of Article 1 of Law No. 2596, the second reform law, religious vestments can be worn only during religious ceremonies. However, the Law empowers the Council of Ministers to grant permission to one religious official from each religious community to wear his/her religious attire without restriction for a certain period of time. If applied, such periods may be extended. The Law also imposes a dress code on government employees and students.²⁷ Because of this Law, head scarfs are forbidden to be worn by students in schools and by government employees in their offices.

b. The Greek Orthodox Seminary

The Greek Orthodox population of Turkey diminished sharply in the 20th century as a result of the 1923 population exchange, of anti-Greek riots in 1955 that prompted many to flee, and of expulsions in 1964-65; the latter two developments were related to the Cyprus issue. Only about 3,000 Greeks reside in Istanbul today.

(1) SYRIAN ORTHODOX

tices in contravention of the law on attire that could give Turkey a backward appearance should be obstructed and laws in this regard should be enforced especially in public institutions.”⁶⁶ For some women, the wearing of a head scarf or *hijab* soon became a symbol of defiance of the military and other secularists in addition to an expression of religious belief. On the other side of the issue, secular women saw the head scarf as a symbolic Islamist challenge to the improved status they had achieved since the Republic was founded.⁶⁷

Enforcement of the ban on head scarves in public institutions has produced conflict. In January 1998, the Ministry of Education issued a decree calling for stricter enforcement of the

Ünal, S. and A. Akdamar, *Türkiye'de Laiklik İlkesi ve Yehova'nın Sahitleri*. Istanbul: Kule Kitaplar, 1983.
206p.

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

defines Ukraine as a sovereign, democratic, unitary state governed by the rule of law, and guarantees civil rights. The Constitution is a supreme legal act with direct effect and determines the division of power between the branches of government. The Constitution affirmed the separation of state power and ideological and political diversity.

Human Rights. Ukrainian religious legislation is in accordance with the recommendations of the Council of

proceedings, the Decree established that a religious organization becomes a legal entity upon registration of its

Commissioner informs responsible state authorities and may appeal directly to any court in the country, including the Constitutional Court of Ukraine. To date no actions of the Commissioner in regard to the protection of religious rights have been reported.

The long period of official atheism and numerous types of bans on religion by the State has left a negative imprint on the current relations between the State and the Church. The attitude of the church toward the State and State officials is marked with distrust. The relationship between the branches of the Orthodox Church in

Motyl, A.J.

accession of William and Mary to the throne ensured the exclusion of Roman Catholic influence over the Crown.

appointments and sees a strong disincentive against criticism of the government by the COE. Benn also notes that

When the 1998 Act is in force, complaints concerning the violation of the right of religious freedom will be

In *R. v. Registrar General ex parte Segerdal*,²⁴ the Church of Scientology was refused designation of a chapel as a meeting place of worship under the Places of Worship Registration Act 1855. The court suggested that there was an absence in the Church of religious worship in veneration of God, making it a philosophy rather than a religion. In this and other cases involving the Church of Scientology, British courts, it is stated, appear to have shed their traditional neutrality with regard to the content of different religions.²⁵

Another religious sect called the Exclusive Brethren was initially denied registration as a charity because its doctrine of "separation from evil," in which members were taught to dissociate themselves from "evil" persons whosoever they may be, was considered to be inimical to the interest of the community at large and therefore not in advancement of religion. In *Holmes v. A-G*²⁶ the Court granted a declaration that the Brethren were clearly a

Harris, David, and Sarah Joseph, eds. *The International Covenant on Civil and Political Rights and United Kingdom Law*. New York: Oxford Press, 1995. 699 p.

Prepared by Kersi B. Shroff
Senior Legal Specialist
Western Law Division
Directorate of Legal Research
Law Library of Congress
Partially updated March 2000

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

Continuing immigration and the liberating atmosphere of the New World gradually eroded those church-

Perhaps because of the interwoven nature of religion and culture in the U.S., the government pays homage to religion in numerous ways, notwithstanding the formal separation of church and state. Early in the history of the republic the government set aside lands in the western territories for the erection of churches, and during the 19th century the federal government gave grants to a number of religious groups for the purpose of converting Native

B. Order of priority

By its terms the Constitution is the “supreme law of the Land”¹² and prevails over inconsistent national (federal) statutes, state constitutions and statutes, treaties, and administrative regulations. Federal statutes also prevail over inconsistent state constitutions, statutes, and regulations. Treaties and federal statutes are equivalent under the Constitution, and whichever is adopted later in time prevails over the other. The Supreme Court is the final arbiter of the meaning and interpretation of the Constitution¹³

More generally, persons with claims that government has impaired their liberty in violation of the Constitution or of particular federal statutes may bring suit in federal district court or in state courts of general jurisdiction.¹⁷ Persons with claims that state or local governments have violated their state constitutions or statutes can bring suit in state courts. Within each system of courts, adverse decisions may be appealed to one or more appellate levels, with an ultimate appeal in each system to the U.S. Supreme Court.

Although the due process clause does not mention religion or the other rights protected by the First Amendment, judicial decisions have held the “liberty” protected from undue state interference by the clause to incorporate all of the protections of the First Amendment, including those relating to the free exercise and the

2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS²⁴

Article 18 of this Covenant provides as follows:

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

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

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

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

The Covenant obligates its Parties "to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."²⁵ The United States supported the Covenant when it was put forward as a treaty by the General Assembly in 1966 and,

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field provides in Article 17:

B. Non-treaty commitments

Major non-treaty commitments involving religious liberty in the international arena include the following:

1. UNIVERSAL DECLARATION OF HUMAN RIGHTS³¹

3. UNITED NATIONS DECLARATION ON RELIGIOUS INTOLERANCE³⁴

In 1981 the General Assembly of the United Nations adopted the "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief." Building on the obligations contained in the UN Charter, the Universal Declaration of Human Rights, and other human rights documents, the Declaration affirmed the right of everyone "to freedom of thought, conscience and religion"; detailed the elements of such freedom; affirmed the right of parents to

employers. The EEOC's guidelines regarding religious discrimination are published at 29 CFR 1605 (1997).

B. Fair Housing Act of 1968⁵¹

The Fair Housing Act makes it unlawful for most individuals and organizations to discriminate in

Religious organizations, in other words, can employ religious preferences in their employment practices and discriminate against disabled persons who are otherwise qualified for employment but who do not share the organizations' religious beliefs. But if a disabled individual who is otherwise qualified for a job meets the organization's religious requirements, the organization may not discriminate against him or her. The EEOC administers the employment nondiscrimination provisions of the ADA, and aggrieved individuals may both file a complaint with the EEOC and institute suit as well. The agency's regulations implementing this aspect of the ADA are published at 29 CFR 1630.

The ADA also requires that most public accommodations be made accessible to the disabled. But it exempts religious organizations entirely from that requirement, as follows:

religious practices ought generally to be entitled to special treatment by government and of Congress'

Education voucher programs, in short, appear to have growing political support. But the out-

D. Government sponsorship of religious activities in the public schools and other acknowledgments of religion

BIBLIOGRAPHY

There have been hundreds of books and thousands of articles published in the United States on the subjects of the history of religion in the American polity and its legal and constitutional status. The following list, consequently, is highly selective and omits numerous publications of equal or greater merit. But the books and articles listed would give the interested reader a thorough understanding of the history and current status of freedom of religion in the United States.

Books

Bellah, Robert N. *The Broken Covenant: American Civil Religion in Time of Trial*

(Spring 1999), . A selection of articles on this controversial decision.

Davis, D.S. "Joining a 'Cult': Religious Choice or Psychological Aberration." 11 *Journal of Law & Health* 145-

"Symposium: Religious Liberty at the Dawn of a New Millenium," 75 *Indiana Law Journal* 1-332 (Winter, 2000).

Viterriti, J.P. "Blaine's Wake: School Choice, the First

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

UZBEKISTAN

ABSTRACT

This report presents an overview of Uzbekistan's religious legislation and the changes made by the Law on Freedom of Conscience of 1998. While the new legislation makes the Law conform with the current political

President.

Judges in Uzbekistan are appointed by the President for a five-year term. The highest court is the Consti-

tional community during the preparation of these fundamental laws, however, were practically disregarded. Human Rights Watch emphasized in its report that the main obstacle for protecting human rights in Uzbekistan is not a weak legislative base, but the steady practice of failing to observe the pledges that have been taken.¹² Despite the fact that Article 29 of the Constitution of Uzbekistan proclaims the right to freedom of thought, speech and convictions, the Constitution contains obvious limitations of those freedoms, which are formulated as the right to “seek, obtain, and disseminate any information, with the exception of that which is directed against the

and labor camps at the request of the people staying there. Registered organizations may also hold worship services and ceremonies outside religious buildings. However, the Law prohibits Uzbek citizens from appearing in public places in religious attire.

The Law also bans the activities of political parties and groups based on religion and similarly prohibits political activity by branches of religious parties set up outside the country. Religion must not be used for the purposes of anti-state, anti-constitutional propaganda, fomenting ethnic enmity, spreading slanderous destabilizing reports or spreading panic. Religious organizations, sects, and other movements promoting terrorism, drug trafficking, and organized crime are also prohibited (arts. 3, 9, 14).

V. LAWS AFFECTING THE OPERATION OF RELIGIOUS ORGANIZATIONS

The 1998 Law on Religion also regulates the status of religious associations in Uzbekistan, including their rights, conditions for their activity, and the establishment of procedures for supervising and monitoring the observance of the legislation on freedom of conscience. The Law defines a religious association in Uzbekistan as a voluntary association of citizens of the Republic of Uzbekistan set up for joint profession of a religion through the exercise of religious services, customs, and rituals. This includes religious societies, religious education establishments, mosques, churches, synagogues, monasteries, and others. The legal status of a religious association depends on whether or not it has a central administrative body and territorial entities in at least eight regions of the

established in the country since independence.²² Because most of these are small, they have not re-registered in accordance with the 1998 Law.

The major problem in religious relations in Uzbekistan is that issues of religion are often used by the political

Transitional Juris Publications (Ed. J. Priban) NY, 1996. 249 p. Collection of Soviet statutes on church state relationships.

This is a U.S. Government publication produced by the
Commission on Security and Cooperation in Europe (CSCE).

« « «

This publication is intended to inform interested individuals and organizations
about developments within and among the participating States of the Organization for
Security and Cooperation in Europe (OSCE).

« « «

The CSCE publishes transcripts of official hearings held before the Commission,
analyses of developments in the OSCE, and other periodic documents deemed relevant
to the region. All CSCE publications may be freely reproduced, with appropriate credit,
in any form. The CSCE encourages the widest possible dissemination of its publica-
tions.

« « «

For a listing of all available CSCE documents, to be placed on or deleted
from the CSCE mailing list, or to request additional copies, please contact:

2.43(Fd HoueasO offe Builidilit,)Tj08006590.194 TD-0