

# Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

## Church-state relations under the Bulgarian denominations act 2002

This page was generated automatically upon download from the Globethics Repository.  
More information on Globethics see <https://www.globethics.net>. Data and content policy  
of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Article
Authors	Petkoff, Peter
Publisher	Keston Institute
Rights	With permission of the license/copyright holder
Download date	2026-06-11 12:08:49
Link to Item	<a href="http://hdl.handle.net/20.500.12424/164857">http://hdl.handle.net/20.500.12424/164857</a>

## **Church-State Relations under the Bulgarian Denominations Act 2002: Religious Pluralism and Established Church and the Impact of Other Models of Law on Religion**

PETER PETKOFF

### **Introduction**

The new Bulgarian law on religion, the Denominations Act (*Zakon za veroizpovedaniyata*) 2002, moves beyond the mere declaratory constitutional recognition of religious pluralism. It represents a particular school of jurisprudence and political philosophy which advocates that liberal values in a society can be introduced and achieved through a programme which has as its logical aim a particular communitarian model of society as the initial stage of a community and character-building process. Only then, after this process has been completed, can a natural discussion of communitarian values lead to the liberal concept, according to which the only true way for such communitarian values to be observed and experienced is by reducing the size of the state to the smallest possible group able to perform its functions. Following an ideology along these lines, the present statute is a balanced model of communitarian ideas and provides enough safeguards for minority religions by offering clear guidelines to the executive and the judiciary for the implementation of religious pluralism. Although these safeguards do not go beyond mere declaration, nevertheless they clarify specific texts, which used to create ambiguity in the past, and thus make the work of the executive and the judiciary more transparent and less confusing. The preminent status of the majority religion, for example, has been reaffirmed together with a non-discrimination clause attached to such status. The registration of religious faiths has been simplified, refusal of registration being allowed only in very specific circumstances, and the state being viewed as an observer, rather than an administrator implementing a particular religious policy. The first steps are being made towards resolving the difficulties of restitution of property previously belonging to religious communities. A procedure is being introduced for establishing succession of legal personality for the minority faiths which were banned after 1945. One of the best features of the present legislation is that all religious communities – save the Bulgarian Orthodox Church (BOC) – follow the same procedure to become legal persons and that this procedure is administered without prejudice by the independent judiciary rather than by the executive. At the same time, this religious pluralism is outlined alongside the concept

of a quasi-established church,<sup>1</sup> the restriction of separatist movements within religious organisations, and the right of the government to give expert opinions in connection with individual religious organisations in court proceedings. Although these are implied problems, they certainly have to be addressed, and I shall do so in this article. The liberal agenda of the preamble of the statute almost stands in contrast with the text of the statute itself, which suggests that the BOC has the status of an established church.

### **The Bulgarian Orthodox Church: an 'Established Church'?**

Religious pluralism in Bulgaria is defined alongside the concept of a 'quasi-established church' in the case of the majority religion represented by the BOC. On the one hand, religion and state are separated and the general terminology establishing religious freedom is essentially liberal (Konstitutsiya, 1991, ch. 13; 37, al.1). On the other hand, both the Constitution and the relevant legislation suggest a special role and often a special place for the BOC within what is effectively a social and political context (Konstitutsiya, 1991, ch. 13; 37, al.1; Zakon, 2002, Preambyul; KS 12/5, 2003; Ministerski Sävet, 2003). This eclectic scheme does not seem to be a result of ill-defined lawmaking. It seems that the legal framework of the law on religion aims at cultivating religious pluralism and mutual tolerance and yet to centre this pluralism and tolerance on a particular ethical paradigm, which in this case is represented by the BOC. There appears to be an ambition, similar to the ethos of the Second Vatican Council's *Dignitatis humanae*,<sup>2</sup> to reconcile religious pluralism with the specific intuitions of a particular monotheistic religion and even a particular form of Christianity. The BOC is therefore seen as a factor in the polity- and community-building of the country, without these being theocratic. Orthodoxy seems to offer minimum standards for community-building based on ethical and historical roots. Opposed to communism, it was its antithesis (although it was often found collaborating with it), and the escape to freedom became inevitably and commonly an escape from a communist paradigm by seeking refuge in a religious paradigm.

In its preamble, the present act acknowledges the special and traditional role of the BOC in Bulgarian history and the formation and development of its spiritual and intellectual history (*dukhovna kultura*). Then it declares its respect for the three Abrahamic monotheistic religions in particular and also for any other form of religion (Zakon, 2002, Preambyul). It also reaffirms a commitment to individual freedom of religious and secular convictions, as well as a commitment to promoting mutual tolerance and understanding on matters of religious and nonreligious conviction (Zakon, 2002). In the light of the turbulent postcommunist years of church-state relations, it seems that the legislators felt that the new law should reaffirm the general constitutional principles of freedom and equality before the law of different denominations, by zero tolerance of any form of discrimination or privilege on religious grounds, including the refusal to hold religious beliefs (Zakon, 2002, ch. 3(1)), except under specific circumstances provided by the law and the Constitution (Zakon, 2002, ch. 3(2)). From the background of the painful clash of religion and state in the schism of the BOC, the infighting within the Supreme Muslim Council during the 1990s and recent European Court of Human Rights' cases (Hasan, 2002; Metropolitan, 2002) Article 4 establishes the central principle that state institutions must not interfere in the internal affairs of religious communities and their institutional structure, a principle emerging from the concept of separation between religion and the state

affirmed by the Constitutional Court (KS 5/6, 1992; KS 21/11, 1996; KS 12/5, 2003) and the subsequent cases at the European Court of Human Rights.

After it has set the general framework for defining religion, the statute provides a whole article (Article 10) on the status of the BOC. The BOC is defined as a traditional denomination. An attempt has been made to resolve the obscurity of the term 'traditional' by adding to it that the majority church has a historical role for the Bulgarian state and has relevance to its political life (Zakon, 2002, ch. 10(1)). I do not think that the legislators could have got any closer to a clear concept of an established church in a parliamentary democracy. Although explicit establishment on a constitutional level or a statutory level is lacking, the above text suggests several important things. Firstly, that there is some kind of a relationship between the BOC and the state on the level of polity. Although the law does not suggest what kind of relationship this is, one could imagine that there is a hint that official holidays and state ceremonies with a religious element will have an Eastern Orthodox framework and will be performed by clergy from the BOC.<sup>3</sup> At the same time, the legislators felt that they should go a step further by legislating on the legitimacy of the BOC, which is to perform such functions. In the light of the troublesome decade of schism within the BOC, the legislators made a desperate attempt to define what 'BOC' means by a combination of theological and jurisdictional criteria, perhaps hoping that such definitions would assist the judiciary to resolve disputes between rival factions by giving more transparent criteria.

In defining the identity of the BOC, the legislators use theological terms as well as terms taken from canon law and administrative law. It is described as 'One, Holy, Catholic and Apostolic', thus adopting Article 9 of the Creed.<sup>4</sup> Secondly, the BOC is described in canon law terms: it is autocephalous,<sup>5</sup> having the status of a Patriarchate; it is the legal successor of the Bulgarian Exarchate,<sup>6</sup> and its governing body is described as a Holy Synod, chaired by the patriarch, who is also metropolitan of Sofia. The texts which deal with the organisation of the BOC employ and repeat the texts from the church's ecclesiastical Constitution (Ustav, 1950). The above arrangement clearly follows the example of the way the status of the Orthodox Church is defined by the Hellenic Constitution. Such wording generates a number of problems. Firstly, in effect it promotes interference by the state legislature in the internal affairs of the BOC. Should the BOC decide to change the way its church government operates, it has to do so by an act of Parliament. One might consider it preferable for an organisation such as the BOC to be able to do this according to the procedure prescribed by its own by-laws. With the present wording of the statute, it seems that the BOC would not be able to do so without parliamentary support. It seems that this text was a way of making a point that the BOC is in some sense an established religion, but it also creates a danger of further tension, should a political grouping decide to use the lacunae within a badly written statute in order to manipulate the governing body of the BOC.

Another specific characteristic of the BOC is that it is a legal person *ex lege* (Zakon, 2002, ch. 10(2)). This is the only religion of the land which has its legal status *ex lege*.

The above text is immediately linked with a kind of a disclaimer clause providing that the texts relating to the status of the BOC should not be interpreted in such a way as to result in discrimination in relation to other religions (Zakon, 2002, ch. 10(3)). Such a disclaimer is very important in the assistance it gives to the courts in interpreting Article 10, with its theological and canonical allusions. Another text which adds to the impression that a primary purpose of the present legislation was to end the organisational crisis within the ranks of the BOC is Paragraph 3 of the

concluding chapters, which provides that persons who have split from a registered religious institution in violation of its Constitution may not use its name or its property (Zakonoproekt, 2002b, para. 3, *Prekhodni i zaklyuchitelni razporedbi*).

In view of the mainly descriptive nature of Article 10, one might wonder what the point is of having it in the statute at all. My personal opinion is that Article 10 is a result of the inability of civil law courts to establish the above descriptions as a point of fact, the corollary of which is that the civil law legislator tends to feel obliged to draft such descriptions for the interpretation of the law, and this transforms a mere principle into a point of law. Secondly, Bulgarian judges demonstrated a concerning inadequacy in dealing with law on religion in the 1990s, which seems to have prompted the legislators to make the status of the BOC, as the majority religion in the country, a point of law.<sup>7</sup>

The above considerations might generate several problems. Firstly, the statute purports to endorse the principle of separation between religion and the state and yet sets up a relationship between the majority religion and the state. Secondly, by defining what the BOC is, by using theological, canon law and administrative law terminology, the statute essentially declares what the elements are that make the BOC 'legal'. However, this has further consequences inasmuch as it makes the BOC, its internal affairs and its governing structure dependent on a statute which essentially overwrites its existing ecclesiastical Constitution and the canon law taken into account by the BOC in its internal affairs. If, therefore, the BOC wished to amend its Constitution and to change the structure of its church government for reasons of theology or canon law, it would not be able to do so without a change in the Denominations Act 2002.

There is also another issue which sheds some light on the rationale for such an obscure definition of the BOC. The Orthodox Church, just like the Roman Catholic and the Anglican Churches, takes the view that its institutions maintain episcopal succession, that is, that the church traces its roots back to one of the Holy Apostles as its founder. This notion of a religious community whose existence and foundations are based on episcopal succession rather than coming to existence by law is problematic, because becoming a legal person is not the same as becoming a religious institution in a temporal sense (the actual *terminus a quo* being the foundation of a particular church by an apostolic successor, while its Constitution as a legal person is in a way secondary and does not substantially affect the fact that a church has come into life before the law which has legitimised it as a legal person). The text of the Act is somewhat ambiguous on this point. In an interview, Professor Ivan Zhelev, the head of the Denominations Directorate, implied that the BOC is an entity which preexisted the state, and therefore should not be subject to the state's administrative law (Dimitrov, 2003, pp. 293–95). A similar view was expressed by the prime minister, Simeon Saksoburggotski, in connection with Constitutional Case no. 3/2003 (Ministerski Sävet, 2003). The ambiguity is further illustrated by the stand taken by the minority religions which opposed the Denominations Act 2002 partly because it does not sufficiently emphasise the nonconformist character of the religious communities which their denominations represent. The idea of a free church as opposed to an established church was argued to be central to the concept of religious freedom.<sup>8</sup> However, it is not quite clear how the existence of an established church *per se* would discriminate in relation to free churches beyond the purely declarative level. For our purposes, the important questions relate to whether, in the context of political transition, the 'national' churches seek, or are given, a formally defined status and whether this is accompanied by any formal restriction of the rights of minorities.

Anderson rightly acknowledges that the traditionally dominant religious institutions will generally argue that what they seek is not privilege but 'recognition' of a historical, cultural and religious reality, and that a formal acceptance of their status does not amount to their being given any inappropriate advantages in relation to other religious communities. Equally, in most of the countries within the European and Slavic context such arguments will be buttressed by a more nationalistic approach that would question the appropriateness of the US model of church-state separation, for example, with its liberal, if not secularist, intellectual underpinnings.

Arguments for 'privilege' are being rooted in a suggestion that those advocating 'neutrality' are in fact seeking to privilege alternative views of religion and its place in the public sphere and that the much vaunted neutrality they proclaim is indeed a chimera. At the same time there is the question of separating out the illegitimate pursuit of privilege from the legitimate process of lobbying that should be available to all groups in a democratic society. (Anderson, 2000, pp. 2–3)

In this respect Anderson is prepared to argue that transitional societies undergoing fundamental change need to build up a religious community with close ties to the nation's historical and cultural past but one that can be utilised in the present era to provide some sense of common values and interests (Anderson, 2000, pp. 2–3).

### **Majority Religions and National Cultural and Political Communities**

The roots of such a concept of establishment in Bulgaria and Greece lie on the one hand in their common Ottoman past and on the other hand in a broader vision about consolidation, nation-building, character-building and community-building on the basis of a particular religious concept shared by a number of modern states.

After the fall of Constantinople in 1453 the ecumenical patriarch was given the status of *milletbashi* – a spiritual and secular leader of all the Christian subjects under the sultan. He had jurisdiction over all but criminal matters in his realm. In this way the old Byzantine political model of a symphony of powers,<sup>9</sup> describing the balance in political action between the church and state institutions in Byzantium, was transformed and concentrated, at least as far as the Christian population was concerned, in the figure of the ecumenical patriarch. This identification of the ecumenical patriarch as both spiritual and political leader inevitably influenced the idea that the Orthodox Church had a special role in the character-building of the Christian community as both a religious and political community with its own canon law and civil law within the Ottoman Empire. The memory of the Christian *politeia* and the hope of its revival placed a significant role in the fulfilment of this ideal on the leadership of the Orthodox Church (Runciman, 1968; Walters, 2002). On the one hand, political independence was essentially a secular phenomenon, often opposed by the Orthodox clergy (Raikin, 1993; Ramet, 1989). On the other, the successful completion of a political agenda of this kind *per analogiam* resulted in a very intimate relationship between the church and the new independent states. It was a matter of fact that the Orthodox Church was to continue to be a central factor for the character-building of the new independent states. Firstly, it continued to exercise jurisdiction in a narrower, yet substantial, area of civil law. Secondly, the Orthodox Church was a way to maintain a strong position in the territories still under control of the Ottoman

Empire or other newly established post-Ottoman states through the Orthodox communities remaining under the umbrella of one or another local Orthodox Church.

Another aspect very much related to the role of the ecumenical patriarch as a *milletbashi* was the correlation between religious emancipation and political independence. The very idea of a community within a community devised by Ottoman law already suggested a formula for cultural emancipation. This formula was adopted by the *Hatisherif*<sup>10</sup> and the *Hatihumaiun*<sup>11</sup> and taken up by the campaign for an independent Bulgarian Church, which in 1870 resulted in the creation of the Bulgarian Exarchate. This was a complex process linking the emergent modern nationalist ideology with the ideal of community built on the foundations of a free and powerful Christian state of the past (Khilendarski, 1981). I will not go in great detail into the problems such ideology generated. What is important was that it influenced the three stages of the Balkan National Revival, namely the establishing of a national secular education and religious autonomy as necessary steps to prepare the third stage – that of national political independence. This role of the Orthodox Church in the Balkan Revival is mirrored by the acknowledgment of its role in the community-building of the new independent states. This acknowledgment, often nominal, nevertheless points to the contribution of the Orthodox Church to the emergence of secular constitutional order.<sup>12</sup> This role of the Orthodox Church in the formation of the new nation states in the Balkans was never considered to be inappropriate. In fact, the relationship between religion and the state was considered a priority in the period before and after the Second World War.

The majority religion played a crucial role in the promotion of national language and culture during times of trouble or foreign occupation and, in the communist context, served as the major pillar of national defence against an atheistic and denationalising regime. Here the argument made by majority religions is less for discrimination against others than a plea for a formal recognition of what are described as cultural and historical realities. Such an argument appears in all the countries considered below, though it has lost much of its force in Spain. For Greek president Constantine Karamanlis, the nation and Orthodoxy 'had become in the Greek consciousness virtually synonymous concepts which together constitute our Hellenic-Christian civilisation', and in 1989 prime minister Mitsotakis could describe Orthodoxy as 'the support of the nation' (Kokosolakis, 1995, p. 260). Such an approach was also evident in Poland where the first postcommunist prime minister argued that the church could not simply be relegated to the private sphere. Not a chauvinist nationalist, but a liberal-minded Catholic, Tadeusz Mazowiecki noted that 'In Poland, where the Church historically has played ... and continues to play, an important role, there should be a profound discussion in which we resist ... denial of the most important historical role of the Church in the public life of this country' (Brzezinski, 1998, p. 122). Such appeals to the national contribution of the dominant church were even more frequent in Russia, where in early 1997 a group of 'patriotic' writers used this approach to call for restrictions on religious minorities. Speaking of 'the historical past and national distinctiveness of Russia', they went on to talk of the historic relationship between Orthodoxy and the state 'in the bosom of which was formed Russian statehood and Russian culture'. Without these ties being reinforced in legislation they saw little hope of rebuilding a sense of Russian national identity.

Though such arguments were generally phrased in terms of a need to recognise the special place of the national church, in some cases they spilt over into calls for a restriction of the rights of minorities. In more radical versions they could be taken to suggest that in some sense members of other religious communities were not really

members of the nation or that their presence threatened national security. During the early 1960s several Spanish bishops opposed the extension of religious freedom on the grounds that it would contribute to the destruction of national unity (Vought, 1973). Referring to Greece, Pollis notes the way in which the notion of 'an ethno-national Greek ethnos as embodied in the state' could be taken to imply that only those who belonged to the religious ethnos were entitled to rights (Pollis, 1992, p. 179). Yet few would have taken the argument as far as Solidarity senator Kaczyński during the abortion debate in Poland, when he suggested that 'all good Poles are against abortion. Those in favour are an evil part of the nation' (Michel, 2002, pp. 340–41). Of course, the latter statement is an extreme one, but this and some of the others quoted above do reflect a type of argument that seeks to justify religious privilege or discrimination with reference to the fact that the dominant church is somehow representative of the majority and has special historical ties to that nation's fate.

This communitarian approach has always been very strong in Bulgaria. It can be seen in the association between religion and politics in the nineteenth century in the process of establishing an independent Bulgarian Exarchate and in the ideology of the independent Bulgarian state, and the approach found its place even in Marxist historiography and jurisprudence after the Second World War (Genchev, 1977, 1988; Zakon, 1949). The myth of the independent Bulgarian Church was also explored by the supporters of the alternative Synod of the BOC, who in 1996 organised a Local Church Council and elected an alternative patriarch, Pimen, referring to the events of 1870 resulting in the establishment of an independent Exarchate and the excommunication of the Bulgarian Church by Constantinople as a relevant precedent justifying their Council.

This religious paradigm, which reemerges with new regimes in a number of modern states (Greece,<sup>13</sup> the United States until the First World War, Ireland<sup>14</sup>), is a paradigm contested and yet not defied in more settled democracies such as the United Kingdom,<sup>15</sup> Denmark (Constitution, 1953, art. 66), Malta (Constitution, 1964, art. 2(1)) and others. In Spain the church objected to the original draft of the Constitution, which simply referred to all religious communities as if they were of the same national and social significance. With the support of the conservative parties and the communists, the text was amended in such a way as to reject the notion of a state religion but to specify that 'the public powers shall take into account the religious beliefs of Spanish society and will maintain appropriate relations of cooperation with the Catholic Church and other confessions'.<sup>16</sup>

For the Polish Catholic Church, intervention in the constitutional debate was part of a much wider communitarian corrective to the perceived failings of the new democratic order and its increasing secularity. When a full Constitution was finally debated in 1995–97, the church sought to include some reference to God and natural law in the preamble, to prevent the use of the word 'separation' in reference to church-state relations, and to introduce a constitutional guarantee of the right to life from the moment of conception.<sup>17</sup>

Similar communitarian concepts in the foundation of a number of European states have been taken into account, accepted and accommodated in the generally liberal framework of law on religion in the European Union. The status of Mount Athos as an all-male monastic community with a specific cultural and spiritual role is established and protected by the Hellenic Constitution and this protection cannot be interpreted via general discriminatory tests developed by European Union law (Documents, 1979; Schengen, 2000). Similarly, the concordats between the Roman See and the states of Spain, Portugal and Italy until very recently used to be excluded from the general

standards of religious freedom set by European Union law (Council, 2000, art. 20) which emphasised that it was necessary to ensure that in applying EU law these states did not breach their international commitments in relation to the Holy See.

Comparing the status of the majority religion in Russia, Bulgaria, Spain, Poland and Greece, John Anderson admits that one cannot ignore the fact that

There has been for many centuries a tradition of privileging specific religious groups and, despite intermittent periods of anti-religious fervour – for example, during the mid-1930s in Spain, or for nearly seventy years in Russia – each has a clearly identifiable ‘national’ religion or Church. In most cases these dominant traditions have an elevated status evident in the respect given to their institutions in the public square. For example, their leaders will be present at major state occasions, will enjoy at least a formal access to political elites, and will often enjoy a series of ‘rights of consideration’ in legislative debates over education, morality and family law – though this rarely offers any guarantee that their views will prevail. (Anderson, 2000, pp. 2–3)

This recognition of certain communitarian exceptions in individual countries’ constitutional frameworks has its origins in the foundation of the European Community. Amongst all the social and political elements which contributed to the foundation of the European Union one must not forget the enormous impact of Pius XII on the foundations of Christian Democratic parties alongside the idea of Christian Europe versus the Communist East, an idea that politically outlined the shape of postwar Europe.<sup>18</sup>

The above examples present a scenario where a particular religious community is considered to be instrumental for the achieving of a political community. At the same time many of these countries embrace the ideals of liberal democracy and their communitarian commitment does not affect the protection of liberal values in society (Robertson, 1998, pp. 187–88). Going back to the Bulgarian case, one observes an attempt to make Eastern Orthodoxy an established religion in the sense that it is part of the legal *status quo* in the land. This is implied by the way it is defined by the Constitution (Konstitutsiya, 1991, ch. 1). This is also the way it is described in stronger terms in the Denominations Act of 2002 (Zakon, 2002, ch. 10). We need to see, therefore, why a country and a government with an essentially liberal agenda are so keen on developing the kind of religious establishment<sup>19</sup> which is evident in the way that the status of the majority religion is consolidated alongside the generally liberal standards of the constitutional arrangement in Bulgaria. In this respect Bulgaria appears to follow examples in Greece, Spain, Portugal, the United Kingdom and Italy, but also, as noted above, the example within the historical tradition of Bulgarian constitutionalism, exemplified by the use of such a constitutional framework in connection with the majority religion before and even after the Second World War.

### **Critique of the ‘Establishment Clause’**

The problem that troubles critics of such a model is that it inevitably clashes with the concept of the separation of religion from the state and that traditionally, in shaping law on religion, one has had to choose either a communitarian or a liberal framework. According to reports from Human Rights without Frontiers and *Keston News Service*, both minority religious and human rights groups criticised the Bulgarian bill, interpreting the establishment of the status of the BOC *ex lege* as conferring a position

of privilege which could lead to discrimination against other denominations (Corley, 2002). A number of MPs boycotted the vote in Parliament, including those from a party most of whose members are ethnic Turks and Muslims (Monitor, 2002a, 2002b). They condemned the bill as a violation of religious equality. One MP, from the opposition Union of Democratic Forces, Ivan Ivanov, launched an appeal before the Constitutional Court (Corley, 2002); the latter subsequently upheld the constitutionality of the new Denominations Act (Corley, 2002). Felix Corley of *Keston News Service* had the opportunity to interview members of the minority churches, and he has summarised the main objections they raised in connection with the Act. Pastor Teodor Angelov, a Sofia-based pastor who heads the European Baptist Federation, told *Keston News Service* on 16 December 2002: 'We are not satisfied with this draft law. Some provisions are not democratic.' Asen Genov also expressed a concern along the same lines: 'As a member of the Hare Krishna community, I can see discrimination in the bill between the Orthodox Patriarchate and other faiths ... This is a Christmas present to the Patriarchate.' In his opinion many other minority faiths shared this negative view of the bill and he complained that there had been no discussion with religious communities (Corley, 2002). The alternative Synod complained that the bill would favour only the Patriarchate and enable it to take possession of all Orthodox property in the country, including the churches the alternative Synod still occupied. The alternative Synod said that it was determined to fight to the death if necessary and would soon convene a Council which would decide how its property would be defended (Sega, 2002). Fr Blagovest Vangelov, vicar-general of the Eastern-rite Catholic diocese of Sofia, said on 12 December 2002: 'This law will alter the status of all religious communities. We all have virtually the same objections as Catholics, Protestants and Muslims – and have made our views clear in a series of petitions' (Corley, 2002). The call for religious communities to be allowed to voice their concerns about the bill before Parliament adopted it was backed by the working group on the bill formed by the Sofia-based Rule of Law Institute (Rule of Law Institute, 2003). The chief mufti stated that the Muslim community would appeal to the European Court of Human Rights because of the preference given in the bill to the Orthodox Church (Monitor, 2002a, 2002b). An appeal to President Georgi Parvanov to veto the future law was signed by all Protestant churches, by one of the wings of the Orthodox Church, and by many other religious and human rights organisations (Corley, 2002).

The most serious critique of the Denominations Act 2002 came from the Council of Europe (Atkinson, 2003). A motion presented to the Parliament expressed concern that the new law contained provisions contrary to the European Convention on Human Rights and to Bulgaria's obligations and commitments entered into upon accession in 1992. Concern was expressed at the apparent position of privilege established by the law in favour of the BOC, despite the assertion within the Act that all religions should be equal. The motion was also concerned about the separate procedure for registration adopted for other religious organisations, despite the assertion in the statute that no discrimination was permissible. The motion further regretted that the law had not been referred to the Council of Europe for consultation, despite concerns expressed during the monitoring process by the two rapporteurs of the Council of Europe, M. Atkinson and H. Gjellerod, during their visits.

As a result of the motion, the Council of Europe requested its Committee on Legal Affairs and Human Rights to investigate the Act and to prepare a report. Professor L. L. Kristian (Louvain-la-Neuve University, Belgium), Professor Malcolm Evans (Bristol University, United Kingdom) and Professor R. A. Lawson in collaboration with

Dr B. K. Albaushenie and Mr K. Gauluke (Leiden University, The Netherlands) acted as experts on behalf of the Council of Europe's Directorate on Human Rights. The three independent rapporteurs reaffirmed some of the findings of the Council of Europe.

For Evans there was no doubt that the overall consequence of the law was to eliminate the possibility of a second Orthodox community obtaining the status of a legal person, which in his view effectively prevented such a community's free exercise of religion as defined in Article 9 of the European Convention on Human Rights.<sup>20</sup> However, the registration of the BOC *ex lege* was considered by Evans not to be discriminatory *per se* or a violation of the Convention *per se*. Nevertheless he recommended monitoring of the judiciary in future concerning the interpretation of the status of the BOC and gave as his reason that the 'ecclesiastical constitution and the form of government of the BOC are outside the remit of control exercised by the Denominations Directorate in relation to other religious organisations' (Evans-Lawson Report, 2003).

Some of the above criticisms reflect the existence of two schools of jurisprudence regarding what law on religion consists of and how it should be applied. The liberal school presents law on religion alongside a very simplified view of an 'American-style' line of separation between religion and the state. It is interesting to note that this line was adopted in the draft Denominations Bill submitted by the Movement of Rights and Freedoms, which is a mouthpiece for the ethnic Turks in Bulgaria. This bill had slight echoes of the approach to radical separation of religion from the state adopted in post-Kemalist Turkey and was supported by the human rights organisations in Bulgaria.<sup>21</sup> Whether or not a direct connection exists between the concept of relations between religion and the state in Turkey and the position of the Movement of Rights and Freedoms, it is useful to explore the patterns of influence in the field of law on religion in Bulgaria.

The other school, reflecting the views of the communitarian lobby and represented in the text of the Denominations Act 2002, manifests itself in an often ill-defined yet determined vision of the dynamics of relations between religion and the state, dynamics which grant a special status to the majority religion; only on this basis is it prepared to build upon a liberal framework of religious pluralism. This vision, apparent in the statute itself, is built on the premise that liberal values will be achieved through a community-building stage driven by Christian values. This stage will naturally lead to the functions of the state being performed by the smallest group in society which is capable of performing them. This school seems to make a further effort to broaden the legal debate by going beyond the strict interpretation of legal language, reminding one of, and pointing out, the inadequacy of every language in the pursuit of justice, of the need for unconventional legal hermeneutics in treating unconventional legal topics such as relations between religion and the state. The recent decision of the Bulgarian Constitutional Court (KS 12/5 2003) on the legality of certain parts of the text of the Denominations Act 2002, in particular the *ex lege* establishment of the BOC in Article 10, illustrates how divided even legal opinion is on how one should handle this area of law, on the position of the two main schools of jurisprudence represented and on the need for a broader understanding and interpretation of the above issues. The judges have split 50:50 over the issue of *ex lege* establishment and have clearly presented two possible approaches of the Convention. The first is a *verbatim* reading of Article 9 of the European Convention on Human Rights and the subsequent jurisprudence of the European Court of Human Rights. The second is the approach often associated with the Oxford school of jurisprudence, which advocates a more open reading of the language of the law and

takes into account the inherent vagueness of the law which judges always have to deal with as they strike a balance between the legal ambiguities in order to achieve an equitable judgment (Endicott, 2000).

Anderson notes that some form of legal recognition, establishment or 'privilege' does not necessarily entail discrimination against religious minorities. Indeed, he goes further, arguing that in times of political transition the commitment to absolute religious freedom might be 'trumped' in some sense by other needs, whether relating to concerns for social and political stability, or to the need for some institutions or value systems that provide a new framework for a society that has lost many of its old certainties (Anderson, 2000, p. 1).

Anderson identifies a number of approaches in the attempt to justify the privileged role of majority religions in a number of countries. The arguments in favour of religious establishment could be reduced to the following claims:

- this religion is the religious community of the people, of the majority, or of the nation;
- this gives it the right to a certain 'recognition', and the right to exercise some form of 'moral guardianship';
- it also necessitates that the state provide it with some form of protection from unfair competition;
- all this is reinforced by a general need in transitional societies for order and stability in the face of uncertainty, and this requires regulation of inappropriate or divisive religious activity;
- in any case, why should our country slavishly follow models of church-state relations developed elsewhere that reflect different cultural and religious contexts?

Anderson notes that the last category of nationalistic argument is especially strong in the three Orthodox countries he deals with – Bulgaria, Russia and Greece (Anderson, 2000). It is also very problematic, as well as being historically and theologically controversial. Firstly, the promotion of Bulgarian culture had its culmination in the nineteenth century when the newly established BOC was excommunicated by the ecumenical patriarch for promoting the heresy of nationalism (phyletism). One could argue, therefore, that promoting national values to their extreme could also be theologically unsound and it will therefore be tricky to argue that such a feature of the majority religion should be supported if it actually violates its broader theological doctrine. Secondly, such a view in the case of Bulgaria diminishes, or does not recognise, the role other communities such as the Roman Catholics played during the Bulgarian cultural and political revival in the eighteenth to nineteenth centuries (Pundev, 1969, pp. 53–66).<sup>22</sup> Thirdly, by ostracising the Muslim and other religious communities by denying them a role in the character building of a multicultural community, the statute fails to live up to the spirit of tolerance and mutual coexistence which the majority religion itself advocates and which therefore should be used as a 'backbone' culture in a communitarian model.

In the case of Bulgaria, it would be true to say that church-state relations define the issue of religious establishment, and yet in a sense religious establishment itself also defines the nature of church-state relations. Many will agree that the BOC has not been an established religion in the same way the Church of England is, for example. Church-state relations were defined by the 1991 Constitution in liberal terms. Yet the BOC was defined as a traditional religion. In other words, the BOC was never established as a state religion, but as a religious entity which has had the most

significant historical influence on the formation of the Bulgarian identity. This was a concept very similar to the concept adopted in the Hellenic Constitution,<sup>23</sup> but without the specific doctrinal and anthropological statements that the Hellenic Constitution makes. Many political events are also religious feasts and the rituals performed during these events are exclusively Orthodox in Bulgaria. All the state holidays are Orthodox Christian feasts. What does that tell us? Is a *de jure* non-established religion *de facto* established? Could we think of St George's Day, which is also the day of the armed forces, without a political presence and without the Great Blessing of the Waters being performed by Orthodox clergy?<sup>24</sup> And what about the feasts of St Cyril and Methodius<sup>25</sup> and Epiphany?

The designation of religious feasts to replace secular communist cults has its reverse precedent in the communist period. In 1970 the Central Committee of the Communist Party appointed a civil servant to design a strategy for replacement of traditional religious feasts with communist ones (BCP, 1967, 1969, 1970a, 1970b, 1971, 1972; see also Todorova, 1997). The restitution of religious feasts in the postcommunist period was no doubt treated by some Orthodox triumphalists as the instating of established religion. In other words, although relations between religion and the state were in theory shaped by a disestablishment clause in the 1991 Constitution, the symbolic place of the majority religion in the public celebrations following the end of communism, and its historical significance, made it possible for it often to influence modern Bulgarian politics as some kind of a quasi-established religion. These debates about the balance between a disestablishment clause and *de facto* established religion took place during the late 1990s, and in 1999 four draft laws were circulating, of which three proposed the granting of special status to the Orthodox Church and one obliged 'state institutions to support and pay special attention to Eastern Orthodoxy as the traditional religious denomination of the Bulgarian nation' (Zakonoproekt, 1997; Gerg'ovden-VMRO, 2001).

Here the wording did not of itself do more than recognise the traditional place of these Churches in the culture and history of the country, but in each draft there were clauses that suggested that something more was on offer, whilst other aspects of the laws appeared likely to have detrimental consequences for minority religious communities. Until the late 1990s the search for a formal recognition of a special status by or for the Orthodox Church was less evident in Bulgaria than in Greece and other transitional societies. In the Bulgarian case the all-too-recent history of subservience and lack of resistance to the old regime weakened the Church's moral case for recognition. Despite this, by the end of the 1990s there were a few signs that elements within the Church and the political elite might seek to strengthen the formal position of the Orthodox Church. Whilst the minorities did not necessarily object to a description of the majority Church as 'traditional', they did oppose any reference to a Church of the nation, with its implication that those who did not belong were somehow not really Bulgarians. They also feared that a law resembling any of the three drafts under consideration might create the conditions for the re-emergence of some of the forms of discrimination, which they had faced during the middle of the 1990s. (Anderson, 2000, pp. 6, 16)

The debate polarised participants into two distinct camps: liberals, advocating a radical disestablishment framework for the new law on religion<sup>26</sup> on the one hand and

the communitarians, advocating the framework of a 'quasi-established church' on the basis of 'ethnic-cultural heritage' argument on the other.<sup>27</sup>

The liberal framework, which dominates political theory, demands disestablishment as a measure for securing freedom in a particular cultural space. There is increasing evidence, however, that this liberal approach is more neglectful than heedful of cultural distinctiveness, and especially that of religious communities, with ethical, ritual and cultural apparatuses. From a formal point of view, this liberal framework is not to be ignored, especially by countries aspiring to membership of the European Union. On the other hand, increasingly there are calls for a critique of the liberal position, questioning the long-term effects of the liberal agenda on multicultural societies.

It is interesting to note that minority religions do not necessarily adopt a defensive stance in relation to the majority religion. Britain is an example of a country where the religious domain is not seen as a sphere of competition. Examples from Britain suggest that the minority religions do not support the disestablishment of the Church of England. The loudest voices in favour of the *status quo* come from the camp of the minority religions, a kind of 'unexpected support for establishment from those religious groups which seem to lose out because of it' (Rowland, 1998, p. 126).

Chief Rabbi Jonathan Sacks has recently argued that for cultural diversity to function properly, it requires a background culture which creates a unified culture within which different values can be publicly expressed.

In Sacks' view the trouble with pluralism is that it does not possess the resources to cope with actual problems in society. Pluralism endorses mutually exclusive visions of the good, and, by abandoning the concept of a common good, leaves us inarticulate in the face of cultural collision. What is required is a frank recognition that any culture requires a certain common ground between its members if conflicts of interest are to be worked out peaceably (Rowland, 1998, p. 127). Sacks expresses this idea with the help of a linguistic metaphor.

Modern citizenship requires that we are able to speak two languages. One, which derives from one particular tradition, the place we learn who we are, who we belong to and what we believe. The other derives from the public culture. This is the language of citizenship, which expresses the shared values, traditions, and conventions that produce a common life. (Rowland, 1998, p. 127)

According to Sacks, disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions (Rowland, 1998, p. 127). Rabbi Sacks emphasises the danger of cultural fragmentation, which would be accelerated by disestablishment. Tariq Modood, a Muslim thinker speaking for the second biggest religious minority in Britain, points to the dangerous cultural vacuum which would be left by disestablishment. A fairly minimal, open-minded Anglicanism, which stands as an ongoing reminder of the public dimension of religion, is much less a danger to minority religion than an unrestrained, triumphal secularism (Rowland, 1998, p. 126).

### **Established Religion and the European Convention on Human Rights**

Another central claim of the critics of the concept of religious establishment is that it is against the principles of Article 9 of the European Convention on Human Rights.

Defining the status of the church *ex lege* is a choice being made in the light of the specific problems which the BOC has encountered in the postcommunist period. Such a statutory arrangement, however, goes beyond a purely technical solution. It is hard to imagine getting closer to a concept of an established church. In a sense there is probably no need to have a non-separation clause as a precondition for the existence of the established church. Although the examples of countries with established religion do also present a model of non-separation between church and state, the main point of the establishment clause is that a particular religion and its system of beliefs is specifically considered to be a part of the constitutional foundations of the land. It is really very difficult to see to what extent the very idea of establishment is incompatible with the jurisprudence of the European Court of Human Rights. The English experience of maintaining the concept of an established church and a jurisprudence consistent with developments in the jurisprudence of the European Court of Human Rights is a particularly interesting example in this respect as it addresses the question to what extent established religion *per se* is compatible with the Convention. Very interesting, in this respect, is the argument of the English courts in favour of enforcing strict liability for the crime of blasphemy as recently as in *Whitehouse v. Lemon* (1979) and in *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* (1991). While in the first case strict liability for blasphemy was considered appropriate, in the second case, a civil action instigated by a group of British Muslims against Salman Rushdie in the aftermath of the publication of his *Satanic Verses* failed on the ground that blasphemy is a crime which can be committed only against the Christian religion. I will not go into details about the reasons why the court made such a distinction in *ex parte Choudhury*. In *Whitehouse v. Lemon* the House of Lords upheld the decision of the lower court to punish blasphemy as a medieval crime of strict liability. The crime of blasphemous libel in a way affirms the view that it is essential that the political sovereign is the sole legitimate interpreter of religious truth. What is important for the present research is the point the court makes in describing blasphemy as an offence against the constitutional order, since an offence against the constitutionally established church is deemed to be equivalent to an offence against the sovereign itself. An interestingly similar rationale emerges from cases addressing the same matter in Austria (Otto-Preminger, 1995). This view is also supported in many earlier blasphemy trials. According to Chief Justice Hale, 'To say religion is a cheat, it is to dissolve all those obligations whereby the civil societies are preserved' (Taylor's Case, 1676). Similarly, Lord Redmond states that 'To say an attempt to subvert the established religion is not punishable by those laws upon which it is established, is an absurdity' (*R. v. Woolston*, 1729). In *R. v. Gathercole* (1838):

a person may without being liable to prosecution for it, attack Judaism, or Mohamedanism, or even any sect of the Christian religion (save the established religion of the country); and the only reason why the latter is in a different situation from the others is because it is the form established by law, and is therefore a part of the constitution of the country. In like manner, and for the same reason, any general attack on Christianity is the subject of criminal prosecution, because Christianity is the established religion of the country. (*R. v. Gathercole*, 1838)

One could argue that the existence of texts in those Constitutions laying down certain theological claims (for example Ireland) or creating a majority church *ex lege* by defining it in a Constitution or in secondary legislation (for example Greece, Bulgaria,

Spain, the UK, Denmark, Sweden, Poland or Germany) effectively creates a strong possibility that an offence against the religion established *ex lege* could be an offence against the law which establishes it.

In such a context, the constitutional principle of separation between religion and the state becomes partly redundant, since establishment *ex lege* means that a religious organisation is effectively not separate from the state, because as a legal person it is a creation of the state's legislature and contesting its status could in certain circumstances amount to contesting the very law which establishes it.<sup>28</sup>

The contrast between Christianity and other religions is illustrated by the comparison between *Whitehouse v. Lemon* and *ex parte Choudhury*. Despite acknowledging several instances of judicial comment on the oddness of protecting only Christianity, and indeed the statement by the judge of first instance in *Whitehouse v. Lemon* that he would then have been prepared to take the law as extending beyond Christianity, the judges of the Queen's Bench Division flatly refused to give an extensive interpretation of the law. Part of their argument for not making such an extension demonstrates again the way in which religion is to be protected only as a matter of civil peace. As Counsel for Rushdie argued,

The existence of such an extended law of blasphemy would encourage intolerance, divisiveness and unreasonable interference with freedom of expression. Fundamentalist Christians, Jews or Muslims could then seek to invoke the offence of blasphemy against each other's religion, doctrines, tenets . . . An extended law of blasphemy which applied to all religions could be used as a weapon between Protestants and Roman Catholics in Northern Ireland or by fringe religions such as the Church of Scientology . . . it is clear that there are fundamental differences which would be capable of setting one religion against another under an extended law of blasphemy. (R. v. Chief Metropolitan, 1991, pp. 321–22)

The European Court of Human Rights held not only that the UK was entitled to punish blasphemy against the Christian religion, but that it was not discriminatory to refuse to punish blasphemy against another major faith. It is interesting to note that when the restrictions placed by the UK authorities on minority faith requirements were subject to challenge in the European Court of Human Rights, the latter almost invariably ruled that the state's impositions on the exercise of religious freedom (the manifestation of religion, as opposed to the freedom to hold religious views (Robertson, 1998, pp. 187–88) were justified under Clause 2 of Article 9 of the Convention. Similarly, in July 2002 Lord Chancellor, Lord Irvine, told peers that he had no plans to change the laws which prevent the monarch and heir to the throne from becoming or marrying a Roman Catholic. Lord Irvine considered that there was 'no clear or pressing need' for change to the Act of Settlement 1701. He was answering Lord Falconer's assertion that the Act was 'plainly discriminatory' (a view which he had noted the prime minister, Tony Blair, agreed with). Lord Irvine acknowledged that 'in principle it can't be right that Catholics are unable to succeed' (HL Hansard, 2002), but stated that there were no plans to legislate in this area. He added that 'these views are very widely shared by leaders of both the Anglican and Roman Catholic Churches'. His rationale apparently was that 'where legislation could have far-reaching effects on our historic constitutional arrangements, both in the UK and in the Commonwealth, it is a good principle I would recommend to consider legislative change only where it can be maintained that there is a clear and pressing need for

change'. But the Act had 'no present discriminatory impact'. Lord Alton, a Catholic, suggested that the government might repeal 'discriminatory' parts of the Act, although he admitted: 'This is not an issue that troubles people from the Catholic tradition or indeed from most religious traditions. Most people in this country who have a religious belief are full of joy that we have so little discrimination and that there is such a pluralistic and tolerant situation.' Lord Irvine concluded that the Act might be repealed if a future monarch or heir wished to convert to Catholicism, in which case the Act would then be likely to have a discriminatory impact and the matter would have to be addressed (HL Hansard, 2002). It is interesting to note the distinction Lord Irvine makes between discrimination in nature and discrimination in impact, suggesting that only when specific circumstances had arisen would there be reasonable grounds for reevaluating the status of the established religion in connection with the Act of Settlement 1701.

This is the approach that the Bulgarian Constitutional Court appears to be taking in connection with the term 'traditional religion': questions of discrimination deriving from the status of traditional religion can be addressed only in specific, not hypothetical, situations (KS 12/5, 2003).

Germany, in a different way but to the same effect, has developed a system of separation of church and state which is both moderate and pro-religious by guaranteeing several institutional links between state and religious communities on the constitutional level including specifically Catholic and Protestant faculties of theology, religious education in schools, the organisation of religious communities as public law corporations, church taxes, compensation for the secularisation of real estate, protection of monuments, church holidays, and care of souls in prisons and the military. The modern state, unlike the former Christian state, lacks the competence to decide religious questions, and accordingly theology has to remain part of the university, sacred monuments must not be left to become dilapidated, and religious education is available in state-sector schools. In contrast with the American model of church-state relations, the German model has overcome the traditional liberal programme of strict separation of state and society. The concept of separation of church and state has been substantially modified in these new fields of social and cultural interaction. Rather than the concept of separation between church and state having been rendered obsolete, it has developed a new precision in terms of the separation of competences, in the context of coordination and cooperation. This seems an effective way both of preventing the state from interfering with the churches' spiritual independence and of preventing the churches from intruding into the sphere of state authority, which according to German constitutional law is to be governed solely by the sovereignty of the people.

France, which abides by a wholly different understanding of relations between church and state, nevertheless advocates a radical approach to secular cultural emancipation, which does not take into account cultural diversity and minority rights and therefore supports an 'established culture'. One could see how the creation of a similar model, along Christian lines, by the new democracies of Eastern Europe, wishing to avoid the extremes of militant secularism, might raise concerns.

The above examples show that 'establishment' as non-separation between church and state is perhaps a more complex category than it has hitherto been thought to be (Papastathis, 1997, pp. 108–13). Anderson rightly points out that analysing religious establishment only on the basis of the dynamics of interaction between the state, the majority religion and the minority religions is far too simplistic and that perhaps there is a need for these relationships to be approached via a new interpretation of the

meaning of 'established religion'. At the same time, he takes account of the fact that, whilst it is true to say that there is a strong cultural identification with traditional religious communities, it is not always clear that sociologically they represent a majority of the population, even in the Russian case, of those who actively practise a religious faith. Overlapping with the majoritarian arguments, and often used, as much by political nationalists and secular politicians as by the churches themselves, is the argument that justifies privilege and/or discrimination on behalf of the majority religion by reference to the deep historical connections between that particular religious group and the nation. Through history, it is suggested, this particular religious community helped to shape national consciousness through its doctrine and institutions (Anderson, 2000, p. 6).

It seems that religious establishment, as a point of focus for creating a background culture, is the essential feature of established religion and, what is more important, this is completely separate from the issue of constitutional establishment or disestablishment. As its extreme opposite, the model of secular cultural establishment provided by France or Turkey seems to make the same, if not more, claims to a total control over the central civilisational paradigm. This suggests that any theory of established religion ought to go beyond constitutional disestablishment as a formal criterion for identifying disestablishment. The above examples show that separation or non-separation between religion and the state is never absolute, and that formally established religion is capable of providing more religious pluralism than a secularist polity. In our analysis of religious establishment we should therefore attempt to identify all its aspects and perhaps extend the definition of what a religious establishment entails by going beyond the style of confrontational thinking which only raises the fundamentalism of one principle of jurisprudence against another and inevitably results in fragmented findings (Palamas, 1966, p. 224).

## Notes

- 1 Via an establishment clause which defines the BOC as a traditional religion with a political significance alongside the constitutional principle of separation of religion from the state.
- 2 Particularly the balance between preaching the Truth and freedom of religion as a means for arriving at that preaching of the Truth. 'This Vatican Council likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power. Religious freedom, in turn, which men demand as necessary to fulfil their duty to worship God, has to do with immunity from coercion in civil society. Therefore it leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ' (Pope Paul VI, 1965).
- 3 In fact this kind of clarification was included in the second Denominations Bill by Kiril Milchev MP and Rupen Krikorian MP. See *Zakonoproekt*, 2002a.
- 4 'Vyarvam v Edna Svyata, Säborna i Apostolska Tsärkva' ('I believe in One, Holy, Catholic and Apostolic Church'). *Sluzhebник*, 1959, p. 66, corresponding to the English version in *Liturgy*, 1995.
- 5 From Greek *autokephalos*, literally 'self-headed'. According to the *Oxford Dictionary of the Christian Church* this is a term used in the early church to describe bishops who were under no superior authority and thus independent both of patriarch and metropolitan. Its principal later and current use, however, is to describe the modern national churches that make up the Eastern Orthodox Church which though normally in communion with Constantinople are governed by their own national synods.

- 6 The Bulgarian Exarchate was created by a *firman* issued by the sultan in 1870 granting permission for the foundation of an autonomous Bulgarian Church. The text of the *firman* is to be found in Noradounghian, 1902, pp. 293–95. In Bulgarian historiography this act is treated as an effective recognition of the existence of a Bulgarian nation on the territory of the Bulgarian Empire.
- 7 See, for example, a Decision of the Supreme Administrative Court which concludes that fairness and the fundamental principles of religious freedom could lead to the conclusion that there could be two religious institutions under the name ‘Bulgarian Orthodox Church’, with two separate governing bodies, under essentially the same constitution (Opredelenie, 2000). See also the earlier case of a Jehovah’s Witness being refused parental rights on account of her ‘membership of a dangerous sect’ (M. v. Bulgaria, 1996).
- 8 See reports by the Bulgarian Helsinki Committee, Tolerance Foundation ([http://www.hrwf.net/html/bulgaria\\_2003.html#Religiousfreedompractice](http://www.hrwf.net/html/bulgaria_2003.html#Religiousfreedompractice)) and The Rule of Law Institute (<http://www.hrwf.net/html/bulgaria2002.HTM#OpinionbytheRuleofLawInstitut>), and the assessment by the Council of Europe (Atkinson, 2003).
- 9 *Symphonia*, a feature of Byzantine political theology, describing the unity of political action between church and state. ‘Symphony’ is usually used in the argument that ‘Caesaropapism’ is not an adequate term to describe relations between church and state in Byzantium, partly because the two domains have never been clearly distinguished. Often the Byzantine emperor is referred to as a semi-priest and his coronation as an eighth sacrament.
- 10 A statute issued by the sultan in 1839, *Giulhan Hatisherif* institutes equal rights for all subjects.
- 11 *Hatiumaiun* was issued by the sultan on 18 February 1856 under pressure from the West. It affirms and accelerates the commitment to reforms in order to improve the status of Christian people, and was used as a legal framework for lobbying for the constitution of an independent Bulgarian church.
- 12 Similar statements also appear in the debates surrounding the passing of the US Constitution, emphasising the importance of the Christian foundations of the new constitutional order. See: Gedicks, 1995; Haiman, 2003, pp. 8–25.
- 13 ‘The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928’ (Constitution, 1975, art. 3 (1)).
- 14 ‘In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Eire, Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves this Constitution’ (Constitution of Ireland, Preamble).
- 15 The following is a non-exhaustive list of UK legislative measures which reflect the changing relationship between the established religion and the other religions in the UK: Toleration Act 1688; Roman Catholic Relief Act 1791; Religious Disabilities Act; Roman Catholic Relief Act 1829; Liberty of Religious Worship Act 1855; Places of Worship Registration Act 1855; Charities Act 1960; Oaths Act 1978; Human Rights Act 1998.
- 16 Addressing a religious gathering in November 1997 Cardinal Enrique y Tarancon pointed out that ‘the Church is a social reality . . . and politics has to bear in mind and respect the real

life of the people; it cannot ignore the fact that a large majority of the Spanish people belong to the Catholic Church'. For this reason the Cardinal argued that there had to be some recognition of the church's position in the political reorganisation of the country, and that the church could not simply be treated as one religion amongst many (Anderson, 2000, p. 9).

- 17 Similar arguments surfaced during the Polish constitutional debates of the mid-1990s, with Cardinal Glemp and other bishops frequently referring to the need to take proper account of the wishes of the people. In 1994 the secretary of the Bishops' Conference, Tadeusz Pieronek, argued that given the country's history and the role of Catholicism in recent events there was a need for some formal recognition of the 'public and social role of the church'. Two years later, commenting on the failure of the constitutional draft to meet Catholic demands, he argued that 'this Constitution does not meet the basic expectations of Polish believers who are in a majority'.
- 18 During his Christmas address of 1944 Pope Pius XII established for the first time a positive view of Christian Democracy as a political movement. After the war the pope sensed that the church had arrived at a turning point in history and that it represented a civilisation, the Christian civilisation, face to face with another antagonistic civilisation, that of communism as embodied in the Soviet Union. The notion of a united Europe was very much in the centre of the political manifesto of Adenauer, Shuman and De Gasperi (see Maier, 1959).
- 19 We must not forget either that according to some sources prime minister Simeon Saksoburggotski occasionally receives communion within the sanctuary together with the clergy during 'The Holy things to those who are Holy', a privilege given historically to only one man, the emperor of Byzantium. This is just a reminder that relationships between religion and the state in Eastern Europe are a very complex reality which is influenced by mainstream politics as well as by background political ideas which emerge in connection with a specific political figure (an ex-king, in the case of Simeon II, or a prime minister who shares Samuel Huntington's view that Orthodoxy is incompatible with the ideas of freedom and democracy in the case of Union of Democratic Forces prime minister Filip Dimitrov).
- 20 Unfortunately it proved impossible to obtain the original full text of the report before this article was completed. For a Bulgarian translation see Evans-Lawson Report, 2003. See also Kănev, 2003.
- 21 In fact this was a draft prepared by the Institute of Integration Research, a think-tank of the Movement of Rights and Freedoms. Their project suggesting complete separation of religion from the state shows indirect links with the concept of secularism as defined in post-Kemalist Turkey. The Turkish Constitutional Court has clarified the meaning of secularism: 'from a legal point of view, in a classical sense, secularism means that religion may not interfere with state [affairs] and the latter not with religious affairs' (Boyle and Sheen, 1997, p. 398). Viewed as the most important pillar of the state and the nation, protected by the Constitution as well as by numerous laws and regulations, secularism was established as an ideology at the expense of Islam, and it restricted freedom of religion particularly in the early years of the Republic. This changed with the introduction of a multiparty system in 1946 and the recent repeal of Articles 141 and 142 of the Criminal Code (prohibiting communist activities) and Article 163 (prohibiting violation of the principle of secularism). After the adoption of the new Constitution in 1982 there was a shift in the jurisprudence of the Turkish courts in treating freedom of expression as related to individual belief. Article 10 of the 1982 Constitution provides the same constitutional protection for all religions and rules that the state has no power to define, create or change any religion. Blasphemous acts against any religion (in contrast with English law) are punishable offences in the Turkish Criminal Law. Article 24 of the 1982 Constitution provides guarantees for everyone's freedom of religion and expression. State interference is viewed only as an overseeing of the protection of the principle of secularism in the area of religious and moral education and in the use of religion for political purposes (Constitution, 1983).

- 22 There are also a number of documents in the archive of the Denominations Directorate concerning the replacement of foreign Roman Catholic priests with Bulgarian ones. See Direktsiya, 1925.
- 23 According to the Hellenic Constitution Greece is the only Orthodox state in the world. Article 3.1 of the Constitution states that the Eastern Orthodox Church is the 'prevailing' religion. The Constitution sets up a regime where there is neither an established church nor complete church-state separation. However, the European Court of Human Rights noted in 1993 that 'according to Greek conceptions, it [the Church] represents *de jure* and *de facto* the religion of the state itself, a good number of whose administrative functions it carries out'. The involvement of the Greek Orthodox Church in areas of public life which come under state regulation has been institutionalised by means of the provision of Article 2 of the Charter of the Church of Greece, which constitutes a law of the state. Its integrative function has been constitutionalised through the Ministry of Education and Religion, by which it exercises administrative control over all religious affairs in Greece. The state also pays the salaries of Orthodox clergy and for the functions which other ministers of religion perform as public officials in civil matters, such as marriages (for which there also exist civil ceremonies). However, the prerogatives of the 'prevailing religion' with respect to other 'known' religions have been tempered by other provisions of the Constitution. Thus everyone can enjoy their individual and political rights, irrespective of their religious convictions.
- 24 Four main holidays of the Bulgarian Orthodox Church are also official holidays in Bulgaria, in addition to several weeks of statutory paid holiday.
- 25 During the communist period this church feast remained a national day of celebration of the Slavic Script and Culture and a corporate festival of the cultural and educational sector.
- 26 The Union of Democratic Forces, the Movement of Rights and Freedoms, the Bulgarian Helsinki Committee, the Tolerance Foundation (the Bulgarian branch of Human Rights Without Frontiers), the Rule of Law Institute (the Bulgarian branch of Advocates International), and most of the minority religious groups.
- 27 The National Movement Simeon II, the Bulgarian Socialist Party, the Gerg'ovden Movement (the Interior Macedonian Liberation Organisation) and the Bulgarian Orthodox Church.
- 28 It is an interesting question whether a state legislature has no other choice but to acknowledge the majority religion's existence as a cultural entity *per se* and thus *ex lege* on some legislative level should the majority religion be recognised on a constitutional level.

## References

- Anderson, J. (2000) *Justifying Religious Privilege in Transitional Societies*, paper delivered at ECPR Workshops, Copenhagen.
- Atkinson, M. (2003) *New Bulgarian Law on Religion Known as the Confessions Act 2002*, motion for an order presented by M. Atkinson and others, doc. 970313, February (Parliamentary Assembly, Council of Europe).
- Boyle, K. and Sheen, J. (1997) *Freedom of Religion and Belief: a World Report* (London, Routledge).
- Brzezinski, M. (1998) *The Struggle for Constitutionalism in Poland* (Basingstoke, Macmillan).
- BCP (1967) *Informatsiya otnosno narastvastyiat broi grazhdani noseshti krástove* (12.10.1967, A95 F1 OP40 AE122, Bulgarian Communist Party Archive).
- BCP (1969) *Informatsiya ot päryviya sekretar na Bälgarskoto posolstvo v SSSR väv vrázka s razrabotvaneto i vävezhdaneto na novi praznitsi i rituali v SSSR za uchastieto na sävetskite profsäuzi v tyakh* (25.2.1969 – 3.3.1969, A101 F1 OP40 AE206, Bulgarian Communist Party Archive).
- BCP (1970a) *Reshenie na Polithiuro na Tsentralniya Komitet na Bälgarskata Komunisticheska Partiya ot 26 May 1970 i doklad väv vrázka s naznachavaneto na dopälnitelen shtaten sluzhitel otgovariyasht za razrabotvaneto i vävezhdaneto na novi tsivilni i sotsialisticheski rituali i traditsii* (A86 F1 OP36 AE975, Bulgarian Communist Party Archive).

- BCP (1970b) *Informatsiya vāv vrāzka s Velikdenskite chestvaniya* (29.4.1970, A108 F1 OP40 AE284, Bulgarian Communist Party Archive).
- BCP (1971) *Protokol na sreshtata na rākovoditelite na Otdel 'Propaganda', 8.2.1971; Dokladi vāv vrāzka s vāvezhdaneto na grazhdanski rituali, podobriyavaneto na propagandni lektsiī, osnobni nasoki v partiinoto obuchenie i t.n* (A108 F1 OP40 AE339, Bulgarian Communist Party Archive).
- BCP (1972) *Informatsiya ot sluzhitelite v otdel 'Propaganda', oblastnite komiteti, Tsentralniya komitet na Komsomola, Profsāiuzite i Dārzhavniya sāvet Narodna Republika Bālgariya vāv vrāzka s vāvezhdaneto na reshenieto na Tsentralniya komitet na Bālgarskata Komunisticheska Partiya ot 11 Mart 1971 za vāvezhdaneto na novi grazhdanski rituali v zhivota na trudovite khora* (13.6.1972–28.7.1972, Bulgarian Communist Party Archive).
- Constitution (1953) Constitutional Act of Denmark 1953 (Folketing, Copenhagen).
- Constitution (1964) Constitution of Malta Act 1964, 21 September (The Malta Independence Order, 1964, as amended by Acts: XLI of 1965, XXXVII of 1966, IX of 1967, XXVI of 1970, XLVII of 1972, LVII, LVIII of 1974, XXXVIII of 1976, X of 1977, XXIX of 1979, IV of 1987, XXIII of 1989; Proclamations Nos. II and VI of 1990; Acts XIX of 1991, IX of 1994; Proclamations IV of 1995 and III of 1996; Acts: XI of 1996, XVI of 1997, III of 2000 and XIII of 2001).
- Constitution (1975) Hellenic Constitution, adopted on 11 June 1975, revised on 6 April 2001, <http://www.parliament.gr/english/politeuma/default.asp>.
- Constitution (1983) Constitution of Turkey 1983, <http://www.tbmm.gov.tr/anayasa/constitution.htm>.
- Constitution of Ireland, <http://taoiseach.gov.ie/upload/publications/297.rtf> (accessed 3 October 2003).
- Corley, F. (2002) 'Bulgaria: minorities object to religion bill', *Keston News Service*, 17 December.
- Council (2000) Council Regulation (EC) no. 1347/2000, 29 May (on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses), Treaties with the Holy See Council Regulation (EC) No 1347/2000 Official Journal L 160, 30/06/2000, pp. 19–29.
- Dimitrov, I. Zh. (2003) 'Zakonāt za veroizpovedaniyata – priznanie za istoricheskata i nastoyashta rolya na BPTS', *Tsārkoven Vestnik*, 103, 3, 1–15 February, <http://cv.dir.bg/03-2003.htm> (accessed 6 September 2003).
- Direktsiya (1925) *Direktsiya po Veroizpovedaniyata, Molbi za perioda 1907–1925* (SA, 904. IV. 3a1, tom. 1–6).
- Documents (1979) Documents concerning the accession of the Hellenic Republic to the European Communities, Final Act, Joint declaration concerning Mount Athos, Official Journal L 291, 19/11/1979, p. 186.
- Endicott, T. A. O. (2000) *Vagueness in Law* (Oxford, Oxford University Press).
- Evans-Lawson Report (2003) *Evans-Lawson Report*, <http://bclf.tripod.com/evans2003.htm> (accessed 3 August 2003).
- Gedicks, F. M. (1995) *The Rhetoric of Church and State: a Critical Analysis of Religion Clause Jurisprudence* (Durham, NC, Duke University Press).
- Genchev, N. (1977) *The Bulgarian National Revival Period* (Sofia, Sofia Press).
- Genchev, N. (1988) *Bālgarskoto vāzrazhdane* (Sofia, Izdatelstvo na otechestveniya front).
- Gerg'ovden-VMRO (2001) *Pametna belezhka ot traditsionniya konsultativen sāvet na politicheskaya sāyuz 'Gerg'ovden-VMRO'* (Sofia, 11 July).
- Haiman, F. S. (2003) *Religious Expression and the American Constitution* (East Lansing, MI, Michigan State University Press).
- Hasan (2002) *Hasan and Chaush v. Bulgaria* (2002) 34 EHRR 55 (European Court of Human Rights Grand Chamber).
- HL Hansard (2002) *HL Hansard*, 2 July 2002, vol. 637, part 162, col.120, Act of Settlement 1701 (House of Lords), [http://www.publications.parliament.uk/pa/ld200102/ldhansrd/v0020702/text/20702-01.htm#20702-01\\_head1](http://www.publications.parliament.uk/pa/ld200102/ldhansrd/v0020702/text/20702-01.htm#20702-01_head1) (accessed 12 October 2003).

- Kănev, K. (2003) 'Ekspertite na Săveta na Evropa pisakha dvoika na Zakona za veroizpovedaniyata', *Obektiv*, 100, <http://www.bghelsinki.org/obektiv/100/100-05.html> (accessed 3 September 2003).
- Khilendarski, P. (1981) *Slavyanobălgarska istoriya* (Sofia).
- Kokosolakis, N. (1995) 'Greek Orthodoxy and modern socio-economic change', in R. H. Roberts (ed.), *Religion and the Transformations of Capitalism: Comparative Approaches* (London, Routledge).
- Konstitutsiya (1991) (Obn. DV, br. 56 ot 13.07.1991).
- KS 5/6 (1992) *Reshenie no. 5 ot 11 yuni 1992 po konstitutsionno delo no. 11 ot 1992, dokladchitsi sădiite Tsanko Khadzhistoichev i Pencho Penev* (Obn. DV, br. 49 ot 16.06.1992) (BKS), <http://www.constcourt.bg/> (accessed 12 September 2003).
- KS 12/5 (2003) *Reshenie na konstitutsionniya săd no 12/5 yuli 2003 po konstitutsionno delo 3/2003* (BKS), <http://www.constcourt.bg/> (accessed 12 September 2003).
- KS 21/11 (1996) *Reshenie no. 21 ot 14 noemvri 1996 po konstitutsionno delo no. 19 ot 1996, doklančik sădiyata Todor Todorov* (Obn., DV, br. 102 ot 29.11.1996) (BKS), <http://www.constcourt.bg/> (accessed 12 September 2003).
- Liturgy (1995) *The Divine Liturgy of St John Chrysostom* (Oxford, Oxford University Press).
- M. v. Bulgaria (1996) *M. v. Bulgaria* 22 EHRR EurCommHR.
- Maier, H. (1959) *Revolution und Kirche: Studien zur Frühgeschichte der Christlichen* (Freiburg im Breisgau).
- Metropolitan (2002) *Metropolitan Church of Bessarabia and Others v. Moldova* (2002) 35 EHRR 13 (European Court of Human Rights).
- Michel, P. (2002) 'Religious renewal or religious deficiency: religion and democracy in Central Europe', *Religion, State & Society*, 20, 3–4, pp. 340–41.
- Ministerski Săvet (2003) *Stanovishte ot Ministerskiya săvet na Republika Bălgariya po konstitutsionno delo no. 3 za 2003*, <http://www.constcourt.bg> (accessed 2 September 2003).
- Monitor (2002a) 'DPS natisna i isliyamăt da e traditsionna religiya', *Monitor*, 19 December 2002.
- Monitor (2002b) 'Myuftiistvoto skochi sreshtu zakona za veroizpovedaniyata: v Evropa priznavat islyama samo dve strani', *Monitor*, 23 December 2002.
- Noradougihian, G. (1902) *Recueil d'actes internationaux de l' Empire Ottoman* (Paris).
- Opređenje (2000) *Opređenje po adm. Delo No 5748/2000* (Vyrhovniyat administrativen săd na Republika Bălgariya, Treto otdelenie).
- Otto-Preminger (1995) *Otto-Preminger Institute v. Austria* (a/295-a) (1995) 19 EHRR 34 ((ECHR) (European Court of Human Rights)).
- Palamas, St Gregory (1966) 'Theophanes, 4: 25, 30', in *Syngramata, Tomos B* (Thessalonica), p. 224.
- Papastathis, C. (1997) 'Tolerance and law in countries with an established church', *Ratio Juris*, 10, 1, pp. 108–13.
- Pollis, A. (1992) 'Greek national identity: religious minorities, rights and European norms', *Journal of Modern Greek Studies*, 10, 2, p. 172.
- Pope Paul VI (1965) *Declaration on Religious Freedom Dignitatis Humanae on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious*, [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat\\_ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat_ii_decl_19651207_dignitatis-humanae_en.html) (accessed 1 September 2003).
- Pundev, M. (1969) 'Bulgarian nationalism', in P. F. Sugar and I. Lederer (eds.), *Nationalism in Eastern Europe* (Seattle, University of Washington Press), pp. 53–66.
- R. v. Gathercole (1838) *R. v. Gathercole* 2 Lew 237 at 254; 168 ER.
- R. v. Woolston (1729) *R. v. Woolston* Fitzg. 64; 2 Str. 834; 1 Barnard. 162; 266.
- R. v. Chief Metropolitan (1991) *R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 All ER 306, per Watkins LJ.
- Raikin, S. (1993) *Politicheski problemi pred bălgarskata obshtestvenost v chuzhbina – sbornik statii, eseta, studii i komentari po politicheski, kulturni, ikonomicheski i istoricheski văprosi publikovani v emigratsiya: 1978-1991v 5 toma* (Sofia, Svobodno zemedelsko zname).

- Ramet, S. P. (ed.) (1989) *Religion and Nationalism in Soviet and East European Politics* (Durham, NC, Duke University Press).
- Robertson, D. (1998) 'The legal protection of religious values in Europe', in J. Rodriguez (ed.), *Religious Liberty and Secularism* (Vatican City, Libreria Editrice Vaticana), pp. 175–92.
- Rowland, J. (1998) 'Religious liberty and the argument for disestablishment', in J. Rodriguez (ed.), *Religious Liberty and Secularism* (Vatican City, Libreria Editrice Vaticana), pp. 119–28.
- Rule of Law Institute (2003) *Report of the Rule of Law Institute*, <http://www.hrwf.net/html/bulgaria2002.HTM#Analysis> (accessed 3 July 2003).
- Runciman, S. (1968) *The Great Church in Captivity: a Study of the Patriarchate of Constantinople from the Eve of the Turkish Conquest to the Greek War of Independence* (Cambridge, Cambridge University Press).
- Schengen (2000) 'The Schengen acquis – Agreement on the Accession of the Hellenic Republic to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990, to which the Italian Republic acceded by the Agreement signed at Paris on 27 November 1990, and to which the Kingdom of Spain and the Hellenic Republic acceded by the Agreements signed at Bonn on 25 June 1991', *Official Journal L* 239, 22/09/2000, pp. 83–89.
- Sega (2002) 'Internet izdanie 16 dekemvri 2002', *Sega*, <http://www.segabg.com/16122002/p0010001.asp> (accessed 28 July 2003).
- Sluzhebnik (1959) *Sluzhebnik* (Sofia, Sinodalno izdatelstvo).
- Taylor's Case (1676) *Taylor's Case* 1 Vent 293; 86 ER 189. See DP 24, at para. 2.10.
- Todorova, M. (1997) *The Effect of Communism on the Pastoral Work of the Protestant Churches in Bulgaria* (Cambridge, Anglia Polytechnic University).
- Ustav (1950) Ustav na Bălgarskata Pravoslavna Tsărkva 1950, <http://www.pravoslavieto.com/> (accessed 6 September 2003).
- Vought, D. G. (1973) *Protestants in Modern Spain: the Struggle for Religious Pluralism* (South Pasadena, CA, William Carey).
- Walters, P. (2002) 'Notes on autocephaly and phyletism', *Religion, State & Society*, 30, 4, pp. 357–64.
- Whitehouse (1979) *Whitehouse v. Lemon; Whitehouse v. Gay News Ltd* (1979) 2 WLR 281 (House of Lords on Appeal from *Regina v. Lemon*).
- Zakon (1949) Zakon za veroizpovedaniyata (Obn. DV, br. 48 ot 1949) (Bălgarsko Narodno Săbranie).
- Zakon (2002) Zakon za veroizpovedaniyata (Obn., DV, br. 120 ot 29.12.2002).
- Zakonoproekt (1997) Zakonoproekt za izmenenie i dopălnenie na Zakona za veroizpovedaniyata 1997, vnesen na 31.07.1997g. ot B. Velikov, V. Vălkanov, P. Slavov i A. Danailov (Bălgarsko Narodno Săbranie), <http://www.bsp.bg/polit/zakon.html> (accessed 7 September 2003).
- Zakonoproekt (2002a) Zakonoproekt za veroizpovedaniyata 2002 no. 248, 26/04/02/254-01-32 (Bălgarsko Narodno Săbranie), <http://www.parliament.bg/appropriations.php?id=6> (accessed 3 September 2003).
- Zakonoproekt (2002b) Zakonoproekt za veroizpovedaniyata 2002 no. 254-01-31 (Bălgarsko Narodno Săbranie), <http://www.parliament.bg/appropriations.php?id=6> (accessed 3 September 2003).