

Testimony of
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Hearing on

Status of Human Rights, Democracy and Integration in South Central Europe

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Mr. Chairman, thank you for taking the initiative to hold this hearing on the status of human rights, democracy, and integration in South Central Europe. The status of religious rights in both society and under law is challenged significantly in each of the states of the area. From active legislative measures to social public contempt directed at religious minorities, the current condition of religious freedom has failed to demonstrate a significant departure from the rigid form and draconian practice under the Soviet system. Regression of religious rights in the Balkans is a reflection of a greater rollback of democratic processes in general in Central and Southeast Europe that must be addressed and dealt with through political and diplomatic tools readily available to the United States, the Organization for Security and Cooperation in Europe, and the entire international community.

Two factors in particular are key to understanding the devolution of religious rights in the region, particularly in the scope of legislative restrictions, each of which plays on the other. First, many of the states in the region have yet to amend the religion laws on the books from the Soviet days. It is their belief that to be a modern European state, the laws must be amended to demonstrate their progress away from Soviet-era systems. Second, and immediately following on the footsteps on the first, these states mistakenly believe that it is imperative that there *be* religion laws at all, and they are using as models restraining legislation from other European states, including France and Russia.

In this testimony, I have painted a broad picture of the religious freedom status in Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Macedonia, Moldova, Romania, Serbia and Montenegro, Slovenia, and Turkey.

ALBANIA

Article 10 of the Constitution of Albania states no official state religion and recognizes the equality of religious communities. However, in practice the traditional religions and predominant religious communities, such as Bektashi, Sunni Muslim, Roman Catholics and Orthodox Church receive a favorable treatment by the state.

A draft of the law on religions by the State Committee on Cults is in discord with the OSCE and European norms. The positive stipulations in the law guarantee basic religious freedom to all religious groups and communities; however, there are several provisions that are intended to undermine freedom of religion in Albania. One of the proposed new provisions sets a high threshold of 500 followers for a community to register with the state. Another condition restricts activities of unregistered religious communities and limits free speech, directly contradicting standards of the OSCE.

The new draft of the law on religion is viewed by the OSCE as unnecessary, as the Constitution does not warrant for a special law on religion and the current version better reflects international standards for religious freedom.

There have been isolated incidents of attacks or discrimination of religious minorities. Jehovah's Witnesses came under pressure following the allegations against the religious group's influence in a series of juvenile suicides. Other isolated incidents of mistreatment of religious communities reflect a rather weak rule of law in the country than the state intent to discriminate against and prosecute religious minorities.

AUSTRIA

The Government of Austria possesses two laws classifying various religious organizations – the 1874 Law on Recognition of Churches and the 1998 Law on Status of Religious Confessional Communities. These laws have partitioned faith groups into three classifications: state-acknowledged religious societies, confessional communities and associations.

As the only classification recognized by the state as a religion, religious societies hold multiple advantages. The 1874 law guarantees religious societies with tax-related privileges, public freedom of expression protection, instruction in public schools by believers' own, government assistance of religious private schools, military chaplains of members' same faith and weekly television air time provided free of charge by the government.

Thirteen religious societies presently operate in Austria: the Roman Catholic Church, the Protestant churches (Lutheran and Presbyterian, called "Augsburger" and "Helvetic" confessions), the Islamic community, the Old Catholic Church, the Jewish community, the Eastern Orthodox Church (Russian, Greek, Serbian, Romanian, and Bulgarian), the Methodist Church of Austria, the Church of Jesus Christ of Latter-day Saints (Mormons), the Armenian Apostolic Church, the New Apostolic Church, the Syrian Orthodox Church, the Buddhist community, and the Coptic Orthodox Church.

The 1998 Law on Status of Religious Confessional Communities created new requirements for organizations to qualify for religious society status. Under section 11 of the 1998 law, religious groups must meet the following criteria:

1. be in existence for a period no shorter than 20 years; the group must be classified as a confessional community for at least 10 of these years;

2. have a membership equaling 2 persons for every 1000 Austrian citizens, or 16,000 members;
3. possess a “positive attitude toward society and the State;”
4. not initiate or take part in illegal disruption of relationships of other recognized religious societies or any other religious communities.

If the thirteen current religious societies in Austria were to abide by these standards only four would qualify for state recognition.

The second tier of religious organizations is the confessional community. In order to be classified as a confessional community, a religious organization must apply through the Ministry of Education and Arts. The application process includes providing proof of 300 group members in residence in Austria, providing documentation of the group’s belief system and its differences from other already recognized organizations. The Ministry of Education and Arts has the power to deny the application on the basis that “the teachings of their application are against the public safety interests of a democratic society, the public order, health and morals, or infringes on the protection of the rights and freedoms of another.” A six-month waiting period before ruling is standard. Only after being approved does the community have the ability to legally purchase property and engage in contracting services and products.

The Austrian government recognizes ten religious groups as confessional communities: the Seventh-day Adventists, the Jehovah's Witnesses, the Baha'i Faith, the Baptists, the Evangelical Alliance, the Movement for Religious Renewal, the Hindu Religious Community, the Free Christian Community (Pentecostalists), the Mennonites, and the Pentecostal Community of God.

The third classification of religious groups are associations. Under this law, groups who do not meet the criteria for religious societies or confessional communities can organize as an association and receive some of the benefits of confessional communities, most notably, real estate purchasing.

Any religion that is not recognized by the Austrian government is often viewed by Austrian society as a “sect.” In Austrian cultural terms, a sect is a danger to societal balance, as seen by a recent poll in which 90% of Austrians believed sects are “inherently dangerous.” This mentality is often aided by the government. Family counseling centers have been established to address the so-called threat of sects. These centers distribute materials listing religious minorities deemed dangerous, including Scientology, Yoga, Transcendental Meditation, and Hare Krishna.

The Ministry for Social Security and Generations, in conjunction with the City of Vienna, also works in similar discriminatory fashion. These groups partner to subsidize a group entitled The Society against Sects and Cult Dangers (GSK) with the purpose of counteracting the growth and influence of sects by disseminating information to schools in addition to running a counseling center to aid those who have been victims of cults.

BOSNIA & HERZEGOVINA

The Law on Freedom of Religion and Legal Position of Religious Communities and Churches in Bosnia and Herzegovina violates OSCE and international standards on religious freedom. Not only does the law generate a great societal conflict, it perpetuates ethnic and nationalistic tensions and cultural and religious intolerance among various religious communities in Bosnia and Herzegovina.

Religious tensions that occasionally erupt in violence against religious communities are directly related to the ethnic lines dividing the country. A religious identity, for the most part, is reflected in the ethnic identity in the Bosnian population. Bosnians generally are associated with Islam, Bosnian Croats with the Roman Catholic Church, and Bosnian Serbs with the Serb Orthodox Church. The Jewish community maintains a very small but important presence in Bosnian society. Despite the constitutional and legal provisions protecting religious freedom, discrimination against religious minorities occurs in virtually all parts of the country through a high threshold required for registration and penalties associated with free speech expressions. These act as the two predominantly used mechanisms to hinder the activities of religious minorities in the country. State favoritism expressed toward particular religious communities contributes to the increase in inter-ethnic tensions in the country. State Department annual report also notes cases of misuse of religious symbols for political purposes and instigation of nationalistic sentiments. Moreover, a greater divergence within the society is perpetrated by foreign missionaries preaching a fundamentalist form of Islam, unfamiliar to the indigenous Bosnian Muslim traditions. This advances a greater division not among various religious communities of Bosnia, but within the Muslim community.

BULGARIA

In 2002, a law was passed in Bulgaria that required all religious communities and organizations, except for the Orthodox Church, to register with the government. Even though the law requires only registration with the Sofia City Court, some religious organizations are still harassed by local authorities for not registering with the local courts.

The U.S. State Department reported that many religious communities expressed a very real concern that some missionaries and other religious leaders were being denied visas to enter Bulgaria. Also being denied by the government were religious leaders trying to renew their residency visas to remain in the country. They have since resorted to applying for tourist visas but that visa greatly limits the time they are allowed to stay in the country.

Although showing some progress, the Bulgarian government has been very slow and reluctant to restore the property that was confiscated under the Communist regime. Many religious organizations still have outstanding claims on property that has not been restored to them.

CROATIA

The Government of Croatia neither has a state religion nor imposes any restrictions on the religious communities that operate freely within their borders. The Croatian government has an agreement with the Catholic, Orthodox, and Muslim communities, granting both those in the military and those in prison access to religious leaders of their affiliation.

Catholicism is the main religion taught in the public school system. However, the government does allow other religious education courses to take place if there are enough students to merit it. Even though this is legally allowed, many school children do not want to openly identify themselves as Serbian Orthodox for fear of social persecution.

Proving an increasingly difficult task for the Croatian government is the issue of refugees. Ethnic Serbs have run into problems when trying to return to Croatia. The Croatian government has often delayed repairing or rebuilding houses and communities where ethnic Serbs reside. Also, all new priests from the Orthodox Church must frequently renew their permits and residency status with the government. The U.S. State Department reports that many have criticized the re-registration practice as it leaves a heavy burden on families to acquire health care benefits and pensions. The State Department also reports that ethnic Serbs are continually being discriminated against in many venues to include but not limited to housing and employment.

During the Yugoslav Communist rule, a large amount of property was nationalized or outright confiscated by the Communists. The Croatian government had agreed to property restoration or compensation with the Roman Catholic Church, but are very slow, even hesitant, to show progress in this area.

Many other religious communities, who do not have a set agreement with the government, and who also lost their property to the Communists during their rule, have complained about the lack of cooperation and aggressiveness on the part of the Croatian government to resolve this issue in a timely fashion. For example, the State Department reported that in 2004, the Serbian Orthodox community only had 10% of their land restored. It was also reported that Jewish property restoration was stalled. Plans for land development in the Muslim community have also been suspended. Even after a permit to construct a mosque was issued the government continued to delayed the project for over ten years.

In regards to anti-Semitism, the police nonchalantly investigate threats and so forth, but hardly even produce suspects. Even when party officials demonstrate anti-Semitic remarks, no action is taken.

GREECE

Under Article 13 of the Greek Constitution, proselytism is forbidden. Greece is the only member state of the European Union to list such a prohibition in its constitution. The Greek Orthodox Church has a significant amount of influence over the political and cultural environment in

Greece. The government provides financial assistance in maintenance of Orthodox Church buildings and also pays for salaries and training for clergy.

Greece does not have a formal application process for recognition as a religion. The two components that create distinctions between religious organizations are their legal standing and their possession of, or lack there of, house of prayer permits.

In Greece two categorizations of legal entities exist. “Legal persons of public law” only describe three religious organizations: The Orthodox Church, Judaism, and Islam. All other religious groups are deemed “legal persons of private law.” As private bodies, these religious groups face many limitations. As private organizations these religious groups cannot be represented in court as a religious entity. They also are not permitted to purchase or own property as a religious body; instead, all property must be registered with a legal entity with the expressed purpose of property ownership.

According to Law 1363 from 1938 and Law 1672 from 1939, in order to open houses of worship religious groups are required to apply for houses of prayer permits from the Ministry of Education and Religion. By law the Ministry can consult with local Greek Orthodox Bishops when making a decision on permit applications and has done so in recent applications of Scientology and Jehovah’s Witnesses. The Church of Scientology was denied a permit on the grounds that it failed to meet the standards of a religion. As a result, Scientology has registered as a non-profit organization.

The government has an agreement with the Muslim community of Thrace under the 1923 Treaty of Lausanne to allow for the establishment of “wakfs” – charitable and social organizations in the community. The Government also appoints and subsidizes two muftis and one assistant mufti in Thrace, arguing such practice keeps with procedure in Muslim countries. This has been met with opposition by many Muslims who insist that a non-Muslim country does not have the right to appoint muftis.

Another example of the Orthodox Church’s relationship with the government can be seen in the building of a church is the case of the Evangelical Free Church of Filiatra, on the Peloponese peninsula. Although the government had given its permission, the local Orthodox bishop objected to this by declaring the need to prohibit illegal proselytism. This opinion of the Orthodox bishop leaves the legal situation of these Protestant believers still unclear.

ITALY

The Italian government has recently reinitiated efforts to pass a religion law involving mental manipulation. If the draft law is to be added to Italy’s Criminal Code, it would be detrimental to legitimate conversions. Even though this law is aimed at sects and cults operating within Italy, it will be negatively affected other recognized religions in Italy.

The similarity between the proposed law and the legislation engineered by Mussolini is based upon the definition of “plagio” – the action of influencing a person so as to undermine their

ability to make rational decisions. In 1981, the Italian Constitutional Court eliminated “plagio” from the Italian Criminal Code as unconstitutional.

The draft law violates human rights precedents set by the Italian courts as well as by the European Court of Human Rights. Specifically, a 1997 decision by the Italian Supreme Court has been frequently cited as a model ruling in terms of upholding democratic principles of religious pluralism. In that decision, the Supreme Court rejected as unconstitutional exactly what this draft law seeks to do – to criminalize religious proselytizing under the pejorative term “mental manipulation.” The proposed legislation would jettison that hard-won progress and take Italy back half a century.

The law’s vagueness could, against the intentions of the promoters, threaten Catholic organizations and movements not aligned with the dominating culture. Such a law is open to abuse, which is why the Constitutional Court took it off the books in the first place.

MACEDONIA

The primary religious target in Macedonia remains the Serbian Orthodox Church. The most recent judicial measures against it was a ban on the establishment of the Serbian Orthodox Church in the country, a law endorsed and upheld by Macedonia's highest court. Deterioration of relations between the Macedonian and Serbian churches followed the initiative by the Serbian Orthodox Church to re-unite in 2002 after 45 years of independence from the Serbian Orthodox Church by the MOC.

The impediment to the establishment of the Serbian church in Macedonia is rooted in the historical confrontation of ethno-nationalistic sentiments between Macedonia and Serbia. Integral in this is Macedonia’s accusation of the Serbian government and the church of the imperial attitude and intentions by refusing to recognize Macedonian nationality.

As an example of the continued opposition to the Serbian church in Macedonia, Bishop Jovan has been imprisoned by the Government of Macedonia since 2004 for returning to the religious practices of the Serbian Orthodox Church and charged with the criminal offense of “causing national, racial and religious hatred and intolerance.” Banished by the Macedonian Orthodox Church, Father Jovan was appointed in 2003 by the Serbian Orthodox Church as the head of the Serbian church within Macedonia. He remains incarcerated by the Macedonian government. The Court’s decision in the case of Bishop Jovan demonstrates that a personal decision of an individual to join and advance religious beliefs, particularly of the Serbian Orthodox Church, in the Republic of Macedonia equates to causing religious hatred, dissonance and intolerance as sufficient grounds for a criminal conviction. This hence undermines the very essence of the religious freedom concept.

Moreover, the current draft of the Law on Churches, Religious Communities and Religious Groups limits each religion to only one registered religious community, does not permit foreign citizens to form a religious group or a religious community in the country and requires the

headquarters of the Churches or religious communities to be based in the Republic of Macedonia along with other restrictions challenging religious freedom in Macedonia.

The endeavors to stake out national identity in Macedonia often lead to social discrimination of the Serb population and followers of the Serbian Orthodox Church in Macedonia. Various incidents of discrimination as well as incidents involving police harassment of followers have been recorded as well. Other religious minorities that have been suffering unequal treatment by the government in Macedonia include Macedonian Catholics, Jehovah's Witnesses, Baptists, Protestant Evangelicals, Seventh-day Adventists and Muslims.

MOLDOVA

The Government of Moldova passed the Law on Religions in 1992, which mandated that religious organizations must be registered with the Government in order to function. Those groups who fail to register are barred from owning property, employing staff purchasing land for public cemetery use or constructing houses of worship.

In 2002 the Parliament enacted amendments to the Law on Religions requiring any group hoping to register to submit a declaration of creation, by-laws, and a justification of the religion's religious beliefs to the State Service for Religions. Within 30 days the religious organization is entered into the Register of Religions.

The 2002 modifications permit the State Service for Religions to appeal to a Moldovan court for an annulment of the religious registration for an organization on the grounds that the group "carries out activities that harm the independence, sovereignty, integrity and security of the Republic of Moldova, the public order, or are connected with political activities." Such vague and broad wording leaves minority religious groups vulnerable to persecution protected by law. Religious organizations registered with the Government are also prohibited from listing in their by-laws any conditions that contradict the Constitution or other Moldovan laws.

Despite intentions for the 2002 amendments to simplify and streamline the registration process, numerous religious organizations have been stymied in their efforts. The State Service for Religions has continually denied registration approval to the Church of Jesus Christ of Latter Day Saints, the Spiritual Organization of Muslims, the Central Muslim Spiritual Board of Moldova and the True Orthodox Church of Moldova.

In 2003 Parliament passed two laws that have drawn much concern from the international community. The Law on Combating Extremism, the Government has professed, is intended to quell the rise and spread of fundamentalist and violent religious thought. However, the law can just as easily be used as a source of exploitation of religious groups who have ties to political parties.

The Criminal Code is another 2003 adoption that could be misinterpreted to take advantage of minority groups by hampering the free speech and expression. One article in the code states "preaching religious beliefs or fulfillment of religious rituals which cause harm to the health of

citizens, or other harm to their persons or rights, or instigate citizens not to participate in public life or in the fulfillment of their obligations as citizens” is a punishable offense. Such wording could be contorted to shift guilt on monastic clergy who by their own will and accord seclude themselves from the public arena.

ROMANIA

The Government of Romania drafted a new religion law in late 2005 and began pushing it through its upper and lower houses in early 2006. The law would create a three-tiered religious categorization for which groups must register.

The draft law specifies a number of qualifications that must be met in order to obtain the government’s most preferential status – religious denominations. Membership requires 0.1% of the population of Romania. At first glance this percentage may appear to be inconsequential; however, in reality it would require a religious group to consist of 23,000 members. This quota is an extremely high figure to prove legitimacy of a faith. Such a threshold would label Romania with the most restrictive registration system in the OSCE region.

In its current form a religious group must wait twelve years before reaching eligibility for ascension from the second-tier religious association. This extensive delay will create a moratorium for new communities that arise after such a law is passed. The Romanian government would be, in effect, stunting the growth of new religious groups and discouraging them from practicing their beliefs openly. Groups below religious associations, those who have 300 or fewer adult members lack the legal right to own or purchase property, erect houses of worship or employ staff or religious leaders.

Additionally, the draft religion law would exempt places of worship from rulings handed down by the Romanian court system. In effect, this would eliminate any opportunity for religions to reclaim property under the control of other faiths. Civil law would also be sidelined in terms of internal discipline of clergy and canon law would be the only code to guide and reprove religious leaders.

The circumstances in which the Romanian legislature has considered the draft law is also a cause for concern. The government rushed the bill to parliament in an emergency procedure and the Senate failed to take a vote on the bill within 60 days of its introduction. Under Article 75 of the Romanian Constitution if a bill is not voted upon within 60 days it is automatically passed in its entirety. The bill awaits a vote in the Chamber of Deputies.

SERBIA

The parliament of Serbia recently passed and the President signed into law a draconian Law on Churches and Religious Communities.

Essential objections to this law include inadequate separation of the church from the state, the combination of civil law and canonical law, and discrimination – predominantly – of small religious communities. The law as written does not guarantee respect for fundamental religious freedoms. Further, the law enforces already existing institutional discrimination against religious groups that do not belong to the group of "traditional churches and religious communities".

Among the most serious problems in the legislation are hazy registration requirements, limitations on naming rights, ill-defined state deregistration powers, speech restrictions, improper public disclosure requirements, and undue deference to registration decisions of other European Union countries. Particularly problematic is the adoption of a blatantly discriminatory amendment aimed primarily against minority religious communities. As this Commission commented, "That measure removed safeguards that would have allowed all religious communities currently registered to maintain that status. Regardless of whether they already enjoy registration, all but seven communities would need to reregister."

The law, which was hastily passed through parliament with a 120-4 vote – without consultation with religious communities, international organizations such as the Organization for Security and Cooperation in Europe, or non-governmental organizations – severely discriminates against "traditional" and smaller religious communities by establishing unrealistic registration standards and by allotting to the government expansive review power.

The Serbian government currently recognizes seven religious communities – the Serbian Orthodox Church, Roman Catholic Church, Slovak Lutheran Church, Reformed Church, Evangelical Christian Church, Islamic communities, and Jewish communities. These groups enjoy privileged status as recognized faiths.

The law passed by the National Assembly guarantees preferential treatment by creating explicit and limited classes of faith groups that advance specific religious communities while marginalizing other faith groups. Registration guidelines require burdensome documentation that only serves to stall groups from moving forward with the process. In the version just passed, the government has the ability to demand any documentation it deems appropriate during the registration period; another tool to delay registration and frustrate applicants. Under the law, the government also judges the beliefs of the religious organization and the sources of income of both the religious organizations as a whole and its individual members.

These and additional regulations combine to form a religion law that mirrors a recent draft religion law in Kosovo submitted by the Kosovo Provisional Authority, which has drawn considerable notoriety and criticism for partiality and extensive religious prejudice.

Serbian Province of Kosovo

The Provisional Authorities of Kosovo have recently introduced a draft religion law that potentially violates the religious rights of individuals and institutions at every level.

Under Section J of the law, Religious Communities and Churches can, subject to the conditions set out in this Law, acquire authorization to exercise special rights articulated in J(a)-(d). Registered Religious Communities may apply for acknowledgement of the special status pursuant to Article (J) on condition that: 1) they have, at the time of application, been legally established for at least 10 years; and 2) full-age citizens or foreigners with habitual residence in the territory of Kosovo belonging to the respective Religious Community count more than one per thousand of inhabitants of Kosovo according to the last census.

The law, if passed, would represent a substantial interference with the rights of minority religious communities and Churches unable to meet the 10 Year Rule and the Population Rule. For example, religious communities unable to meet the duration and representation requirements would be deprived of the right to charge persons with the provision of spiritual services and to make use of appropriate facilities in security forces, in hospitals, in areas of custody or imprisonment as well as in preventive care and social retraining facilities.

The law, as drafted, violates the right to freedom of religion or belief and the right to be free from discrimination based on religious grounds.

Kosovo: European Convention Standards

The draft law cannot be countenanced with the right to freedom of religion or belief pursuant to Article 9 of the European Convention on Human Rights (Convention) and the right to be free from religious discrimination pursuant to Article 14 of the Convention.

The clear interferences with Article 9 and 14 rights cannot be justified by Kosovo authorities. Whatever the aim (or asserted aim) of the 10 Year Rule and the Representation Rule, the authorities cannot demonstrate that its enactment would be strictly necessary to meet a pressing social need, or that it is narrowly targeted to meet that need. The draft law has a disproportionate adverse impact on minority religious organizations and communities new to Kosovo by depriving them of the right to perform critical religious functions in violation of the right to be free from religious discrimination under the Convention.

The draft law's approach contravenes the European Court of Human Rights' application of a fundamental human rights policy of the European Community to religious freedom issues – "the need to secure true religious pluralism, an inherent feature of the notion of a democratic society". Similarly, the Court has emphasized the importance of "pluralism, tolerance and broadmindedness, without which there is no democratic society". As the Court has stressed, since religious entities exist in the form of organized structures, "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords". It would frustrate this policy of "true religious pluralism" and result in arbitrariness and unfair discrimination to exclude minority faiths from attaining the same rights and benefits of other religions simply because they are small or new to Kosovo.

Kosovo: OSCE Standards

The draft law also violates OSCE standards. The OSCE, in a document entitled Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities, has determined that population requirements such as Kosovo's are "troublesome" in relation to fundamental human rights standards and that such duration requirements contravene OSCE standards:

"The wording of this commitment in Principle 16.3 of the Vienna Concluding Document recognizes that the precise form of legal personality varies from legal system to legal system, but access to some form of legal entity is vital to OSCE compliance. This is clearly violated by the refusal to register religious groups that do not satisfy the 15-year rule. The drafters of the Russian legislation apparently attempted to remedy this defect by creating limited entity status, but this also fails to satisfy the OSCE commitment, because the limited status does not confer rights to carry out important religious functions. Failure to grant such status constitutes a limitation on manifestation of religion that violates Article 9 of the ECHR. It can hardly be said that denial of entity status, simply due to an organization's failure to 'exist' under a preceding, anti-religious, communist government, 'is necessary in a democratic society' or a proportionate response to a legitimate state interest".

Kosovo: United Nations Standards

Finally, the draft law violates UN standards. The concepts of equality under the law and non-discrimination are emphasized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As stated in one United Nations study:

"The important guiding principle is that no individual should be placed at a disadvantage merely because he is a member of a particular ethnic, religious or linguistic group. Above all, in any multi-ethnic, multi-religious and multi-linguistic country, the strict application of the principles of equality and non-discrimination is an indispensable requirement for maintaining the political and spiritual unity of the State concerned and achieving understanding and harmonious relations between the various components of society."

The most important finding by the United Nations on religion is Human Rights Committee General Comment No. 22 on Article 18 of the Covenant, which guarantees freedom of thought, conscience and religion. This General Comment provides the Human Rights Committee's definitive interpretation of the right to freedom of religion. The Human Rights Committee finds that:

"Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the

subject of hostility by a predominant religious community." (Para. 2) (Emphasis supplied).

The Covenant thus clearly prohibits any attempt to discriminate against religions because they are small or are newly established in a State.

The General Comment also emphasizes the narrow permissible restrictions government may impose on religions, and the need to ensure equality and non-discrimination among religions.

"In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18..." (Para 3).

The draft law in governing the ways that religious communities acquire rights essential to important religious functions and to economic survival, imposes limitations on the organizational manifestations of religion or belief. Like any other limitation on freedom of religion, they must be justifiable under the exacting standards detailed in the United Nations Human Rights Committee General Comment No. 22. In addition, it must be clear that restrictions are not applied with discriminatory purpose or in a discriminatory manner. The draft law does not meet these requirements.

The draft law violates European Convention, OSCE and UN standards.

On the Ground in Kosovo

The situation of religious freedom in Kosovo remains utterly intolerable under accepted international standards.

As the time for talks on the future status of Kosovo draws near, the need to examine the record of political and social developments in the province to determine the level of preparation of Kosovo for either autonomous or independent rule is most urgent.

The present record of rule of law, protection of the rights of religious and ethnic minorities, and the return/resettlement of internally displaced people by the Provisional Authority of Kosovo – all of which are indispensable for democratic governance – have been gravely unsatisfactory in the last six years. We cannot discuss viable political self-rule of Kosovo unless there is a well-demonstrated, long-term commitment on the part of Kosovo power holders to the preservation of peace and ethnic diversity of the region through both legislative and institutional means. As I will expound below, since 1999 the Kosovo Provisional Authority on numerous occasions acted contrary to pertinent democratic commitments and norms, and therefore cannot be trusted as the sole independent guarantor of rights and freedoms for all peoples of Kosovo.

The Institute on Religion and Public Policy led an investigative delegation of religious liberty leaders to Kosovo in August 2004 to inspect the situation in Kosovo and witness the damage in Pristina, Prizren, Dechani and other areas of the province in the aftermath of the ethnic violence

earlier in March that same year. Admittedly it was the first such independent international religious delegation to visit Kosovo since 1999. It is both from the findings of the delegation and from the close monitoring of Kosovo by the Institute on Religion and Public Policy in the past several years that I am testifying today.

Kosovo since 1999: Key Sociopolitical Dynamics

Kosovo, the heart of Serbian Orthodoxy since the 12th century that largely formed the Serbian national identity in the following centuries, by 1999 was home to diverse religious and ethnic groups.

Kosovo Muslims who inhabited the region since victory in the epic battle of Kosovo in the 14th century constituted a significant majority in 1990s. Unfortunately, since 1981 no official census has been taken, and the demographic stratification of Kosovo is not statistically confirmed. By some estimation it has been increasing over the decades of communist rule favoring the wider autonomy for the region for the sake of balancing out Serbian influence in larger Yugoslavia and has reached nearly 80% of total Albanians living in Kosovo by the early 1990s (hence the sentiment of the predominant Albanian population for self-rule on ethno-historical and demographic grounds).

When, in response to demands for greater self-rule and independence in the 1990s, Slobodan Milosevic radically reacted by conducting policies of ethnic cleansing and disfranchisement of Albanian population, the United States and NATO considered the plight of the people of Kosovo and engaged through NATO bombing of the Serbian capital Belgrade with the aim of forcing Milosevic to stop the ongoing ethnic cleansing. Following the bombardment, according to UN Security Council Resolution 1244, the peacekeeping mission UNMIK was established in Kosovo to oversee administrative matters of the region, while KFOR was formed as an international police force mandated to deter hostilities, establish security in Kosovo and daily protect the inhabitants. Under the Constitutional Framework for Provisional Self-Government of Kosovo of May 15, 2001, the Kosovo Provisional Authority was to assume power as the indigenous democratic governing body under the supervision of UNMIK. This mechanism was envisioned to ensure peaceful transition of Kosovo to the next stage of political arrangement, where independence was regarded by some as an option.

Mr. Chairman, all of these institutions have failed to protect the people of Kosovo from violence and instability.

Since 1999, around 200,000 Serbs have fled Kosovo for fear of communal or institutional violence. Largely these families are rarely known to return. Indeed, the refugees have cast their vote with their feet. As we have well seen from recent Balkan history, any change in demographic balance because of one ethnic group threatening the existence of another is bound to have repercussions in places of the region where the same ethnic groups live in close proximity to one other (e.g. Serbia and Bosnia and Herzegovina, etc). This out flux is critical for regional security balance, to say nothing of the day to day needs of fleeing peoples. Unfortunately, this problem in no way was adequately addressed by either UNMIK or Kosovo Provisional Authority.

Not only has the fear of violence been driving Serbs out of their homes in Kosovo, ethnic Serbs that remain in Kosovo are denied treatment in hospitals, denied construction of schools, and are inflicted with increasingly rigid travel restrictions, effectively confining them to Serbian ghettos. With implicit endorsement of the UN peacekeeping forces, this practice ensures the isolation of ethnic groups from each other, and thus conveniently creates an artificial environment where ethnic tension can be caged. But peace confined through a cage is no real peace, nor is it a democratic practice that allows individuals and communities to develop to their best capacity. True transformation heeds the rights of minorities and fosters diversity is needed, although the Kosovo Provisional Authority has not been able to provide it thus far.

March, 2004 and Its Consequences for Future Kosovo Stability

The most appalling event that demonstrated the incompetence of both Provisional Authority, UNMIK, and KFOR to protect the people of Kosovo started on March 17, 2004. On that day ethnic violence erupted involving over 50,000 individuals in at least 30 separate incidents, which claimed the lives of 19 civilians and injured over 900 persons, including international peacekeepers and members of the clergy. This violence displaced more than 4,000 persons, mainly Serbs, from their homes. The ethnic violence perpetrated by Kosovo Albanians resulted in the destruction or serious damage of more than 900 houses and 150 vehicles belonging to Kosovo Serbs, Roma, Ashkali, and other minorities. Our delegation learned that ethnic violence was directed toward the centers of cultural and religious life of Kosovo's minority communities, more specifically the Orthodox, and it resulted in the desecration of approximately 36 churches and monasteries, many centuries old, added up to the total of over 140 churches and other religious places ruined, damaged and desecrated in the past decade.

Let me illustrate how such atrocities could happen in the presence of multi-thousand regiments of KFOR that were supposed to ensure the security in the region. The Monastery of Djakovica is the home of several Orthodox nuns, some of them of senior age. During the first night of violence, French KFOR troops held back the attacking mob from the monastery that historically was a place of great respect and pilgrimage for the Muslim population of Kosovo. On the second night, in the absence of the abbess, French KFOR troops forcefully threw the nuns, in the words of one of the elderly nuns, "like sacks of potatoes" into an armored vehicle. As the troops stood by watching, an angry mob attacked the monastery. French troops were alerted that an elderly nun who had recently suffered a heart attack was recovering in her cell, but responded that there was nothing they could do for her as the mob set her room on fire. By the Grace of God, the nun escaped to the neighboring forest and lived in the elements for three days with no food, shelter or blanket for fear of her life before returning to the monastery.

This is an exemplary story of how KFOR has generally perceived its mission: protect people, not property. The result is worth reiterating; 19 people dead, 900 injured. Although Italian and American troops did in some places prevent desecration, in general there is great need to reform KFOR policing practices and communication to prevent this from happening again.

While none of the Churches in Kosovo has yet been restored, the number of mosques has grown significantly with funding from Saudi Arabia and other Islamic states, as the plaques on these

mosques indicate. Although many mosques are empty, such process of religious mapping in and of itself has symbolic and political repercussions.

After March 17, 2004 the Serbian population of Kosovo has refused to recognize as legitimate the authorities in Kosovo that failed to fulfill their mandate and largely boycotted the 2004 fall elections for the Kosovo Assembly. Without further explanation, let me simply point out that such a political situation is in no way conducive to either larger autonomy or independence of Kosovo.

Finally, the Institute on Religion and Public Policy has closely monitored the Kosovo Provisional Authority attempt to introduce a law on religion which violates significantly internationally accepted standards for religious freedom in at least seven of its articles. We voiced our objection to UNMIK about this law which was drafted to establish tight governmental control over religious groups and set limiting conditions of their ability to survive as communities. Needless to say such legislative initiatives by the Provisional Authority contradicts democratic standards and can further exacerbate religious stability in the region.

Clearly, the problem of internally displaced persons, the incapacity of Kosovar provisional institutions to prevent violence, and gross mistreatment of religious minorities by legislative and other socio-political means by current Kosovo institutions demonstrates the lack of democratic infrastructure that would prevent the region from further collapse into the very ethnic and religious violence that the international community initially intervened to stop and avert. Until the above is guaranteed, the independence of Kosovo cannot and must not be an option.

With this in mind, let me offer the following recommendations for urgent steps to address the present and future critical situation in Kosovo:

- UNMIK must appoint an investigative commission to find and render judicial persecution the perpetrators of the March 17 violence;
- The international community through UNMIK and the European Union must allocate aid to restore the demolished and desecrated churches to their full historical appearance and religious functionality;
- UNMIK must require the Provisional Authority to reverse its socio- economic policies toward the minority population of Kosovo and begin a legitimate and objective process for resettlement of the IDPs while ensuring freedom of movement of the minority population in the enclaves;
- NATO must permit KFOR to widen its mandate to fully protect all peoples of Kosovo as well as sites of historic and religious value and significantly improve communications and the chain of command and cooperation within KFOR;

- Encourage closer cooperation of OSCE and the structures of the European Union with Kosovo authorities for the economic reconstruction and supervision of the legislative, executive and judicial process in Kosovo.

SLOVENIA

The current law guarding religious freedom and registration of religious organizations in Slovenia dates back to 1976, long before the disintegration of the former Yugoslavia. An attempt to update the law began in 1998 with the introduction of a law to parliament, but the government withdrew the draft soon after. In 2003 the process commenced anew, with the formation of a task force, under the direction of the Office for Religious Communities. The present state of the draft religion law is unclear, with little progress reported in the past year.

After the 1998 draft law was removed for consideration from parliament, the government sought to reach agreements with religious organizations on an individual basis. In 1999 the Catholic Bishops' Conference came to terms with the state as did the Lutheran Church of the Augsburg Confession in 2000. In 2001 the position of the Catholic Church in Slovenia was further legitimized with an agreement between the Vatican and the State.

With two-thirds of the majority in Slovenia and with the head of the task force assigned to draft the new religion law being a member of the Catholic Sovereign Military Order of Malta, many minority faiths have become wary of the government's ties with the Catholic Church. Some have voiced the fear that the implementation of a new draft law will give the Catholic Church a legally privileged status above other faith groups.

In addition, a number of minority religions have faced difficulty in registering with the Office for Religious Communities in recent years. In 2000 the Director of the Office for Religious Communities, ceased processing all applications received from the previous year, declaring the registration law in place to be too vague in its criteria for what constitutes a religious group. The ban was lifted only after intense pressure from political groups and the media.

TURKEY

Turkey has numerous laws in place that fail to reach acceptable standards of religious freedom. Although the Constitution provides for freedom of religion, the Government plays an active role in protecting the secular ideology of the State.

Two governmental bodies supervise the state of religious affairs in Turkey. The Diyanet, under the control of the Prime Minister, oversees the country's 75,000 mosques and imams, who are categorized as civil servants. The second agency – the General Directorate for Foundations (Vakıflar Genel Müdürlüğü) – is responsible for oversight of all non-Muslim religious organizations and their corresponding places of worship, education and all other related areas.

The General Directorate for Foundations currently recognizes the legal status of 161 non-Muslim religious communities or “minority foundations.” However, the Government has utilized the Law on Foundations as a method to reclaim land for the State from minority religious groups. In recent years a number of these foundations have lost properties due to an inability to support the land or insufficient community population in the area. When reclaiming land the General Directorate has cited a 1974 High Court of Appeals ruling that stated minority foundations did not possess the right to obtain land beyond that which was declared in 1936. No legislation is currently in place that allows foundations to apply for reacquisition of lost property nor are foundations permitted to claim property listed as owned by a third party, which were often simply names of religious saints.

Many religious communities also have trouble providing education and training in their own faith tradition. In 1997 the Government enacted a law mandating eight years of compulsory secular education. Only after completion of this eight-year term can students elect to attend schools with a religious curriculum, such as imam hatip high schools, where young men receive education in both secular and Islamic theology. In addition, all religious courses taught outside of schools are controlled by the Diyanet, restricting children under the age of 12 from registering for official Qur’an courses.

Perhaps the most egregious offense to religious freedom in Turkey is commonly referred to as the headscarf law. Since the 1960s the Turkish government has periodically outlawed the wearing of headscarves for female students and professors in the university setting. The argument made by the government was that in doing so, it protected the laws of others – of those not wearing religiously associated clothing. Such a law maintains secularism and ensures that people not wearing headscarves could not be accused of being non-religious.

In 1997 the implementation of the headscarf law increased in intensity with the Turkish military strictly enforcing the law without exception. This strict interpretation of the law has barred women wearing headscarves from assuming elected positions in parliament, practicing law in court, teaching in private schools and universities, and working as state employees. Despite much international outrage over the law, the European Court on Human Rights upheld Turkey’s implementation of the headscarf law in 2005.

CONCLUSION

As I mentioned at the outset, this testimony reviewed the legislative, executive, and social conditions of religious freedom in the countries of the broader region of South and Central Europe.

Religious freedom is a priority issue within the human rights basket of the Organization for Security and Cooperation in Europe, and hence the US Commission on Security and Cooperation in Europe. Consequently, it is vital that the OSCE and the Helsinki Commission continue to dedicate the time, energy, and resources necessary to advance democracy and fundamental rights throughout the Balkans in particular and the OSCE region writ large.

As a mechanism to continue to advance the development of fundamental rights, I would like to encourage a significant increased investment of resources into the Advisory Panel of Experts on Freedom of Religion or Belief of the Office for Democratic Institutions and Human Rights of the OSCE. With a larger staff and further capacity to investigate, review, and recommend actions regarding religious freedom throughout the region, the issues covered in this testimony would be more quickly and effectively managed.

Further, I would like to recommend that the mandate of the Special Representatives of the Chairman in Office be amended slightly. In particular, the mandate of the Personal Representative of the Chairman-in-Office on Combating Racism, Xenophobia, and Discrimination, also focusing on Intolerance against Christians and members of other religions is too broad to be maintained by one office/person. In order to guarantee the greater protection and promotion of fundamental rights, I would encourage that a mandate for Intolerance against Christians and members of other religions be carved out of the current position and established as a separate and independent mandate in the person of another Special Representative.

Mr. Chairman, thank you again for the opportunity to address the Commission on Security and Cooperation in Europe, and I am happy to take any questions from the Commissioners.