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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**COMMENTS**

**ON THE DRAFT LAW  
REGARDING THE RELIGIOUS FREEDOM  
AND THE GENERAL REGIME OF RELIGIONS  
IN ROMANIA**

**by**

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## **I. Introductory Remarks**

The draft law is the result of extensive discussions between the Romanian Ministry of Culture and Religious Affairs – The State Secretariat for Religious Affairs – on the one hand and the organizations listed in the annex to the draft law on the other. There appears to be far reaching agreement that the relations between the State of Romania and religious communities within the country in the future should be regulated along lines as envisaged in the draft.

The terminology of the non-official English translation of the draft seems to be somewhat provisional. To avoid unnecessary misunderstandings, the following brief comments, when necessary, also take into account the Romanian text of the draft as published in the book *Ministerul Culturii si Cultelor, Secretariatul de Stat pentru Culte: Viata religioasa din Romania, Editia a II-a, Bucuresti 2005, ISBN 973-9492-67-3*.

## **II. Cults (Religions), Religious Associations, Associations**

According to the Draft the legal status of religious communities may be either “religion”, in Romanian “cult” (and to avoid ambiguity this latter term will be used below) or “religious association”, in Romanian “asociațiile religioase”. A religious association can be founded as such, and later, by Government decision, it can be recognized as cult. Status of cult is reserved for religious communities with a large number of members and with stable institutions and activities which have been ongoing for a long time.

## **III. Religious Associations**

Status of religious association can be achieved by registration in a public register according to Articles 40–48 of the Draft. One basic requirement – according to Article 40 (1) – is membership of at least 300 Romanian citizens residing in Romania. This requirement may be difficult to fulfil for believers who belong to great religions of the world – as Hinduism or Buddhism – which may not have a great number of followers with Romanian citizenship and residing in Romania. In my view this requirement is too difficult to fulfil; it should be softened to the level which is applied to associations in general.

Another requirement – provided for in Article 41 (2) b) – is that a request for registration among other information has to include documentation of the future association’s “own confession of faith” and “the main activities which the religious association cares to undertake with a view to reaching its spiritual goals”. I do not think this requirement meets the standard as provided for in Article 9.2 of the European Convention of Human Rights that limitations have to be necessary in a democratic society in the interests of public safety, etc.

According to Article 48 (1) in proceedings regarding the acquisition or loss of the status of religious association “it is mandatory the presence of the prosecutor ...” – in Romanian “este obligatoriu prezenta procurorului ...”. There is no mentioning of the (public) procurator elsewhere in the Draft and it should be clarified in which capacity and for which purpose the procurator should participate in the specific proceedings under Article 48.

#### **IV. Cults (Religions)**

The requirements for recognition of a religious association as cult are set out in Articles 17 and 18 of the Draft. If recognized as cult, religious associations gain a number of rights which are detailed in Section 4 of the Draft on “The Patrimony” (Articles 27–31).

According to Article 17 the status of cult can be acquired by religious associations, which by activity and number of members offer guarantees not only of durability and stability, but also of “public interest” – in Romanian “interes public.” In special circumstances a provision of this kind may be reasonable concerning secular associations, but it does not seem reasonable in this context.

The membership requirement according to Article 18 c) of the Draft is at least 0,1 % of the population of Romania according to the latest census. With a population of 22.3 million this provision would translate into a requirement of at least 22.300 members, all of which have to be Romanian citizens residing in Romania.

The stability requirements are described in Article 18 a) and c) of the Draft: Any religious association which applies for status as cult among other things has to provide documentary evidence that it is constituted legally and has been functioning uninterruptedly on the territory of Romania for at least twelve years.

These high and rigidly written membership and stability requirements combined make it very difficult for religious associations to acquire status of cult. In my view this is too high a threshold which should be lowered. This could be done either by reducing the number of necessary members or by using a less rigid formula.

Further, according to Article 18 c) of the Draft, documentation has to be provided concerning the applicant’s “own confession of faith and the organization and functioning statute ...; its structure of central and local organization; the mode of rule, administration and control; ... the main activities which the cult cares to undertake with a view to reaching its spiritual goals;” etc. However, there is no indication in the Draft, why and for which purpose this information has to be provided by the applicant, how detailed the information has to be and to what use it could be for the Government in reaching a (positive or negative) decision on the application. With the guarantees of Articles 9 and 11 of the European Convention on Human Rights in mind it could be argued that the yardstick of “necessity in a democratic society ...” etc. should be applied to these requirements. If that is done the result can only be that the requirements are too far reaching.

In this context it also has to be remarked that the 18 cults listed in the annex to the Draft according to transitory provisions in Article 49 of the Draft can become recognized by summary proceedings and without providing some of the information which unlisted religious associations would have to provide to become recognized as cults.

But recognition is not automatic and not necessarily granted. According to Article 49 (4) recognition is granted for the statutes and canonical codes of any applying cult only on the condition that they by their content do not affect national security, order, health, public morality or human fundamental rights and liberties. It is not clear why this provision really is necessary for recognition of the well known cults listed in the annex. It should be clarified that there is no

intention of improper exploitation of this provision as instrument to deny any of the cults listed in the annex recognition under the new law.

Finally, according to Article 26 of the Draft, the cults can have their own organs of religious trial for matters of internal discipline, and in these matters the statutory and canonical provisions are exclusively applicable. This broadly written provision is not entirely in conformity with the European Convention on Human Rights, mainly its Article 6, and should be adjusted.

## **V. Associations in General**

The Draft does not mention whether an association may be set up under general legislation on associations in order to manifest religion or belief. The conditions under which this can be done should be specified – at least with regard to the membership requirement of 300 members for religious associations and other special requirements for registration of these associations on the one hand and on the other lower membership and less detailed documentation requirements for associations in general.