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MPhil Thesis – Politics and International Relations – Michael Trimmer

Student Full Name: Michael Stuart Trimmer

Student Number: 10902695

Student Login: MT327

Student Faculty: Social Sciences

Student School: Politics and International Relations

Program of Study: POL:MPH-R

Thesis Title: How does the EU interpret and implement “religious freedom” as part of the enlargement system?

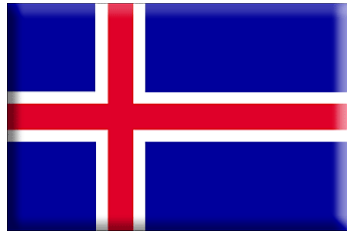
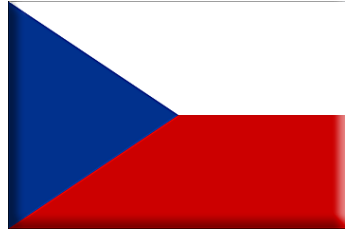
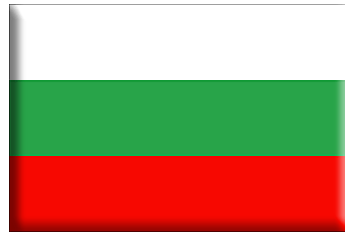
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Abstract: This Thesis aims to examine the understanding of religious freedom used by the European Union when it considers the human rights element of the membership criteria for countries entering into the enlargement process. Because religious freedom is a less clearly defined right than most, multiple conceptions of it are possible, and understanding which the EU uses is crucial to future questions of external relations as well as internal human rights policy and enforcement.

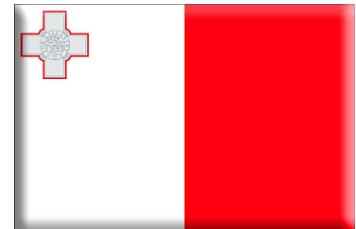
To gain this understanding, the EU’s “Regular Reports” that examine the readiness of countries to join will be examined. The content contained within these will then be compared to documents examining religious freedom situations produced by the United States State Department’s Office for International Religious Freedom. By comparing the simple description of the religious freedom situation produced by USSDOIRF to the documents highlighting particular religious freedom linked to EU membership standards, issues that the EU is concerned with can be separated from those which it regards as not relevant to potential membership.

To gain the maximum possible data from the most appropriate sources, all countries that have been involved in the membership process since 1998 have been examined. This is the time when the EU’s membership processes were formalised. Also, countries that have become members have been examined alongside countries that are in various stages of applying, so as to give maximum range to the case studies involved.

The conclusion of this research is that the EU has a bottom-up, *de iure*, and negative (in Isaiah



**How does the EU interpret and implement**  
**“religious freedom” as part of the enlargement system?**



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## **Chapter One: Introduction**

### 1.1 Introduction

Certain regularly referenced human rights are clear and (relatively) simple to codify and comprehend. For example, there are a limited number of positions that a given polity may hold regarding the right to life, and by extension, capital punishment. These can be, broadly speaking, characterised as one of the following: complete abolition, functional abolition,<sup>1</sup> partial use,<sup>2</sup> moratorium (either short or long term), or active, available, non-exceptional use. Other rights however are far more complex and nuanced in their application and classification across various polities, and this is particularly true of issues surrounding the right to religious freedom.

Many different polities have made exceptionally explicit their intent to support religious freedom, but their specific policies dealing with religious matters vary substantially. To give a few examples of the diversity on the matter: some polities have multiple state churches, others have a single state church and others still eschew all mentions of religion as part of public dialogue.<sup>3</sup> Some polities have strict conditions to meet in order to officially register as a religion with the government, some require religious institutions to register in order to purchase property for worship purposes, whereas others only need registration to include a religion within the polity's educational curriculum.<sup>4</sup> Some polities prohibit religious proselytising in public because they believe that this is a matter of 'freedom from religion',<sup>5</sup>

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<sup>1</sup> One example is the United Kingdom between 1973 and 1998 where the death penalty had been abolished for murder, but was still available for other crimes, yet was never used.

<sup>2</sup> Such as the United States, where federal states are permitted to use capital punishment, but not all do.

<sup>3</sup> There are further variations within this last group regarding the extent to which such eschewing is a legal requirement, or is just a matter of choice due to the political culture of a given polity.

<sup>4</sup> Sergej Flere, 'Registration of Religious Communities in European Countries', *Politics and Religion*, Vol. 4 (2010), pp. 99-117.

<sup>5</sup> Bani Syarif Maula, 'Religious Freedom In Indonesia And Malaysia In The Constitutional Comparative Perspective: The Cases Of Judicial Review In Blasphemous Offences', *Jurnal Al-Manahij*, Vol. 6, No. 1 (2012), <http://ejournal.stainpurwokerto.ac.id/index.php/almanahij/article/view/341> (accessed 15.7.2013)

others have no recognition of religions as legal entities at all,<sup>6</sup> and some have specific procedures in place to recognise and individual who changes their religious affiliation,<sup>7</sup> viewing that such matters are important for the government to be able to monitor.

These differences in approach to religion by various polities reflect the fact that religious freedom is understood and interpreted in very diverse ways. This thesis seeks to explore the manner in which freedom of religion is understood by the European Union (EU), and it aims to do so by examining the consideration of religious freedom used during the enlargement and accession processes.

The importance of this question can be seen in a number of ways, both general and specific. First of all, in terms of the general trend, there is now a broadly accepted consensus among sociologists that the previously dominant secularisation hypothesis can no longer be considered accurate. Prominent proponents of the original secularisation thesis, such as Peter Berger, predicted in the 1960s that religion would inevitably decline and even disappear from much of the West.<sup>8</sup> Rodney Stark summarises the secularisation thesis: “[in] the 21st century, religious believers are likely to be found only in small sects, huddled together to resist a worldwide secular culture...the predicament of the believer is increasingly like that of a Tibetan astrologer on a prolonged visit to an American university”.<sup>9</sup> More recently, due to a variety of observable trends, former advocates of the secularisation thesis are now forced to admit their error: “[Secularisation] is simple. Modernisation necessarily leads to a decline in

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<sup>6</sup> Sharon L. Worthing, ‘Religion and Religious Institutions under the First Amendment’, *Pepperdine Law Review* Vol. 7 (1979), pp. 313-353.

<sup>7</sup> ‘Egypt officially changes rules for ID cards’, *Baha’I News Service*, <http://news.bahai.org/story/707> (accessed 2.8.2013)

<sup>8</sup> Peter L. Berger, *The Sacred Canopy: Elements for a Sociology of Religion* (New York: Anchor Books, 1967); and *The Social Reality of Religion* (London: Faber, 1969).

<sup>9</sup> Rodney Stark, ‘Secularisation RIP’, *Sociology of Religion*, Vol. 60, No. 3 (Autumn 1999), pp. 249-273, quote at p. 250.

religion, both in society and in the minds of individuals. And it is precisely this key idea which has turned out to be wrong”.<sup>10</sup>

This sociological development is also running parallel with an increasingly muscular and progressively larger EU whose mission is in part to modernise its member-states. Due to the need for a co-ordinated EU response to the crisis within the Eurozone that began in late 2009, the EU has become an increasingly important international actor: “the current crisis is global... This crisis demonstrates the importance of EU coordination”.<sup>11</sup> With the newly reformed Lisbon Reform Treaty of 2007, the European Parliament and Council have both become more powerful (particularly with the effective expansion of the use of co-decision procedures).<sup>12</sup> And with the EU’s increased powers comes increased responsibility, particularly with regard to areas relating to human rights. This mantle is one we also see taken up in 2007, with the creation of the European Fundamental Rights Agency, expanding and further empowering the former European Monitoring Centre for Racism and Xenophobia.

Thus, with a rising religious population<sup>13</sup> (even if, in relative terms, the religious resurgence in Europe can be seen as less pronounced than in other areas)<sup>14</sup>, and a more muscular EU, the question that arises is how exactly the EU has used its new-found muscle when it comes to formulating policy on religious issues.

In terms of the specific instance, recent cases bring to light serious concerns about the EU’s policies regarding religious freedom. The most serious incident is perhaps Romania’s entry into the Union. In December 2006, the lower house of Romania’s parliament passed a

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<sup>10</sup> Peter L. Berger (ed.), *The Desecularisation of the World* (Grand Rapids: Wm.B. Eerdmans, 1999), pp. 1-2.

<sup>11</sup> István P. Székely and Paul van den Noord, ‘Economic crisis in Europe: Cause, consequences, and responses – A report by the European Commission’, *Vox*, <http://www.voxeu.org/article/economic-crisis-europe-cause-consequences-and-responses> (accessed 15.7.2012)

<sup>12</sup> Wim Van Gestel, ‘The indirect impact of the Lisbon Treaty on Commission appointment’, *5th Annual Conference on The Political Economy of International Organizations* January 26 – 28, 2012 <http://147.142.190.246/joomla/peio/files2012/papers/Van%20Gestel%2030.09.11.pdf> (accessed 15.7.2012)

<sup>13</sup> Andrew Higgins, ‘In Europe, God is (not) dead’, *Wall Street Journal* <http://online.wsj.com/article/SB118434936941966055.html> (updated 14.7.2007 - accessed 15.7.2012)

<sup>14</sup> Grace Davie, *Europe: The Exceptional Case* (London: Darton, Longman & Todd, 2002).

new religious freedom law within a matter of hours.<sup>15</sup> The speed of this move was in violation of legal procedures that normally allow for preparation, debate, deliberation and voting on all other legislation. It was passed just over two weeks before Romania's accession to the EU on 1 January 2007, and was greeted with street protests from various religious organisations. The reason for their opposition was "the law's three-tiered system: state recognition, the powers the law gives to the state and the recognized communities, and the law's stipulations that violate freedom of expression by limiting some religious symbols".<sup>16</sup> A particular concern is found in art. 13, which states that "[a]ny form, means, act or action of religious defamation and antagonism, as well as public offending of religious symbols are forbidden in Romania".<sup>17</sup> It is now impossible to offer public critique of any religion without it potentially being branded a criminal offense. The Institute on Religion and Public Policy said in 2008 that as a result of this law, "President Basescu and the Romanian parliament have now gained for Romania the moniker of worst religion law in Europe".<sup>18</sup> This is a widely held view. At least nineteen other civic associations have come to similar, if not identical, conclusions.<sup>19</sup>

Thus, the following question should be asked: exactly what understanding of religious freedom does the EU operate under if a state with a set of religious freedom policies that have been so widely criticised has been allowed to enter into the EU? What was the EU's reaction? Was there even one at all? While it is true that the law was passed only weeks before date of accession, it is inconceivable that the EU would have had no knowledge at all of the issues that emerged from these actions. At least nineteen other institutions felt the need seriously to

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<sup>15</sup> 'Romania: Sudden secretive rush to adopt controversial religion law', *Forum 18*, <http://www.unhcr.org/refworld/docid/468919cad.html> (accessed 14.7.2012)

<sup>16</sup> Christian G. Romocea, 'Church-State Relations in Post-1989 Romania', *Journal of Church and State*, Vol. 53, No. 2 (2011), p. 276.

<sup>17</sup> Lavinia Stan and Lucian Turcescu, *Church, State, and Democracy in Expanding Europe* (Oxford: Oxford University Press, 2011), p. 140.

<sup>18</sup> 'Report on Religious Freedom in Romania 2008', *Institute on Religion and Public Policy* [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/IRRP\\_ROM\\_UPR\\_S2\\_2008\\_InstituteonReligionandPublicPolicy\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/IRRP_ROM_UPR_S2_2008_InstituteonReligionandPublicPolicy_uprsubmission.pdf) (accessed 15.7.2012)

<sup>19</sup> Romocea, 'Church-State Relations in Post-1989 Romania', p. 277.



condemn Romania for its actions. Did the EU join in with that chorus? The fact that such questions arise clearly necessitates further investigation into the manner in which the EU conceptualises religious freedom.

## 1.2. Research Question

Certain terms within the research question require specifically defining for the purposes of this thesis. The central two are ‘European Union’ and ‘Religious Freedom’. Although the former of the two seems much simpler than the other, there is a certain degree of complexity to both.

Firstly, there is the question of what exactly is meant by the EU. The EU is a complex and multi-faceted polity that has taken many different forms over its history. Because of this it is necessary to clarify which institutions will be being examined, and over which period. In terms of the period being studied, a central concern is the point at which human rights became central to the EU’s composition, rather than just an ancillary function of its agenda. It is definitely true that the polity that ultimately became the EU has clearly expressed interest and concern regarding human rights issues at several points in its history. In 1957 issues such as gender neutral pay,<sup>20</sup> opposition to discrimination<sup>21</sup> and general promotion of human rights abroad<sup>22</sup> were raised in the Rome Treaties creating the European Economic Community. In 1969 and 1974, as a result of the Stauder and Nold rulings, the European Court of Justice declared that fundamental rights form part of the general principles<sup>23</sup> of Community law.<sup>24</sup>

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<sup>20</sup> The European Commission ‘Finding out About... The EU and Human Rights’, <http://www.eia.org.uk/finding/0709-10-human-rights.pdf?PHPSESSID=2c88ed05a3e83ff010de2a348d20477b> (accessed 14.7.2012)

<sup>21</sup> EU-Lex, ‘Treaty Establishing the European Community – Article 14’, [http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html#anArt14](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html#anArt14) (accessed 13.7.2012)

<sup>22</sup> EU-Lex, ‘Treaty Establishing the European Community – Article 117’, [http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html#anArt177](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html#anArt177) (accessed 14.7.2012)

<sup>23</sup> Although at the time this declaration did not give a specific set of rights that were protected, these were established later by a series specific judgements.

This was followed by more overarching action in 1977, when the European Parliament, Commission and Council stated that “[...] the prime importance they [The Communities] attach to the protection of fundamental rights [...] and in pursuance of the aims of the European Communities they [The Communities] respect and will continue to respect these rights”.<sup>25</sup>

This was partly geo-political, as a message of encouragement to the newly democratising Mediterranean states to pursue appropriate human rights policies, a message which was further reinforced by the 1978 “Declaration on Democracy”. Later, the solemn declaration in 1983 reaffirmed the Communities commitments to human rights, which itself then became part of the 1986 Single European Act.<sup>26</sup>

It was not until 2000 that the Charter of Fundamental Rights was first drafted, and it did not come into full force until 2009. However, following 1992 with the Maastricht Treaty and the transformation of the European Community into the EU, human rights became formally a fundamental constituent part of the EU. Art. 6 of the Maastricht Treaty states:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States...The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>27</sup>

The above passage demonstrates that it was in 1992 when human rights became a foundational issue to the EU. This was then further extended in 1997 by the Amsterdam Treaty, which not only made absolutely unequivocal the fact that the EU is founded on

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<sup>24</sup> Ninon Colneric, ‘Protection of Fundamental Rights through the Court of Justice of the European Communities’, *Oxford Centre for Competition Law and Policy*  
<http://denning.law.ox.ac.uk/iecl/pdfs/working2colneric.pdf> (accessed 14.7.2012)

<sup>25</sup> “Joint Declaration by the European Parliament, the Council and the Commission”, *Official Journal of the European Communities*, C.103 (1977), p. 1.

<sup>26</sup> ‘Solemn Declaration’ *CVCE*

[http://www.ena.lu/solemn\\_declaration\\_european\\_union\\_stuttgart\\_19\\_june\\_1983-02-7725%20target](http://www.ena.lu/solemn_declaration_european_union_stuttgart_19_june_1983-02-7725%20target) (accessed 14.7.2012)

<sup>27</sup> ‘Consolidated version of the treaty on European Union’, *Europa* [http://eur-lex.europa.eu/en/treaties/dat/12002M/htm/C\\_2002325EN.000501.html](http://eur-lex.europa.eu/en/treaties/dat/12002M/htm/C_2002325EN.000501.html) (accessed 14.7.2012)

principles of human rights, but also extended powers of the European Court of Justice to include an ability to deal with human rights concerns regarding the EU's own actions. The treaty of Amsterdam also included provisions and procedures to enable the EU to respond to a member state making a clear and persistent breach of human rights.

However, although human rights became central in 1992, this thesis will be limiting its analysis to the period between 1998 and 2012. This is because, as has already been indicated, it will seek to answer the question by examining the enlargement and accession processes. The reasoning behind the selection of this period of time is that from 1998 onwards, the EU has had specific formalised processes by which its enlargement policies are conducted. Were the thesis to include such enlargements as the 1981, 1986 or 1995 enlargements, there would be a certain amount of problems due to the lack of organisational structures compared with the 2004, 2007, candidate states, and the recognised candidate states.

In terms of the institutions of the EU that shall be examined within this thesis, the question shall be answered by examining the enlargement and accession process, as has been previously mentioned. Therefore, the focus will be the documentation outputs produced by the EU as part of these processes. The reasoning behind using the enlargement and accession process as an effective indicator of the EU's understanding of religious freedom is that these are the areas where the EU's attitudes towards human rights can be seen most clearly. During the enlargement process, the EU makes detailed examinations of an applicant state's internal situation in order to determine whether that state is suitably qualified to accede to the Union. In some rare cases, this process is relatively simple, such as in 1987 when Morocco's membership bid was quashed within a single year on geographic grounds.<sup>28</sup> However the vast majority of the time, extensive amounts of information are required in order to make an

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<sup>28</sup> 'Good to know about EU Enlargement' *European Commission – Directorate General for Enlargement* [http://ec.europa.eu/enlargement/pdf/publication/screen\\_mythfacts\\_a5\\_en.pdf](http://ec.europa.eu/enlargement/pdf/publication/screen_mythfacts_a5_en.pdf) (accessed 11.7.2012)

accurate assessment of a state's suitability to join, and one of the most important areas of examination within these assessments is that of human rights. Although the EU does have its own policy outputs concerning human rights (most notably the Charter of Fundamental Rights of the European Union), these outputs are limited to the areas where EU law has direct control over given issues. The European Commission's website explains it in the following terms: "The Charter also applies to EU countries but only when they implement EU law. The Charter's provisions do not extend to the competences as defined in the EU Treaties. The EU cannot intervene in fundamental rights issues in areas over which it has no competence".<sup>29</sup> However, when the EU is considering a potential new member state, it is able to describe, analyse, and pass judgement on all areas of a given state's policy outputs, including policies surrounding the issue of religious freedom. Therefore, when examining the EU's outputs during the enlargement and accession processes, a broader picture of the EU's views on religious freedom will be revealed. The primary instance of these outputs is the set of the 'Regular Reports' produced by the EU annually about all accepted candidate states, which this thesis focuses upon.

The second area that requires clarifying is the exact nature of what is referred to by 'religious freedom' in the context of this thesis. This question is much more complex to answer. As has been previously mentioned, the nature of religious freedom is such that it is not a human right which submits easily to simple categorisation. Not only do many academics and other experts have exceptional difficulty defining exactly what a religion is,<sup>30</sup> they also must answer the question of the extent to which a given religion or religious institution should be 'free', as well as what is meant by freedom in this context (as was earlier discussed, different countries see it very differently). Indeed, the nature of the question itself

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<sup>29</sup> 'Fundamental Rights', *Europa* [http://ec.europa.eu/justice/fundamental-rights/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/index_en.htm) (accessed 10.7.2012)

<sup>30</sup> Victoria S. Harrison, 'The pragmatics of defining religion in a multi-cultural world', *International Journal for philosophy of religion*, Vol. 59, No. 3 (2006), pp. 133-152.

may make a definition counterproductive. After all, the intent here is to discover how the EU interprets religious freedom and implements policies relating to it. If the thesis uses a definition of religious freedom that is in some manner incompatible with the one used by the EU itself, the conclusions reached may be flawed simply due to the nature of the framework of definitions within which the question is asked. Therefore, in order to gain as broad as possible an understanding of what is meant by religious freedom in the EU context, it is necessary to analyse the EU's constituent documents, using them to create a basic understanding, and then examining outputs such as the regular reports in order to gain a more complete comprehension.

Using this system, it seems to be the case that the central concerns of the EU are the freedoms of individuals and institutions, although it should be made clear that there is not a substantial body of information to go on. The first substantial mention of religion in the various treaty documents from 1992 onwards can be found in the Amsterdam Treaty, which includes a section entitled 'Declaration on the Status of Churches and Non-Confessional Organisations'. The text of this section reads as follows: "The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organisations".<sup>31</sup> This would suggest that one of the EU's most important points of concern regarding religious freedom is that of the religious institution itself. Although this may be seen as something of an obvious point, and that any religious freedom concern should necessarily include freedoms for religious institutions, it is not in fact always the case. One of the primary reasons that the United States scores a neutral zero in Jonathan Fox's global survey of relations between religious groups and the state is that

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<sup>31</sup> 'Treaty of Amsterdam - Official Journal C 340, 10 November 1997', *Europa* <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (accessed 27.7.2012)

the US maintains neutrality by having no official system of religious recognition.<sup>32</sup> Although US religious institutions have been exempt from taxation since the inception of the modern American system of taxation in 1894, this policy is broader than simply religious institutions and instead encompasses all charitable organisations. This discussion by the EU of the position of churches means that institutions make up an important point of the EU's religious freedom concerns, in contrast to the American case, where all charitable institutions, religious or secular, are viewed in the same light as far as governance issues such as taxation are concerned.

A further important point that can be derived from this text is that the EU has, at some level, a concern for a level of equality between religious and non-religious groups. This revealed by the EU's mention of the fact that alongside its respect for the status of religious groups under member-state law, there is also an equal respect for other groups (philosophical and non-confessional groups). This statement of 'respect' might potentially be interpreted as a declaration that the EU intends to allow the regulation of relationships between religious groups and member-state governments to be entirely dealt with by the member states themselves. While this is certainly possible, it is not the only meaning in this context. What may also be meant is that while the EU respects the right of member-states to dictate the status of religious groups via national law, the EU will not use this status to make prejudicial judgements of a given religious group when dealing with them directly.

While the importance of institutions to the EU's religious freedom policies is made somewhat clear in the founding treaties, concerns surrounding the individual's religious freedoms are less substantially defined. The only specific mention of such concerns to be found in any of the constituent documents from 1992 onwards is in Article 5b of the 2007 Lisbon Treaty, which specifically refers to discrimination on the grounds of religion, along

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<sup>32</sup> Jonathan Fox, *World Survey of Religion and the State* (Cambridge: Cambridge University Press, 2008), p. 134

with areas such as race, age, gender, disability or sexual orientation. It was not until 2000 with the drafting of the Charter of Fundamental Rights of the EU that the Union made a specific point of reference to the exact nature of “fundamental freedoms” and “human rights”, which could be found in diverse documents. Up until that point, EU internal sources pointed to the European Court of Justice as being the primary agent of EU human rights law creation via jurisprudence. In various documents, in particular the regular reports, references are made to the European Convention on Human Rights and Fundamental Freedoms, despite the fact that it is not an EU document (it traces its origins to the Council of Europe).

The formation of freedom of religion discussed in the Charter is one that is much more directly linked to the individual. Art. 10 of the charter states the following:

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance [...]. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.<sup>33</sup>

Thus it is quite clear from this basis that the EU is also concerned with the abilities of religious individuals to practice their beliefs, and specifically the limited government involvement in the restriction of those beliefs. This conception would appear to eliminate other possible conceptions of religious freedom, such as the notion of ‘freedom from religion’ whereby the state is expected to limit the ability of religious individuals to influence wider society, and in particular the public sphere and government.

Therefore, on the basis of the concerns of the EU in various documents, for the purposes of this thesis, a policy shall be considered related to religious freedom if it does one of two things. Firstly, if it specifically affects the ability of an individual to practice his or her religion. Secondly, if it specifically affects his or her access to broader freedoms due to his or

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<sup>33</sup> ‘Charter of the Fundamental Rights of the European Union’, *Europa*  
[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (accessed 27.7.2012)

her religious status or affiliation. Thus, this thesis shall examine the extent to which the EU expects that its member-state governments shall be permitted to influence, impact, or otherwise control religious activity.

### 1.3. Case Studies

The case studies selected here will be chosen in order to create as broad and complete a picture of the EU's conceptualisation and implementation of freedom of religion as is possible, using the regular reports that have been drafted from 1998 onwards. To that end, the organisation of the thesis and its focus will not be directly based around individual accession countries. Rather, it will focus on the waves of enlargement themselves and, more specifically, on thematic areas of concern raised by successive waves of enlargement (2004, 2007, 2013). As such, this thesis does not study all the countries involved in each active wave of enlargement from 1998 onwards. Instead, it uses examples from all ten countries since the 2004 round of enlargement to illustrate certain common themes, including the registration of religious groups, both countries from 2007, Croatia (the most recent new member-state), the five candidate countries currently in negotiations, and the three potential applicant countries. In short, examples will be drawn from twenty-one countries in total. However, this dissertation does not examine the religious freedom in each and every country. Nor does it analyse all the dimensions of the EU's approach to religious freedom. The focus is on the way in which the Union views religious freedom in relation to the accession process.

It is of course a potential, and indeed a significant possibility, that as a result of the broadening of the number of countries to such a large body, there will be a dilution of detail that each country will receive. Consequently, there are several countries of the 21 (such as aforementioned Romania) that require much more attention, compared to other countries with less controversial or serious issues surrounding religious freedom (such as Iceland).



#### 1.4. Methodology

The methodology employed in this thesis shall be primarily one of discourse analysis with a secondary, partial focus on the comparative method. The preference for a qualitative over a more quantitative method, such as that employed by Fox, is largely due to the nature of rights being discussed. Freedom of religion is not a right that can be considered or described in simple terms. As has already been discussed there are many complex variables and issues to consider. How does one judge, for example, the forcible teaching of a particular religion in state funded schools against the ability of the state to discriminate on the grounds of belief with regard to adoption because they believe the content of such belief is potentially harmful to the child? Given religious freedom's relative complexity, such a system would be wholly inappropriate.

Discourse analysis is fundamentally necessary because at its heart, the EU's conceptualisation of religious freedom is in itself a meta-discourse. In this context, a meta-discourse refers to a type of overarching approach that may itself not be directly mentioned in speaking or writing, but from which other discourses will themselves arise. This can be seen from the fact that although the EU's Copenhagen Criteria specify human rights as a functional part of the criteria, they do not specify in detail the nature of these rights, and the system by which they are implemented.<sup>34</sup> And although the EU's Charter of Fundamental Rights lists several specific areas of how it expects freedom of religion to be implemented, it does not give specific details, much in the same way that in Art. 11, freedom of expression is

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<sup>34</sup> The Copenhagen Criteria are the standards which potential EU member states must meet before accession. They were first drafted in 1993 when Denmark held the presidency of the European Council. The following is the text from the Copenhagen Presidency's Conclusions which explain the criteria in full membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

guaranteed without giving specific reference to issues such as libel and slander etc. This is likely, at least partially, by design. The EU already contains within it a wide range of national styles and systems, and if too much specificity existed enlargement negotiations would very quickly become intractable. However, while too much specificity would be a problem, too little would also be a concern, and it is the intent of this thesis, in its use of discourse analysis on the various regular reports produced by the EU regarding these twenty one countries, to discern the nature and amount of specificity the EU has regarding its interpretation and implementation of religious freedom. In this sense, the investigation is analogous to sprinkling fine graphite dust onto a sheet of paper that then reveals the hidden indentations left by what was written on a piece of paper above once it has been taken away.

Discourse analysis of the reports alone, however, will only get this thesis so far when it comes to discerning the EU's true interpretation of religious freedom. In order to get an accurate picture of how the EU interprets and implements religious freedom, it is not only necessary to consider what is contained within the EU's regular reports, but also what is left out. A complete understanding of the EU's conception of religious freedom would not be possible by only examining its outputs, because in the vast majority of cases, outputs relating to human rights documents are drafted in a positive manner. They specify the rights that individuals possess and do not seek to contrast their particular model of human rights with others. Although they may comment in certain situations where rights are breached, they may not comment in situations where another's conception of human rights was breached and theirs was not. Therefore, to allow for greater differentiation, more material is necessary.

In order to determine that which the EU chooses to leave out of its regular reports, it is therefore necessary to compare the output's content with other actors who are covering the same issues. These actors may be other states, charities, think-tanks, pressure groups, religious organisations, and many other possible actors. Many of these actors are particularly

useful in highlighting the EU's concern because unlike the EU, not all of them have a political agenda. Some merely seek to provide information on the state of affairs within a given polity regarding religious freedom concerns. Therefore, the EU's outputs which do have a particular political viewpoint can have this viewpoint exposed more clearly.

By comparing and contrasting what the EU focuses on in its regular reports, and what other comparable actors highlight as being the situation, we can determine what the EU sees as important, and what it does not. From these points of data, we can extrapolate the manner of interpretation the EU uses regarding religious freedom, and determine the standards that it seeks to hold potential new member states to.

### 1.5. Literature Review

There are three bodies of literature to which this thesis will be contributing: two very large and general areas, and one that is much more narrow and specific. The two larger bodies are the study of conceptualisations of religious freedom in general (and even more generally, the study of the conceptualisation of freedom itself), and the examination of the EU's foreign relations. The smaller field is where the issues of religious freedom and EU foreign relations overlap, but as will be demonstrated even within that relatively narrow field of overlap, this thesis will be presenting something new and original.

One of the most famous works among the literature on the subject of conceptualisations of freedom is of course the essay by Isaiah Berlin entitled 'Two Concepts of Liberty'. This thesis agrees with Berlin's initial point regarding the difficulties in conceptualising freedom: "Almost every moralist in human history has praised freedom. Like happiness and goodness, like nature and reality, it is a term whose meaning is so porous that there is little interpretation

that it seems able to resist”.<sup>35</sup> Berlin’s two concepts of positive and negative freedom are a vital part of answering the question of how the EU interprets and implements religious freedom. To separate the two, positive freedom is used to answer the following question: “What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?”.<sup>36</sup> By contrast, negative freedom engages with another question, namely “What is the area within which the subject — a person or group of persons — is or should be left to do or be what he is able to do or be, without interference by other persons?”.<sup>37</sup> A significant part of the question here asked is the extent to which, if at all, the EU views religious freedom as an affair negative or positive freedom from a political viewpoint. Is it solely concerned with the question of whether or not the state controls or conditions religious activity? Or does it also take issue with the extent to which the state actively enables or encourages religious activity? Or is it (as is quite probable) something of an element of both, to varying extents. This thesis shall be an application of the spectrum discussed by Berlin, with specific reference to the EU. Although it will not attempt to answer the question in a normative fashion, it will investigate where the EU places its own normative emphasis.

Jay Newman’s book *On Religious Freedom* is a piece with a slightly more narrow focus than the work of Berlin, moving from freedom in general to religious freedom in particular. In his work, Newman examines the questions of the various specific forms of religious freedom that can be said to exist. In that sense this thesis continues that research but in a more specific examination, attempting to determine the particular conception of religious freedom applied by the EU during the enlargement process. For example, Newman makes the point that discrimination on the grounds of religion is also a factor to consider. He writes that

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<sup>35</sup> Isaiah Berlin, ‘Two Concepts of Liberty’, in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. 121

<sup>36</sup> Berlin, ‘Two Concepts of Liberty’, p. 121

<sup>37</sup> Berlin, ‘Two Concepts of Liberty’, p. 121

“[f]or example, though there is nothing particularly religious about being a corporation president, the fact that one is not prevented from being a business executive because one worships in the Roman Catholic Church or the Church of Scientology indicates that one enjoys a certain degree of religious liberty”.<sup>38</sup> There are other complex considerations of religious freedom that Newman discusses, such as the question of whether or not it can be considered as freedom ‘of’ or freedom ‘from’ religion:

Maurice Cranston is impressed by the fact that ‘we find the expression “religious freedom” used sometimes to mean “freedom (from state interference) for religious institutions” and at other times to mean “freedom (for individuals) from religious institutions” (people who want freedom from religious institutions often look to state interference to secure it).<sup>39</sup>

Other further areas to consider include the nature of the actors are involved in the question of religious freedom. Newman points out that “[...] if someone is being bullied by big business because she is a Muslim or a Jehovah’s Witness, then even though no political figure has been directly involved in the persecution, the victim may well be seen as being denied religious liberty”.<sup>40</sup> What Newman’s work does is to create a framework for analysis of religious freedom. He highlights a wide selection of potential considerations when discussing various conceptions of religious freedom. This thesis contributes to these issues by discerning the EU’s interpretation of freedom of religion through direct policy outputs, rather than overall statements of intent.

Within this analysis, it may be possible to further discover a distinct and unique interpretation of religious freedom used by the EU, thereby discovering further nuances to the question of religious freedom. The EU is often said to be *sui generis* in its nature as a political actor in so far as it possesses some, but not all, of the qualities of a state, and that it

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<sup>38</sup> Jay Newman, *On Religious Freedom* (Ottawa: University of Ottawa Press, 1991), p. 94.

<sup>39</sup> Newman, *On Religious Freedom*, p. 3.

<sup>40</sup> Newman, *On Religious Freedom*, p. 95.

possesses some, but not all, of the qualities of an international organisation.<sup>41</sup> It is therefore possible, that this thesis may discover a *sui generis* conception of religious freedom, involving elements of conceptions from various other understandings.

In terms of literature discussing the EU's foreign relations, in particular the question of accession and enlargement, an important area of work to which this thesis will be further contributing is that of Dimitry Kochenov and his book on EU enlargement and the failure of conditionality.<sup>42</sup> Kochenov's work is a detailed critique of the enlargement process as a whole, and in particular the political conditionality surrounding issues like rule of law and democracy. He argues that although there were large numbers of references to ideas such as the rule of law, their relevance to the process of candidate countries towards accession was limited, thus significantly undermining the principles behind the process. This thesis follows Kochenov's work on this key argument, which seeks to understand in greater detail the exact nature of the role of political conditionality within the enlargement process. His aim was to determine the amount of impact concerns like rule of law actually possessed when the regular reports were drafted, and more broadly to see how these issues impacted other aspects of the process. This thesis aims to do something similar, in that in analysing the implementation and interpretation of religious freedom involved, part of the considerations will be the extent to which a particular issue of religious freedom has had an impact on the accession and membership process, according to the reports. If an issue definitively impacts the prospects of a country joining the EU, it could be said to be significantly more important. A stark contrast however between this thesis and Kochenov's work is that in his analysis he produces a profoundly normative response, even if it is couched in terms of internal relevance to the EU itself. He argues that what he considers the failure of conditionality, i.e. the seeming inability

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<sup>41</sup> See, for example, Simon Hix, *The Political System of the European Union*, 2<sup>nd</sup> rev. ed. (London: Palgrave Macmillan, 2005); Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford: Oxford University Press, 2006).

<sup>42</sup> Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality* (The Netherlands: Kluwer Law, 2008), p. 311.

of issues surrounding the rule of law and democracy to make substantial impact on the enlargement and accession process, was an “alarming” development, due to the fact that it undermined so much of the principle of conditionality outlined by the European Council.<sup>43</sup> It is not the intention of this thesis to produce a normative critique of the EU.

Dietrich Jung and Catharina Raudvere have also produced a work that runs parallel to this one in its attempts to understand the rationales behind the process of accession itself as they go into great detail in their examination of the question of Turkey’s EU accession, and the concerns therein.<sup>44</sup> This book specifically examines what effect Turkey’s religiosity has on the current state of negotiations and progress towards the possibility of Turkish membership of the EU. It asks questions of such areas as the long term conflict between the Islamist groups within Turkish politics and the more secular minded groups along with their military influence on the country’s political process. The areas Jung and Raudvere examine, which this thesis shall cross over into, will be those dealing with the EU’s standards regarding religious freedom in potential member states. In attempting to understand the exact level of impact that Turkey’s religiosity has on the accession process, this thesis does share a great deal in common with Jung and Raudvere’s work. However, an important distinction is that the lens in the case of Jung and Raudvere is that of membership itself. Jung and Raudvere are asking a question about how exactly religion has impacted Turkey’s bid for membership, whereas this thesis intends to take that question one step further. In asking how Turkey’s religiosity and its policies and attitudes towards religion have been responded to as part of the accession and enlargement process, this thesis intends to determine exactly what it is the EU is referring to in its interpretation of religious freedom.

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<sup>43</sup> Kochenov, *EU Enlargement and the Failure of Conditionality*, p. 311

<sup>44</sup> Dietrich Jung and Catharina Raudvere, *Religion, Politics, and Turkey’s EU Accession* (New York: Palgrave MacMillan, 2008).

Moving more specifically onto works that examine the overlapping area of religious freedom and the EU, there are several important publications on this topic to which this thesis hopes to make a contribution. Two highly technical works in this regard are, first of all, Renata Uitz's *Freedom of Religion*,<sup>45</sup> a book published by the Council of Europe as part of a series entitled 'Europeans and their Rights' and, secondly, Achilles Emilianides's work entitled *Religious Freedom in the European Union*,<sup>46</sup> published by the European Consortium for Church and State Research. Uitz provides a detailed critical analysis of vast swathes of statute and case law within Europe dealing with the subject of religious freedom. Just as Uitz examines the various legal principles and practices that make up the experience of European religious freedom felt by the majority of its citizens, so too will this thesis be looking in detail at these areas within the EU. Where this thesis diverges from Uitz's work is that this thesis intends to look in more detail at areas specifically controlled and dealt with by the EU itself. The majority of Uitz's work looks at freedom of religion in Europe at the state level, and though this thesis is examining the state level also, it is doing so through the eyes of the EU. This thesis's aim is to know how the EU perceives religious freedom, thereby highlighting the distinctions between what the EU focuses on, and what others focus. Although there is some coverage of incidents at the ECHR, this is far from the work's primary focus. We also see this in Emilianides's work. There are great swathes of technical detail of how each individual state acts regarding religious freedom. However it is that they are in the EU that marks them as cases for Emilianides's study, rather than an examination of the EU itself as a particular actor.

There have been a number of studies conducted and articles published to determine the nature of the EU's rationale and standards of human rights done on other issues. One of

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<sup>45</sup> Renata Uitz, *Freedom of Religion* (Strasbourg: Council of Europe, 2007).

<sup>46</sup> Achilles Emilianides, *Religious Freedom in the European Union* (Paris: European Consortium for Church and State Research, 2011).



the most commonly focused on, and an area which arguably spills over into the issue of religious freedom, is that of rights of minorities. James Hughes and Gwendolyn Sasse examine the effectiveness of the EU's minority rights practices in the regular reports.<sup>47</sup> In analysing its effectiveness, Hughes and Sasse's goals are both similar to, and yet different from, the goals of this thesis: similar in the sense that by examining the effectiveness of the EU's examination of minority rights issues, it is necessary for them to use the reports to determine exactly what the EU expects of applicant and candidate countries. However, because they are examining effectiveness, they are differing from this thesis in that they seek to make a normative judgement. But it should be pointed out that one of the important conclusions of Hughes and Sasse's work is that the regular reports do not paint a consistent picture in regards to what the EU expects. The piece describes the reports as being '*ad hoc*' in their various arrangements, and therefore concludes that the EU has been ineffective in its protection of minority rights in that regard. Hughes and Sasse are not alone in that description of ineffectiveness. Kyriaki Topidi, in his examination of the EU's impact on laws surrounding the protection of minority rights in Slovakia, concludes that the EU has had very little impact on the Slovakian situation.<sup>48</sup> In Hughes and Sasse's case, the argument is that a significant part of this ineffectiveness is to do with inconsistency, and that without a clear structure and set of standards, the EU's reports are doomed to be ineffective. Although it is not the aim of this thesis to attempt to consider the effectiveness of the EU's regular reports and other activities in improving the freedom of religion conditions of the various states here examined, it is important to note that if it is also discovered that the EU had an *ad hoc*

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<sup>47</sup> James Hughes and Gwendolyn Sasse, 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', *Journal of Ethnopolitics and Minority Issues in Europe*, Issue 1, (2003), pp. 22-58, available online at [http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003\\_Hughes\\_Sasse.pdf](http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003_Hughes_Sasse.pdf) (accessed 27.7.2012)

<sup>48</sup> Kyriaki Topidi, 'The Limits of EU Conditionality: Minority Rights in Slovakia', *Journal of Ethnopolitics and Minority Issues in Europe* Issue 1 (2003), pp.136-173, available online at [http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003\\_Topidi.pdf](http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003_Topidi.pdf) (accessed 24.7.2012)

attitude towards religious freedom also, that it will be very difficult to produce any serious understanding of the interpretation of religious freedom that the EU possesses, and indeed it is a possible conclusion that the EU does not have a singular one at all.

Other considerations of religion in the EU have been made in a general sense by several authors. Jean-Paul Willaime in his article ‘European Integration, Laïcité and Religion’<sup>49</sup> discusses *laïcité*, the French-originated concept of mutual non-interference between religious institution and government authority, and how this concept has been integrated into EU legislation such as the treaty of Lisbon, and what consequences further European integration will have for *laïcité*. In particular, it makes mention of the ‘secular compromise’ found between various religious and non-religious forces that debated over questions of references to God and Christianity especially within the preamble of the treaty. It also mentions the necessary dialogue that Article 16C of the Lisbon Treaty makes specific reference to, and then goes on to further point out that given the pluralising nature of the implementation of *laïcité* within the EU, that *laïcité* itself finds itself alongside various other non-religious political and philosophical traditions as part of the dialogue. It is interesting, in this context, to raise the question of whether or not the act of dialogue itself is a secularising force. In forcing religious groups, many of whom argue they have a monopoly on metaphysical truth, to set aside differences and work for a specific ‘common’ goal as part of the dialogue, the process of dialogue implies that that goals of the dialogue are more important than the metaphysical truths of the religions, since those truths have had to be set aside in order to be accepted into the dialogue. This is something, that to an extent, *laïcité* itself experiences as part of what Willaime calls ‘European *laïcité*’ as opposed to ‘French *laïcité*’. In terms of the way this thesis contributes to the same body of literature as this piece

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<sup>49</sup> Jean-Paul Willaime, ‘European Integration, Laïcité and Religion’, *Religion, State and Society*, Vol. 37, No 1-2 (2009), pp. 25-35.

does, they both are attempting to achieve a similar goal, but to do so in different ways. Willaime aims to examine this from within, considering the constituent make-up of the EU in terms of its treaties and other documents and from them he attempts to determine the specific nature of the form of *laïcité* that the EU employs. Whereas this thesis instead wishes to examine the external outputs of the EU, and in so doing hopes to gather a more detailed and nuanced understanding of the exact nature of the EU's interpretation and implementation of religious freedom, be it a form of *laïcité* or otherwise.

Regarding a more broad consideration of the EU's attitude towards religious freedom, Norman Doe's chapter "Towards a 'Common Law' on Religion in the European Union" covers an important section of ground that this thesis also touches on.<sup>50</sup> In particular, this is the exact nature of the EU's standards and expectations when it comes to freedom of religion concerns. He identifies eight specific principles which the EU has, in various ways, enshrined into its laws, and thus dictate the nature of the EU's relationship with religious institutions. However, of these eight principles, religious freedom is only one. This thesis intends to be far more focused on that aspect of the issue. Doe considers several other values which are linked to religious freedom, such as autonomy of religious institutions as well as questions of religious privilege. But he also engages with other questions that this thesis will not consider, such as issues regarding the value of religion. And although a description of a common law on the EU's attitude towards religion is very important to this thesis, the focus is much more on how that law is engaged with in practice, in terms of the accession process, and the form of freedom conceptualised that arises from that. Doe's work considers the principles that arise, but it does not consider the interpretation that causes those principles to arise. By

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<sup>50</sup> Norman Doe, 'Towards a 'Common Law' on Religion in the European Union', in Lucian N. Leustean and John T. S. Madeley (eds.), *Religion, Politics and Law in the European Union* (New York: Routledge, 2010), pp. 141-160.

examining the output of the EU in the regular reports, that is what this thesis aims to discover.

#### 1.6. The focus and contribution of this thesis to existing scholarship

This thesis's importance lies less with the nature of the questions it asks, and more with the manner in which they will be answered. As has been mentioned in the literature review, there has been much analysis of the EU's considerations of freedom of religion and how the EU interprets and implements different freedoms. What has not been done before, not in any of the pieces here mentioned, is to contrast what the EU produces in its regular reports with other comparable reports and other documentation. What this thesis does is provide a means of gaining a distinct and sharp image of that which the EU considers most important. It does this not, as the work of Doe does, by examining purely what the EU says that it is concerned with. In this respect, the EU is, after a fashion, being held to account. That phrase is not strictly accurate, since this thesis does not intend to form a normative judgement on the effectiveness or otherwise of the EU's religious freedom outputs. Nor does it intend to hold up the regular reports in comparison to the CIEs as if to confirm whether or not the EU was accurate in its investigations. Rather, they are being contrasted so as to determine that which the EU considers a priority, and what it does not. From this difference, the shape of the EU's interpretation of religious freedom can be extrapolated. This is a distinct method, and allows for much more nuanced detail regarding specific instances and issues that may be mentioned in one or both of the groups of documents being analysed. With the ability to break down the EU's focus to specific instances and concerns, rather than general sweeps of policy or law, an incredibly detailed conclusion about the EU's exact conceptualisation is possible.

Furthermore, this study seeks to be comprehensive. Covering twenty-one countries over a period of fourteen years, this thesis can encompass a dramatic amount of EU output.

Of particular importance is the fact that these countries exist on a wide spectrum within the EU in terms of their status of membership. The 2004 wave are now accepted and well integrated members of the community. Although the 2007 wave have achieved the status of full members, there is still on-going reporting activity on various issues (mainly corruption).<sup>51</sup> There is a country that is now guaranteed accession in 2013 (Croatia) and there are two groups of countries that are not yet members, but under distinct classifications (candidate and applicant). It is the plethora of these statuses that further enable a detailed conclusion on the issue of the EU's interpretation of religious freedom. Although it is true that there may be other interfering factors, it is possible that at least in part, the EU's decision to place a given country in a given stage within the accession process has been decided on the basis of its current status regarding its religious freedom policies. As such, this provides further detail as to exactly how the EU interprets and implements religious freedom.

### 1.7 Thesis outline and chapter breakdown

The thesis will be organised in terms of the various waves of enlargement, chronologically, as well as position within the EU enlargement process. Chapter two will examine the regular reports of the countries from the 2004 enlargement wave and chapter three the 2007 wave. Chapter four will include both Croatia as a newest member-state, along with the candidate countries being currently considered by the EU (Macedonia, Iceland, Montenegro, Serbia, Turkey). Although technically Croatia is in a separate category, since it joined the EU on 1 July 2013, to separate it out because of this would overcomplicate the chapter structure. Chapter five will cover the applicant countries (those that the EU describe as having been "...promised the prospect of joining when they are ready").<sup>52</sup> This group is comprised of

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<sup>51</sup> 'Report on Progress under the Co-operation and Verification Mechanism in Romania', *Europa* <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/569> (accessed 18.9.2012)

<sup>52</sup> 'EU Enlargement – Check Current Status' *Europa* [http://ec.europa.eu/enlargement/countries/check-current-status/index\\_en.htm](http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm) (accessed 18.7.2012)

Albania, Bosnia and Herzegovina and Kosovo. The final chapter shall consist of an overview of what has been discovered about the EU's conceptualisation of religious freedom.

## **Chapter Two: The 2004 Enlargement Wave**

### **2.1 Chapter Introduction**

This chapter will focus on a number of themes in relation to the ten countries that make up the 2004 enlargement wave (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovakia). However, as was stated in Chapter one, this focus shall not be based upon individual countries themselves, but rather based upon thematic areas, selected on the basis of their emergence in the body of literature produced both by the EU itself, and by the various other investigative entities whose function it is to examine the situation regarding freedom of religion in these various countries, notably the United States State Department's Office for International Religious Freedom (USSDOIRF).

In highlighting the areas that the EU focuses its concern upon, and contrasting it with the specific situation and the concerns raised by other investigative groups, a level of understanding can be reached about how the EU interprets religious freedom, and where the important agency of the freedom lies (IE the freedom of individuals, freedom of institutions, equality of systems etc). The thematic areas that will be considered here will be the situations regarding religious education, systems regarding the official registration of religious groups, the state of relations between religious groups and the government (dialogue and accommodation of beliefs in legislation, etc.), and the question of discrimination on the grounds of religion. This will be followed by a concluding discussion about what can be learned from these instances.

### **2.2 Discrimination on the grounds of religion**

This area would appear to be, from the content of the reports, the single most consistent concern of the EU with regards to religious freedoms. Every single country here listed has, at

some point or other in the accession reportage process, been highlighted for the fact that it does indeed prohibit discrimination on religious grounds. However, very little detail is provided about this fact. For example, it would be perfectly reasonable for an employer to wish to discriminate against someone on religious grounds if their religious principles would most likely come into conflict with the performance of their duties. The reports do not highlight to what extent the law should prioritise religious freedom over other areas.

In terms of the contrast to the USSDORIF reports, the situation regarding religious discrimination is similarly mirrored. Specific incidents are mentioned, such as one case regarding prison chaplains in Estonia, where it is pointed out that although it is the case that all prison Chaplain activities are conducted through a group of Lutheran diaconal centres, USSDORIF are quite satisfied that the conduct of these centres is such that it cannot be said to discriminate against non-Lutherans.<sup>53</sup> There is also mention of the fact that the Cypriot government, both on the Turkish and Greek dominated regions, have in place constitutional protections against discrimination on religious grounds,<sup>54</sup> and the fact that in Malta, despite the overwhelming dominance of the Roman Catholic church, both politically and socially, there is no observable social or political discrimination on religious grounds.<sup>55</sup>

However, there is a particular case that the USSDOIRF reports highlight which the EU does not which gives some crucial insight into the beliefs and conception of religious freedom used by the EU. In Poland the following case was reported: “In June 1998, a provincial court decided that a crucifix hung in the meeting room of the Lodz city council in 1990 could remain, denying the complaint of a city resident. An atheist complained that the crucifix threatened religious freedom and discriminated against him”.<sup>56</sup>

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<sup>53</sup> Estonia Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5642.htm> (accessed 22.8.2012)

<sup>54</sup> Cyprus Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5616.htm> (accessed 22.8.2012)

<sup>55</sup> Malta Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5618.htm> (accessed 22.8.2012)

<sup>56</sup> Poland Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_poland99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_poland99.html) (accessed 22.8.2012)



Thus we can make some inferences about the nature of the EU's reportage system with regards to discrimination on the grounds of religion. Firstly, it is clear that some kind of system exists. It would appear that the EU does not take the merest accusation of discrimination on the grounds of religion as sufficient merit to warrant that a case of it has emerged. Therefore, they do not believe in the notion that discrimination of this sort can be defined by the supposed victim, and rather that there is an independent external definition as to what constitutes an action that can be described as discriminatory. Second the action in question cannot be said to be the presence of religious symbols within a given building, even if the building in question is one owned and operated by a state institution. It is interesting and important to note that this opinion did not remain entirely consistent throughout the EU's history, but in 2011 a court judgement was made regarding Italy's legal requirement that schools display a Crucifix was not in itself a breach of an individual's religious liberty, regardless of their own personal affiliations. The grand chamber of the ECHR ruled that "a crucifix on a wall is an essentially passive symbol and...cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities".<sup>57</sup>

Therefore, it could indeed be argued that this judgement in the EU's regular reports was in fact an form of this opinion, present in the EU (since of course the ECHR is not in itself an EU institution). Thus, it would appear that the EU regards the presence of religious symbols in and of themselves to not be a threat to religious freedoms, and not a form of discrimination on the grounds of religion.

Since it is clear that all the states in this instance appear to have a necessary level of legal protection against discrimination on the grounds of religion, it cannot be entirely clearly stated how important this issue is to the EU in terms of the accession process. Seeing as how

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<sup>57</sup> Judgement *Lautsi v. Italy*, *EUCHR Grand Chamber*, [http://www.echr.coe.int/echr/resources/hudoc/lautsi\\_and\\_others\\_v\\_italy.pdf](http://www.echr.coe.int/echr/resources/hudoc/lautsi_and_others_v_italy.pdf) (accessed 18.9.2012)

no single state appears to violate the EU's need for it, so much so that every single EU applicant state in this group has their opposition to this form of discrimination mentioned at least once, there is no comparable data point to see the consequences to a given country's progress in the accession proceedings if they should fall short in this measure. However, given that it is mentioned repeatedly, and indeed universally (albeit not every year) we can conclude that this area is of exceptional importance for the EU in regards to its attitude towards religious freedom. It is interesting to note that this is not an area which is, in itself, within the purview of religious groups. That is to say, it is perfectly natural and indeed expected, that a religious group would be discriminating on the grounds of religion when it comes to various positions within its own institutions. In the case of this area, the primary focus of the regulation is those outside the religious sphere of influence, namely secular employers and the state. Therefore, it would appear that the EU's primary point of concern with regard to religious freedom is that of threats external to religious groups generally. It is arguably less concerned with the activities of individual religious groups, or their relationship to the government directly. The fact that the EU's only consistent area of concern regarding religious freedom is an issue where the threat to religious groups is external tells us a great deal about the nature of the EU's understanding of religious freedom.

### 2.3 Official Registration of Religious Groups

A policy area that emerges repeatedly within discussions of religious freedom in the EU's regular reports, and much more frequently within analyses undertaken by various other sources, is that of how a given country operates its system of registering a given religion with the government of that country, and what the consequences and privileges of such a registration are. However, although the EU reports mention this policy area on several occasions, there is never a clear indication that a given mentioning of the policy is a positive

or a negative occurrence in terms of a given country's religious freedom position. Specific mentions of religious registration systems occur in the cases of Cyprus, the Czech Republic, Slovakia, and Slovenia. But crucially, in none of these cases does the EU make specific mention as to whether or not the policies of these countries are a positive development for them, or a negative one. Therefore, inferences on the EU's position must be made on the basis of the lack of discussion of these issues in other cases, and the details of issues being discussed in these instances.

In terms of the EU's specific discussion of these concerns, although it is a specific policy area that emerges regularly, the discussion levels are still quite limited. In the case of the Czech Republic and Slovakia, both countries are highlighted as having what can be considered, in the wider context of countries from the 2004 enlargement wave, exceptionally demanding requirements regarding religious registration. In the Czech Republic, the 2002 report highlights the fact that law governing the procedure involving registering a religion was in the process of being changed.<sup>58</sup> The facets of this law discussed in the reports notably included the fact that any new religious group wishing to undertake activities such as religious teachings in schools, said group would be required to provide a petition with the signatures of 10,000 members who were permanent residents within the Czech Republic. A similar issue was raised in the case of Slovakia regarding its religious registration system, as it requires a given religion to have 20,000 members before it can apply for recognition, and according to the 2002 report this was criticised by several smaller groups who were unable to register. There is an important point of language use to note in this case. The exact phrasing surrounding the case is as follows.

The freedom of religion is enshrined in the Constitution of the Slovak Republic, and no particular problems have been reported in this regard. Some religious organisations, however, complain about not receiving public financial support as

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<sup>58</sup> Czech Republic Regular Report 2002, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/cz\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cz_en.pdf) (accessed 22.8.2012)

they are not registered. In order to be registered, the signatures of at least 20 000 permanent residents adhering to this religion are necessary.<sup>59</sup>

The key word to note at this point is the word “however” and the moment within the paragraph in which it occurs. It would seem to imply, albeit very subtly, that this is a cautious addendum to this section of the report. While the implication is so very subtle as to hardly be noticeable, it is very easy to interpret on closer examination, that the EU believes that such actions are problematic with regard to religious freedom. Exactly how significant a problem this is isn’t clear, but what is interesting to note is the apparent self-contradiction in the paragraph, in that it claims there were no particular problems, and then goes on to list a very specific and particular problem. The qualifier would seem to be the first part of the first sentence, where it mentions the phrase “The freedom of religion”, implying therefore that though this is a problem to do with religion, the EU does not view it as a problem that directly threatens freedom of religion in Slovakia.

The Czech law change also had critics that raised issues that were referenced in their report, citing “the law infringes on the right of churches and religious societies to manage their institutions, especially those committed to social and charitable work, by imposing new administrative measures and controls”.<sup>60</sup> It is important to point out here that it appears that in the case of Slovakia, there is no direct evidence from the reports to suggest that there was any kind of law change in 2002, therefore implying that the reason it came up was because of the fact that individual unregistered religions complained in such a fashion as to garner the EU’s attention.

The case of Cyprus and its system of religious recognition is an intriguing one, with regard to interpreting the EU’s understanding and interpretation of religious freedom.

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<sup>59</sup> Slovakia Regular Report 2002, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf) (accessed 22.8.2012)

<sup>60</sup> Czech Republic Regular Report 2002, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/cz\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cz_en.pdf) (accessed 22.8.2012)

Specifically so, because unlike the vast majority of countries, the EU gives specific reference to issues it is particularly concerned about. According to the 2000 report, the following is descriptive of the state of affairs regarding the Cypriot government's policy and procedures regarding religious groups "The Constitution of the Republic of Cyprus recognises five religions that are exempted from taxes and receive government subsidies. Other religions may register routinely as non-profit organisations and receive tax exemptions, but not subsidies".<sup>61</sup> However, in the 2002 report the following statement is made "There is no state religion in Cyprus and no law makes any distinction between religions".<sup>62</sup> This then implies that the EU does not view the distinctions that Cyprus makes between its registered and unregistered religions as being substantial or important.

In order to gain the fullest understanding of the state of affairs that the EU considers to be a situation of complete lack of distinction, it is necessary therefore to examine alternative sources of information on the exact nature of Cyprus's religious registration policies. For that information, the USSDOIRF is an appropriate source. Like the EU regular reports, these are produced annually, and they seek to systematically cover both every country in the world, but unlike the EU, they are not specifically politicised within a specific agenda. The EU regular reports have a particular purpose in detailing the situation with regard to potential EU membership. However, the USSDOIRF reports are purely research based, and thus can be considered a more complete picture of the situation (if not totally complete, since as has been mentioned, religious freedom is not a right with an objective, agreed upon definition).

Regarding Cyprus's religious registration policy, the USSDOIRF reports explain the following. There are five specifically registered religious groups within Cyprus. These are the

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<sup>61</sup> Cyprus Regular Report 2000, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/cy\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/cy_en.pdf) (accessed 22.8.2012)

<sup>62</sup> Cyprus Regular Report 2000, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/cy\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/cy_en.pdf) (accessed 22.8.2012)

Greek Orthodox Church, the Vakf (the religious trust responsible for the regulation of all religious activity of Turkish Cypriots), the Armenian Orthodox Church, Maronite Christians and the 'Latins' otherwise known as the Roman Catholic Church. The advantages that this official registration bring are in the form of tax exemption for all non-commercial activities. In particular, the USSDOIRF reports make a point of mentioning that the Vakf and the Greek Orthodox Church are explicitly mentioned within the 1960 Cypriot constitution as possessing the absolute and exclusive right to manage, regulate, and administer their own internal affairs and properties in accordance with their own principles. There is a clear constitution directive that no legislative, executive, or other actor can intervene with the internal operations of either the Greek Orthodox Church or the Vakf. Similar specific protections are not mentioned in the constitution for the Armenians, the Maronites, or the Catholics.

The USSDOIRF reports also confirm what the EU regular reports state regarding those religious groups that are not registered with the government, albeit in much more detail. They point out for instance that the reason that the religious groups must register with the government is not specifically because they are religious groups, but rather because this is the necessary legal pre-requisite they must acquire, if they wish to operate such things as their own organisational bank accounts, or if they wish to own property as a collective, rather than simply under the auspices of the leader of that group, which could become administratively problematic. In order to apply for non-profit organisational status, a given religious group needs to provide information to the Cypriot authorities including an explicit explanation of the non-profit group's purposes and the names of its corporate directors. This information must be provided by an attorney. Furthermore, regular information must be provided to the government regarding the organisation's ongoing activities, and although such non-profit organisations are also tax exempt, unlike the five officially recognised religions, they are not eligible for any kind of official state subsidy. There appears to be no specific method via

which a given religious group may ascend in its legal position to become in any way legally akin to those officially recognised Cypriot religious groups, and receive a state subsidy. Although the reports do not officially state it, it would appear that the only way for this to happen would be an amendment to the Cypriot constitution.

This would seem to demonstrate then, that the EU does not consider there to be any distinction between the government's attitude towards registered and unregistered religious groups that is significant enough to warrant a specific mention or any kind of concern. However, the use of language is very curious, as it is quite clear from the USSDORIF reports, and from the reports produced by the EU itself, that there is, on the part of the Cypriot government, a clear distinction between the non-registered and the registered religious groups. Even within the registered religions, there are important distinctions. It would appear that the Vakf and the Greek Orthodox Church are the two 'senior' (for want of a better word) religious groups out of the five recognised ones, since they, unlike the others, are specifically mentioned within the constitution as having particular protections from both legislative and executive intrusion on their internal actions. The constitution makes great pains to allow the Vakf and the Greek Orthodox Church the ability to act according to their own principles and beliefs as much as possible within their own spheres of influence.

There are also isolated incidents of the EU noting when a given religious movement achieves a specific level of recognition from the government at large. One example of this is in the 2000 regular report covering Lithuania, where the EU feels the need to mention the fact that the Hasidic Chabad Lubavich community have been officially granted the status of 'traditional' religion by the Lithuanian government.<sup>63</sup> What is curious about this mention is that, once again, the EU does not seem to represent this as a positive or negative development. It merely states it as a matter of fact. Given the relative rarity with which the

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<sup>63</sup> Lithuania Regular Report 2000, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/lt\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/lt_en.pdf) (accessed 22.8.2012)

EU mentions specific instances, we should therefore infer that the EU is indeed viewing this as an important development, and therefore the EU is indeed definitely concerned with matters surrounding the status of individual religious groups, but the extent and development of that concern is unclear.

A similar instance occurs again in the Slovenian reports. In the 1999 report, it is pointed out that “Around 30 small religious communities are registered in Slovenia and a special Office has been established”.<sup>64</sup> However, once again, there is no specific reference or tone to suggest whether such a development is a positive or negative occurrence. The fact that it is mentioned indicates it is noteworthy, but beyond that, little is clear.

In terms of the USSDORIF’s coverage of the Czech and Slovak cases, there is also more detail that is available in these cases. In the case of the Czech Republic, far more is explained about the legal change that was reported on by the EU as coming into effect in 2002, as well as comments on the situation beforehand. Prior to the 2002 law, it would be reasonable to describe the situation as somewhat complicated, but it is difficult to say with any authority whether the new law is a distinct improvement. From between 1991 to 2002, the registration system revolved around the Department of Churches at the Ministry of Culture. Similar to the situation in Cyprus, there is no requirement for religious groups to register with the government, and those that do not instead may form what the USSDOIRF reports call “civic-interest associations” in order to manage property and other issues of that sort. Registered religions are the only groups who receive any kind of government subsidy.

However, the situation regarding how a religion may actually come to be registered is more complex. Prior to the 2002 law change, a new religious organisation would require 10,000 members before it could be officially registered. Also, if a religious group had been registered officially with the World Council of Churches, a non-governmental organisation

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<sup>64</sup> Slovenia Regular Report 1999, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/slovenia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovenia_en.pdf) (accessed 22.8.2012)



that describes itself as “A worldwide fellowship of 349 churches seeking unity, a common witness and Christian service” then that group would only require a permanent Czech residency membership of 500 before it could be officially registered with the government.<sup>65</sup> Also, if a religious group was registered with the government prior to 1991, even if it does not meet either of the previous two sets of requirements, that group is still officially registered.

The way in which the 2002 law changed the situation was to create a two tiered system, modelled on a law first developed in Austria. There would be two levels of registration, a lower level which would require 300 adult Czech residing adherents, as well as annual reportage on group activities to the government, as well as a ten year waiting period until the possibility of full membership could be considered. Although the lower tier religious groups would receive some tax exemptions, they would not be able to teach in schools, and they would receive limited state funding. Only religious groups on the upper tier would be able to perform marriages and funerals officially, and there are strict requirements on how registered organisations on both tiers use money generated from any activities for solely ‘religious’ purposes, as opposed to ‘social’ or ‘civil’ ones.<sup>66</sup>

The strictness of the regulation of religious groups finances caused several in the Christian, and in particular Catholic communities, to protest this move, arguing that it was a threat to their religious liberty. Some commentators even likened it to the Communist era. The fact that the EU commented on this incident at all demonstrates that it is a significant moment from their perspective, in terms of Czech religious freedom, and how it relates to the EU. However, like so much else of the EU’s comments on religious freedom, it is somewhat ambiguous. There is no clear condemnation of the Czech government’s actions in this case.

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<sup>65</sup> ‘WCC – Who are we?’, *World Council of Churches*, <http://www.oikoumene.org/en/who-are-we.html> (accessed 22.11.2012)

<sup>66</sup> ‘Czech Churches Protest Against Law Bringing Religion Under State Control’ *Christianity Today*, (accessed 22.11.2012)

Nor is there any suggestion that the passing of this law has in any way altered the EU's opinion of the Czech Republic's status regarding religious freedom. So the fact that the EU commented, but did not pass judgement, suggests the situation is significant, but not vital.

It is worth noting however, that the EU itself did bring into the report concerns from the various religious groups that complained about the rules, citing the two main concerns, that the law would be discriminatory to smaller religious groups, and that it would be overly stifling in terms of the charitable activities of established religious groups. This mentioning of these groups concerns suggests that the EU is concerned to some degree, especially when considering the latent context, i.e. that according to the USSDOIRF reports, even prior to 2002, the law still had an effective 10,000 resident requirement (although there were exceptions as has been mentioned).

It is also worth pointing out that according to earlier drafts of the law (which were later altered) reported on by the USSDOIRF in 2001, the plan was to increase the upper tier's requirement for membership to 20,000.<sup>67</sup> Later USSDOIRF reports confirm that this law did not in fact pass, but it is curious that the EU would not even mention this law at all. There is precedent for the EU mentioning a law in its report that has not passed at the present time, but is in development. Such was the case regarding certain laws planned to be passed by the Estonian government regarding the regulation of the use of the Estonian language in business practices.<sup>68</sup> This was brought up within the reports because the EU was concerned that such a practice (prohibiting the use of languages other than Estonian in the workplace, an initiative mainly targeted at quelling the growing use of Russian) would not only contradict the EU's principled stance on human rights, but would also interfere with free market principles, making it difficult for businesses from outside Estonia to operate freely within their borders.

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<sup>67</sup> Czech Republic Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5642.htm> (accessed 22.8.2012)

<sup>68</sup> Estonia Regular Report 1999, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/estonia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/estonia_en.pdf) (accessed 22.8.2012)

Therefore, since there is a clear example of a case where the EU was concerned enough by a developmental stage law, that it commented in advance of its full promulgation, it is unclear exactly why the EU did not comment on a potential law that would have increased the required permanent resident membership count of a given religious group to 20,000. It is also unclear why the Czech case was of particular relevance at the time of the 2002 law change with regard to government registration, when the 10,000 members requirement had already been part of the Czech governments religious registration requirements since 1991. A possible explanation may be that it was difficult for the EU to ignore the situation, in the light of the arising of a specific issue. However, that does not then explain why the issue was not then judged as being a positive or negative development in the question of Czech human rights.

Regarding USSDOIRF's coverage of the Slovak case, it too is more detailed. The reports indicate for example that the system of registration, similarly to the situation in the Czech Republic, applies retroactively since 1991. All religions registered with the Slovak government prior to 1991 remained registered even if they did not meet the 20,000 member requirements. The reports also elaborate further on the question of the relevance and necessity of registration. The Slovakian government has no requirement of any kind regarding registration, a religion may function without it. However, in a strictly *de jure* sense, religious groups that are registered with the government are the only ones that have the legal right to carry out worship services in public, or other overtly religious activities. In practice though, there are no explicitly banned religious practices and the authorities do not intervene in the activities of unregistered groups.

It is interesting, and indeed revealing, to note that none of the USSDOIRF reports mention a change in the law in the years between 1998 and 2002, and they continue to cite the 20,000 member requirement for government registration throughout the reports. There is

no recorded change to this requirement of any kind. Therefore, we are at something of a loss as to conclude why it is that the EU reported on this statistic in 2002 alone.<sup>69</sup> The given explanation would appear to be that a significant amount of complaint was raised, and thus with attention drawn the EU therefore commented on it. However, once again, the EU did not do anything more than simply comment. There is no specific mention of a judgement or a position taken on the matter that many within Slovakia regard the 20,000 member requirement for regulation of religious freedom as being exceptionally restrictive. Therefore, we cannot say with any significant degree of confidence that the EU is substantially concerned with the situation. Although it must be of some interest, as otherwise they would not have mentioned it, exactly how much, and whether that interest is positive or negative, is entirely unclear.

The USSDORIF also point out that Slovakia has very strict de jure prohibitions on non-registered religious groups, however de facto, there is no real concern. “Registration is not required, but under existing law, only registered churches and religious organizations have the explicit right to conduct public worship services and other activities, although no specific religions or practices are banned or discouraged by the authorities in practice.”<sup>70</sup> However, later laws passed effectively nullify the requirement to be registered in order to conduct public worship services. Despite this however, non-registered religions still cannot build new religious places of worship, or conduct legally binding wedding ceremonies. A Muslim community in Bratislava in 2003 purchased a plot of land with the hopes of building an Islamic centre, but local municipality laws prohibited it.<sup>71</sup>

There are a very significant group of other countries which have not had their religious governmental registration systems commented on by the EU in the slightest. In

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<sup>69</sup> Slovakia Regular Report 2002, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/sl\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sl_en.pdf) (accessed 22.8.2012)

<sup>70</sup> Slovakia Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_slovakre99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_slovakre99.html) (accessed 22.8.2012)

<sup>71</sup> Slovakia Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24432.htm> (accessed 22.8.2012)

examining these, we are able to develop a sense of the kinds of situations the EU tolerates to the point of viewing them as an irrelevance.

Many of the other countries from the 2004 enlargement wave have a basic model of religious registration that runs along a set of basic lines. There is no compulsion of any religious group to register directly with the national government, however any religious group that does so is often entitled to certain benefits (IE state subsidies, protection by laws that allow a group to collectively own a building or bank account etc). The requirements needed to be accomplished in order to register with the government vary, but usually they revolve around a given number of permanent residents of that country that would call themselves ‘members’ of a given religion, as well as some level of information provided by the religious group to the government, followed by external validation of that information. There may also be certain traditional or dominant religions that are registered with the government in a special manner, in such a way that it is either impossible or exceptionally difficult for another religious group to attain the benefits such an elite status bestows. Although this is a very general picture, there are several specific situations that emerge within the umbrella of governmental religious registration systems which merit focusing specific attention upon them.

One such example of this is the case of Malta, but before continuing further it is important to point out that Malta’s accession to membership began slightly later than other states, and thus there is no regular report from 1998. Malta is a country very heavily influenced by Catholicism. The influence is so extreme that the constitution itself makes the bold claim that the Catholic Church alone, has “the authority to teach which principles are right and which are wrong”.<sup>72</sup> Naturally extending from this absolute authority is the Catholic Church’s religious primacy on the island, and going further into the constitution, USSDOIRF

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<sup>72</sup> Malta Report 1999, *USSDOIRF*,  
[http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_malta99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_malta99.html) (accessed 22.8.2012)

reports confirm that Catholicism is indeed the Maltese official state religion. However, this official status does not directly impinge on other religion's ability to function. All the USSDOIRF reports that cover the time monitored here point out the following "Since 1991 churches of all kinds (not just the Roman Catholic Church) have had similar legal rights".<sup>73</sup> Other religious groups and organisations can own property and perform marriages. The USSDOIRF 2003 report frames this situation in the following way: "The Roman Catholic Church makes its presence and its influence felt in everyday life. However, converts from Catholicism do not face legal or societal discrimination, and relations between the Catholic Church and other Christian denominations generally are characterized by respect and cooperation".<sup>74</sup>

Malta's case is an important one to draw attention towards, because unlike many of the other countries highlighted, there is no specific system described as to how a religion may seek to become 'recognised' or indeed official in any other meaningful manner. However, that does not seem to stop there being an official religion of any kind. The fact that the EU is completely silent on the lack of religious registration system, as well as Malta's official state religion and the systems such a thing creates (IE the compulsory teaching of Catholicism in schools, with the availability of a constitutionally supported exemption upon request) is an important further indicator in its attitudes towards such matters.

In extreme contrast to the Maltese case, there is the far more intricate and complicate situation that is present in Lithuania. The state of affairs regarding the religious recognition system in Lithuania is complicated. In essence, although the Lithuanian government states that religions are classified into two groups (traditional and other) in practice, the USSDOIRF reports describe a four-tiered system. Traditional, state recognised, registered, and

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<sup>73</sup> Malta Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_malta99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_malta99.html) (accessed 22.8.2012)

<sup>74</sup> Malta Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24422.htm> (accessed 22.8.2012)

unregistered communities. Traditional religious groups are defined by the state as being Latin Rite Catholics, Greek Rite Catholics, Evangelical Lutherans, Evangelical Reformers, Orthodox, Old Believers, Jews, Sunni Muslims, and Karaites. While traditional and state recognised religious groups can receive state subsidies and other government benefits (such as not having to pay for health insurance, exemption from military service, and exemption from VAT on certain services like electricity and heat), only traditional religions can teach religion in state schools and buy land as a communal legal entity in order to build a church. Registered religions do not receive any of the benefits of either traditional or state recognised religions, but since they are registered with the Ministry of Justice they can act as a legal entity and while they cannot buy land, they can rent it and thus use it for religious building purposes. Unregistered communities have no benefits from the state of any kind, however according to the USSDOIRF reports, there is no evidence to suggest that they have been prevented from worshiping because of this.

Although the registration procedure is not in itself aggressively enforced, there have been problems for some groups in seeking to move up the tiers. The Osho Ojas Meditation Center and the Lithuanian Pagans Community both applied to be registered with the Ministry of Justice to move from the fourth to the third tier. However, both of these were rejected because the Ministry of Justice did not consider either group to be religious, and suggested instead that both groups seek to be registered as NGOs.<sup>75</sup> While the 2002 and 2003 report both point out that the situation does improve, and many other religious groups do manage to move up the tiers in the system, they also point out that the Lithuanian Pagans Community never applied to become an NGO and technically ceased to exist in July 2002. These reports also point out that due to Catholic objections, a second Pagan group, the Old Baltic Faith Community Romuva, was suspended from being granted traditional religion status.

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<sup>75</sup> Lithuania Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5627.htm> (accessed 22.8.2012)

The USSDOIRF reports also describe a confrontation between the state security services and a particular religious community. A group known as the “Collegiate Association for the Research of the Principle” was prosecuted under the law on public organisations because they were proselytizing on behalf of the Unification Church, which was not a function they had officially listed.<sup>76</sup>

Once again however, the EU regular reports are practically silent on concerns surrounding this issue. The only significant mentions of the Lithuanian religious registration system are to be found in the 2000 report where it points out that those religious groups that are declared “traditional” by the Lithuanian government are eligible for public funds, and that in 1999 the Hasidic Chabad Lubavich community was accepted as such.<sup>77</sup> Thus it is clear that it seems the EU is not bothered by either an overly complicated, nor an overly simplistic religious registration system, or indeed a system that uses its security services to monitor the exact nature of a given religion’s evangelism.

In the case of Hungary, the USSDOIRF refers in its earliest report (1999) to the fact that it only takes 100 regular members for a church to be registered with the government. Later reports also mention that it is necessary also to include a brief statement of principles. Registration is not required, but it does give access to various forms of state funding. In 1999 there were approximately 300 churches registered with the government in 79 denominations (how to register as a denomination with the government, and indeed whether the government registers denominations at all, is not made clear). An additional benefit of separate specific agreements was given to the four “historic” churches (the Jewish community, the Roman Catholic Church, the Lutherans, and the Calvinists) in order to support them in the long term. One such example of agreements reached with these groups is that in 2001, the Hungarian

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<sup>76</sup> Lithuania Report 2002, *USSDOIRF* <http://www.state.gov/j/drl/rls/irf/2002/13946.htm> (accessed 22.8.2012)

<sup>77</sup> Lithuania Regular Report 2000, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/lt\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/lt_en.pdf) (accessed 22.8.2012)



state agreed to support the wages of all religious leaders in these groups serving settlements with 5000 people or less (separate arrangements were made with the Jewish community, since they have very few synagogues in such communities). Later, in 2002, similar agreements were reached with the Baptist, Unitarian, and Pentecostal churches, and the Budai Serb, Romanian, and Greek Orthodox Churches.

However, in 2001 a serious concern regarding regulation, registration and recognition of religious groups emerged. The Hungarian parliament voted down a new law designed to tighten the religious registration and recognition system. It possessed the following powers

The bill offered a definition of religion and a listing of religious activities that would be used to determine what groups could benefit from church status. It empowered the Prosecutor General's office to seek and gain access to records on the activities of churches. Finally, the amendment sought to codify the Parliament's ability to legally differentiate among churches based on their social and functional differences.<sup>78</sup>

This was objected to by many, particularly smaller and less established religious groups, who while agreeing with the good intentions of the bill, pointed out that it left open opportunities for persecution, and could open up a national debate that had the potential to lead to a more restrictive environment in the long term.

Once again, this incident was not commented on by the EU in its reports covering Hungary at the same time period. It would appear therefore that the EU is highly tolerant of the possibility (an important point, since this law did not pass) that governments may conduct investigations into religious groups.

In the case of Estonia, there is also a certain amount of complexity in regards to the registration system that the EU has not moved to comment on. However there has also been a specific concern regarding a potential change in the rules surrounding the registration of religious groups. Although the Estonian political executive did not ultimately sanction or

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<sup>78</sup> Hungary Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5679.htm> (accessed 22.8.2012)

promulgate the law, and the specifications of it were ultimately changed, it is difficult to argue that this particular law did not represent a fundamental shift and indeed concern to the area of the registration of religious organisations.

In terms of general comments on the system, it can be seen as demanding. Unlike several other countries, Estonia requires that religious groups register with the Religious Affairs Department, which is itself a subset of the Ministry of Interior Affairs. Although the membership numbers requirement could be fairly described as staggeringly low (only twelve members are necessary for registration) there are specific requirements for the registered leader of a religious organisation (permanent residency within Estonia for a minimum of five years) as well as severe informational requirements. Specifically, any prospective religion must provide, according to the 2001 USSDOIRF report, “The minutes of the constitutive meeting, a copy of statutes, and a notarized copy of three founders' signatures serve as supporting documents for the registration application.”<sup>79</sup> This is, quite clearly, a rather large degree of oversight on the part of the Estonian government. Especially when you consider that it is required for a religious group to register. Although the report is unclear to what extent, and in what manner, this requirement is enforced, the fact that it exists and that it comes with such a substantial list of informative requirements would suggest that the question of religious registration is taken exceptionally seriously by the Estonian government.

However, by contrast, the EU regular reports make no mention at all of the stringency in terms of required information, that surrounds the Estonian religious registration system. Nor do they raise concerns about the fact that said system is mandatory in terms of participation. Nor are they praising of the Estonian lax attitude towards registration numerical requirements. This further informs our position regarding the EU's attitude towards religious freedom in regards to the religious registration process. It seems that the stringency of the

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<sup>79</sup> Estonia Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5642.htm> (accessed 22.8.2012)

process with regard to the information required is not a specific concern, even in cases where registration of religious groups is a legal requirement.

In the specific instance, a particular legislative incident regarding Estonia's regulation and registration of religious groups gives us further insight into the EU's position. According to USSSOIRF reports, between 2001-2002 there was an ongoing concern regarding a new possible law that would, if promulgated, bar religious groups and organisations from officially registering themselves with the Estonian authorities if their primary centre of administration or economic management was situated outside Estonia's borders. This would have, if passed, had profound negative effects on various substantially large religious groups within Estonia. According to the reports, The Orthodox Church, Moscow Patriarchate, and the Estonian Council of Churches, all registered their objections, highlighting the affect this would have on communities with well-established traditional ties to the country. It is important to note that this law was ultimately not passed. According to USSDOIRF, the Estonian president at the time of the initial discussion, Mr Lennaert Meri, said he would refuse to promulgate the law, stating that it would intrude into a sphere of influence specifically reserved for the religious institutions themselves.

While it is true that this law was not ultimately passed, the fact that the EU did not further investigate this incident is possibly further indicative of the exact nature of their stance regarding religious freedom. There is a precedent which has already been mentioned, specifically found within the EU's treatment of Estonia, regarding the analysis of laws that have not yet been passed, and their potential contradiction to the EU's standards and expectations. The specific example being that of Estonian language law, and the EU's strong criticism of a law that would have, if passed, strictly regulated the use of the Estonian language within the private sector, and limited the use of foreign languages.

It would seem entirely appropriate to draw attention to the comparison between that incident and the one here discussed, since in both cases, the issue at hand is the ability of an organisation to function in a trans-national fashion. In the case of the language law, there was a certain and specific concern that the law, if passed, would have been in fundamental contradiction with the EU's principle of free markets, and within that free movement of persons, goods, services, and capital. It would be an extra regulation that would hold back free movement of individuals into Estonia, since it would limit their ability to form permanent business links. It would seem that, in principle, a similar issue is raised by the question of selective religious registration, based on trans-national organisation structures. This system would be a limitation on the ability of individuals to organise religious groups in Estonia as a subset of larger religious groups elsewhere, thus limiting the religious trans-national 'marketplace'. However, the EU has made no comment on this case in its regular reports during this period, thus we can conclude that it appears not to be a concern.

A further incident to report from Estonia specifically is that of the continued failure of the Satanist community within Estonia to become officially registered with the Estonian government as a recognised religious organisation. The USSDOIRF reports point out that Satanist communities have attempted registration on two occasions, and on both occasions they have been rejected due to technical concerns. Of particular interest is the fact that the case of the Estonian Satanist movement can be seen as an example of extreme micromanagement on the part of the Estonian government as according to the Estonian Churches and Congregations Act of 1993, Article two, section one, the use of the name "Church" is prohibited for groups other than those of a Christian affiliation.<sup>80</sup> Thus, it would appear that the EU is exceptionally tolerant of civil authorities becoming micromanaged so significantly into a religious groups business, that it may actually force the group to rename

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<sup>80</sup> Jesper Aagaard Petersen, *Contemporary Religious Satanism: Who Serves Satan?* (Farnham: Ashgate Publishing, 2009) p. 133.

itself if it wishes to be officially registered with the government, even if that registration is a legal requirement.

Many countries in both EU and USSDOIRF reports have had smaller religions criticise their policies because of issues surrounding religious registration systems. However, there are some instances where the systems move to act specifically against particular smaller religions. In this instance, the USSDOIRF reports point out one particular case in Lithuania.

In December 2001, Stanislovas Buskevicius, a nationalist Member of Parliament, proposed draft legislation "On Barring the Activities of Sects." The draft was discussed widely and was expected to be considered by the Parliament in 2002; however, it had not been considered by the end of the period covered by this report. The Parliament's Department of Law criticized the draft law, and the Government's Department of European Law publicly expressed concern regarding the legal shortcomings of the draft and indicated its inconsistencies with European law practice.<sup>81</sup>

Groups considered 'Cults' or 'Sects' have had several problems in Lithuania according to the USSDOIRF reports. The 2001 report makes reference to the fact that several religious groups had issues with immigration processing due to being regarded as 'Cults' by the border authorities. However, most issues of this nature were reported as solved by mid-2001.

It would appear, then that the EU did not mention an issue which the Lithuanian government itself regarded as an intimate concern of European legal practice. This seems rather bizarre, that there should have been no comment on this matter from the EU itself.

Registration is not something that only takes place at the level of an official religious organisation. Individuals may also, in some instances, require registration, especially in the case of missionaries travelling abroad. The USSDOIRF reports point out that foreign missionaries visiting Latvia face severe difficulties and restrictions.<sup>82</sup> Although they are

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<sup>81</sup> Lithuania Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2002/13946.htm> (accessed 22.8.2012)

<sup>82</sup> Latvia Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5609.htm> (accessed 22.8.2012)

permitted to partake in all normal religious activities and practices, they can only initiate events and other gatherings with the express invitation of a local Latvian religious organisation. This restriction has been heavily criticised by the foreign missionary community. Also, missionaries intending to stay for significant periods of time for religious ministry purposes are required to provide either a certificate of ordination, or a document that would be comparable to a Latvian degree in theology (although later reports point out that difficulties in this area have decreased, and that the Latvian authorities are behaving cooperatively in this area). Once again, this policy was not commented on by the EU.

On the basis of the following cases, as well as a complete reading of all the relevant reports, it appears that the picture regarding the EU's tolerances of various systems of religious registration is rather broad. The EU it seems is not too concerned about the levels of complexity put forward by various religious registration systems, however there is some slight concern over issues to do with registration limits based on the number of permanent residents of a given state that subscribe to that religion (as is the case in the EU's mentioning of the 10,000 and 20,000 restrictions in the Czech Republic and Slovakia respectively). However, the EU does not make it clear to what extent, if any, it regards these restrictions as a negative factor. It is possible to infer that there is negativity in the EU's analysis, since in both cases the issues were raised alongside complaints made by the general population, however the EU itself offered no clear condemnation (as it has done in other instances, such as the most notably references case of the Estonian language law) so it cannot be said to be clear cut in this matter.

#### 2.4 Relations between the state and religious groups

A group of fundamental concerns that are referenced repeatedly in the cases of several countries throughout the EU regular reports, can be summarised in terms of the perceived

state of affairs regarding relations between both various religious groups and the state, as well as relations between different religious groups and the public at large. Although this is, to a certain extent, covered with regard to official registration of religious groups, that is merely one aspect of the broader issue of religious relations within a given polity. Although a religious group may be officially recognised by the government of a given country, and indeed it may even enjoy certain specific benefits such as access to state educational institutions, or some form of state subsidy, there may still be elements of the relationship between that religious group and the state that may prove problematic or praiseworthy, and thus relevant and of note to the composition of the reports. In this section, the areas where the EU discusses these relationships shall be examined, and shall be contrasted to how other sources, most notably the USSDOIRF reports, regard the situation.

Perhaps the single most notable case regarding the issues of relations between the state and religious groups, as well as between different religious groups, can be found in the case of Poland. The EU's regular reports are remarkably praising of the situation in Poland, in particular the situation regarding the relationship between the nominally Roman Catholic population and the significant minority of Jewish groups. Although Poland is, in general, praised for its sensitivity regarding these matters, it is always couched in the context of the debate surrounding concerns of how to manage the remaining Holocaust sites. The reports describe how Poland has passed laws effectively making the sites neutral spaces, unable to be used for such things as public meetings or commercial activities, as well as prohibiting development of the immediately adjacent land.

This relatively minor mentioning of the situation regarding the Polish religious relations with regard to the Jewish community lies in stark contrast with the situation as explored by the USSDORIF reports. The problems of Anti-Semitism in Poland are very

serious. The report produced by the USSDOIRF notes many different incidents of extreme concern. One however stands out as being particularly striking. The ‘Pope’s Cross’ incident.

The Cross originally adorned the altar at a mass conducted by Pope John Paul II near Birkenau in 1979 and was erected at the site of the Carmelite mission in 1989. The Cross is clearly visible from the former camp's block 11 and marks the site where Polish political prisoners (possibly including Catholic priests) and later Jewish prisoners were murdered by the Nazis.<sup>83</sup>

In August of 1998, as a response to the possibility of the removal of this cross, due to sensitivity issues with the Jewish community, ultra-nationalist groups placed dozens of new crosses in close proximity to Auschwitz. In May 1999 the government passed a law that gave the government authority to deal with the “New Crosses” situation. After the arrest of the leader of one such group for putting explosives near the site of the new crosses, they were moved to a nearby Franciscan monastery under the supervision of a local bishop. The area was hence after sealed off to prevent the erecting of new crosses.

A further notable incident was highlighted in the 2002 USSDORIF reports, and pointed out the complicating factor of the anniversary of the Holocaust massacre in the town of Jedwabne in the North East of Poland. Allegations were published in an inflammatory book that suggested the killings were conducted, not by the German occupying forces, but by the Polish community itself.<sup>84</sup>

This was then further compounded by an incident involving a member of parliament making what were widely regarded as openly anti-Semitic remarks in a discussion of an examination of Poland’s history. The USSDOIRF report states

On March 1, 2002, the National Remembrance Institute (IPN), which was created to provide access to Communist-era secret police files and provide an accurate history of the Communist period, released its first annual report. During the debate, one Member of Parliament criticized the report for devoting too much time to the July 1941 killing of Jews in Jewabne and introduced a motion

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<sup>83</sup> Poland Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_poland99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_poland99.html) (accessed 22.8.2012)

<sup>84</sup> Poland Report 2002, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2002/13955.htm> (accessed 22.8.2012)



to reject the report; he made remarks that some observers interpreted as anti-Semitic. The case was referred to the ethics committee; however, there were no reports of an investigation at the end of the period covered by this report. A group of well-known politicians, scientists, clergymen, artists, and businesspersons signed an open letter of protest against the verbal attacks on the IPN Chairman.<sup>85</sup>

Other exceptionally serious incidents included the beating of a fourteen year old boy<sup>86</sup>, the throwing of rocks at Jewish community headquarters<sup>87</sup>, the defacing of graves<sup>88</sup>, and the use of a university press to publish literature denying the Holocaust.<sup>89</sup>

The lack of discussion of any of the rather severe violent incidents, and instead a blanket statement about the fact that the violent incidents are isolated, demonstrates that Poland is exhibiting the kind of levels of violence and relational discord where the EU considers it apt to discuss these issues, but not serious enough to openly condemn them. Given the large number of distinct, and (in the case of the ‘Pope’s Cross’ incident) dramatic incidents of violence, it would seem therefore that the EU has a very high tolerance when it comes to issues of anti-religious violence. However, it is a curious point that the government notes that the violence and intolerance has “no place” in Polish society, thereby implying that it would be a concern for the EU if there was a significant percentage of the population who held sympathy with those committing the violent acts. It is a curious point to make that although the USSDOIRF reports raise several incidents of Polish anti-Semitism, the EU regular reports point out that Polish laws designed to stop the use of mass media to “Advocate discord” seem to be working well, citing the fact that surveys indicate that Polish hostility towards Jewish, and other minority groups, is dropping. Clearly, the incidence of

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<sup>85</sup> Poland Report 2002, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2002/13955.htm> (accessed 22.8.2012)

<sup>86</sup> Poland Report 2000, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_poland.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_poland.html) (accessed 22.8.2012)

<sup>87</sup> Poland Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_poland99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_poland99.html) (accessed 22.8.2012)

<sup>88</sup> Poland Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5727.htm> (accessed 22.8.2012)

<sup>89</sup> Poland Report 2001, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_poland99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_poland99.html) (accessed 22.8.2012)

religious violence is an important concern to the EU, thereby implying that it is not only the state institutions that must meet EU standards of behaviour, but also the general citizenry as well. However it is unclear to what extent such an issue would have to arise before the EU considered it an outright dangerous concern.

According to the USSDOIEF reports, Anti-Semitism is a phenomenon that is by no means confined to Poland. In several countries, USSDOIRF mentions that not only have there been incidents of verbal and organised protest and burial desecrations, there have also been explosives used against synagogues (specifically, several incidents in Latvia in 1998 and 1999).<sup>90</sup> In the Czech Republic, the USSDOIRF reports mention that “A small but persistent and fairly well-organized extreme right-wing movement with anti-Semitic views exists in the country”.<sup>91</sup> The EU regular reports however make little to no mention of any of these incidents. While it is true that the EU should, in theory, have no more interest in persecution of Jewish groups than any other, it is true that, as has been mentioned, the history of the EU’s institutional architecture surrounding the issue of religious freedom has at certain points held a specific and important focus on the concerns of anti-Semitism and the overall treatment of the Jewish population of Europe.

While the EU is substantially silent on matters of anti-Semitic violence, it is also rather quiet on state responses to anti-Semitism. The following is an extract from the 2003 USSDOIRF report:

During 2001 a court convicted Vit Varak on charges of disseminating hate speech and propagation of a movement aimed at suppressing rights and freedoms for selling "Mein Kampf" on the Internet. Varak was given a suspended sentence and fined, but the Constitutional Court later annulled his verdict. New charges have been brought against Varak, and the case was still pending at the end of the period covered by this report.<sup>92</sup>

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<sup>90</sup> Latvia Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_latvia99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_latvia99.html) (accessed 22.8.2012)

<sup>91</sup> Czech Republic Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5622.htm> (accessed 22.8.2012)

<sup>92</sup> Czech Republic Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24353.htm> (accessed 22.8.2012)

The silence from the EU on the matter of whether such a matter would indeed be an appropriate legal measure would suggest that the EU is tolerant of using the law as a means to protect other religions from certain forms of criticism. However, it should be pointed out that the Holocaust is an exceptionally extreme case in this regard, and it is possible, if not necessarily probable, that such a principle may not be more broadly replicated.

It is not only Jewish communities that are suffering relational concerns. The USSDOIRF reports also point out that the Orthodox Christian community encounters several serious problems within Poland. USSDOIRF cites incidents such as less than proportional funds for cultural events being allocated for occasions associated with the Orthodox community, incidents where layoffs were made to Orthodox employees well ahead of others, and an attitude in the local press that made strong associations suggesting Roman Catholicism was somehow a fundamentally necessary for true Polish citizenship.

Muslim communities also have been faced with problematic issues and concerns over the period reported here. Two specific incidents were recorded in Slovenia which were not reported on by the EU, both of which were resolved in the community's favour, and as far as the reports seem to describe, to their satisfaction. The first of these concerns emerged in 2002 when Muslims complained to the national television providers that their period of fasting (Ramadan) was not given significant airtime or discussion, in contrast to other comparable periods from the Catholic, Serbian Orthodox, and Protestant communities in terms of their holidays.<sup>93</sup> The Ombudsman who pursued the case agreed with the Muslims and Slovenia TV resolved the problem.

The second of these concerned Amela Djogic, the wife of Mufti Osman Djogic, who was arrested by Slovenian police officers for failing to produce proper identification. The

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<sup>93</sup> Poland Report 2002, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2002/13955.htm> (accessed 22.8.2012)

Djogic family however accused the police force of acting improperly, and targeting Ms Djogic because she was wearing a headscarf.<sup>94</sup> An investigation concluded that the police force had acted improperly, however it was believed that the officers had been responding to an ethnic, rather than religious prejudice. The fact that these issues were resolved may potentially be the rationale as to why the EU did not mention them in any of its reports, however as has been seen on other instances, resolved disputes, or simple complaints, have been raised as issues before (such as the complaints of communities in the Czech Republic and Slovakia regarding the arguably restrictive policies in term of numerical membership requirements for official registration with the government) so presumably therefore the EU did not regard these disputes as severe enough.

The USSDOIRF reports also make mention of other areas where relations between state and religious groups can be difficult. In the case of Cyprus, there is the following section of the 2000 report that raises significant concerns: “The police may initiate investigations of religious activity based on a citizen's complaint under laws that make it illegal for a missionary to use "physical or moral compulsion" in an attempt to make religious conversions”.<sup>95</sup> While it is of course perfectly appropriate that the state intervene regarding incidents where physical compulsion methods are used to extract a religious conversion from an individual (given the obvious fact that it is most probable that such methods would be prohibited anyway, regardless of the presence of a motivation, religious or otherwise) there is a definite concern here with regard to the use of the phrase “moral compulsion”.

Morality is, as the fields of philosophy, theology, sociology, politics and economics all attest to, an immensely complicated and multi-faceted one. Therefore, the notion of moral compulsion is one that is worrisome for the state to enforce so readily, since it may well be

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<sup>94</sup> Slovenia Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24433.htm> (accessed 22.8.2012)

<sup>95</sup> Cyprus Report 2000, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_cyprus.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_cyprus.html) (accessed 22.8.2012)

that such enforcement could be in violation of an individual's human rights, in a situation where one perception of morality is imposed in a manner that is too far reaching upon an individual or a group. The USSDOIRF makes no judgements on the problems or otherwise of the moral compulsion judgements, and indeed it is not mentioned within the reports of 2001 or 2002. So while it would definitely be seen that this issue has the potential to severely damage relations between religious groups, it would appear, as far as can be determined, not to be the case. The USSDOIRF reports point out that people are occasionally detained under the basis of these laws and that such arrests often produce publicity, however it is not clear whether these arrests are relating to physical or moral compulsion.

Regarding relations between religious groups and the state, it would appear that an important factor in the EU's view is the presence of representatives from any involved religion in any compromises that will be made on the matter, rather than made by external agents working on the behalf of any specific religions, or all religions as an amalgam amorphous group. This is seen in the case of the discussions surrounding various specific issues of religious dialogue concern in the case of Cyprus, and in the case of Poland regarding the involvement of various Jewish representatives in the resolution of issues surrounding former Holocaust sites. Although the preference for dialogue with official members is not made explicitly clear, since like so many instances of EU reportage, it states the issues in a very matter of fact manner, the fact of mentioning these representatives at all would suggest a certain level of importance to their presence.

However, there are definite instances of the EU not fully investigating all affairs regarding Church-State relations. One such incident in the Czech Republic is covered by the USSDOIRF reports. The government had planned the creation of a commission on Church-State relations, and while the various religious groups that made up those consulted were initially very supportive, they were less so when they discovered that a Communist member

of parliament had been appointed as part of the commission. This issue was resolved however, with the creation of two commissions, one made up of political representatives, at least one from each party in Parliament, and another comprised of experts and religious leaders.

### 2.5 Religious education

The coverage of this section shall be relatively limited compared to other areas, however there is a very specific reason for this. The fact is that unlike other thematic sections here discussed, the EU itself has made absolutely no mention of its policies regarding religious education, in the case of the 2004 enlargement wave group of countries. The closest it comes to making a mention is a brief discussion in the case of Cyprus, regarding arrangements that the Albanian community have made regarding their primary schools. This very limited discussion can hardly be considered comprehensive enough evidence to warrant the matter resolved, and the USSDORIF reports cite a great many different situations with regard to religious education. An overview of the situation in these countries follows.

The Cyprus reports indicate that the Greek Orthodox religion is taught in primary and secondary schools regularly, but while parents belonging to other religions (those specifically referenced here being Maronites and Jehovah's witnesses) can request their children be excused from religious services, the reports highlight the fact that they have testimony to suggest that such children are not excluded from all Greek Orthodox religious instruction.

In Estonia, Christian religious instruction in primary school is parentally elective, and at secondary school is student elective, with other comparative religion classes also available as electives. In Latvia, religious instruction is given in public schools on a voluntary basis, but can only be provided by one of the larger officially recognised religious traditions (Lutheran, Roman Catholic, Orthodox, Old Believers, Baptists, and Jewish). Although

education for different religious traditions is offered to schools that specifically cater to minorities, smaller religions find it very difficult to educate using their traditions.

In regards to Lithuania, there is a very important case that has been raised by the USSDOIRF reports, which is especially relevant to the EU's involvement. Since a law passed in 2001, only schools from the religions of the nine traditional religious groups can be funded by the state. However, a concern about whether or not such a law is discriminatory has been raised by a very important department relating to this thesis.

Since September 2001, amendments to the Law on Religious Communities and Associations have granted full government funding only to the educational institutions of traditional religious organizations. The governmental Department of European Law had criticized the amendments for discriminating against traditional religious communities and associations. The Department implied that although the Government has the right to provide different legal statuses for different religious communities, differences in status should not result in differences in rights and privileges.<sup>96</sup>

Later reports do go on to point out that members of other religions and minorities are given vouchers under a different law that permits them funding to go to private schools established by non-traditional religious groups.

In Malta, while Catholic religious instruction is mandatory, it can be avoided if a parent or guardian objects. The Catholic Church and the government both participate in an educational foundation where non-pastoral Catholic landholdings were transferred in ownership to the foundation in order to create several educational institutions. And while the government does grant subsidies to Roman Catholic schools, the reports point out that religious schools are eligible for subsidies (not specifically Catholic) and that the main reason it seems that the Catholics receive the majority of the subsidies is that 95% of the population is Catholic, and that the Catholic community is the only one to have constructed a parallel school system.

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<sup>96</sup> Lithuania Report 2000, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_lithuani.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_lithuani.html) (accessed 22.8.2012)

In Poland, the reports regularly point out that though it is true that there is mandatory Catholic religious instruction that is state funded, parents can choose to opt out their students in favour of either alternative religious education (assuming that the desired religion is registered with the state) or they may choose an ethics/moral philosophy class instead. In practice however, the Polish Ombudsman's office has been repeatedly referenced in reports as having pointed out that in fact, due largely to financial constraints, ethics class are rarely available in the majority of Polish public education establishments. Also, Catholic representatives are the only religious group to be represented on a commission that is responsible for the picking of new textbooks for the Polish national curriculum.

The status of religious education in Slovakia is generally described as very positive. Children are taught religion and/or ethics from ages corresponding to the American grades five through nine. The only areas of concern are the fact that some religions do not have representation in the course because there is not staff available to teach them. In April 2000, a state funded Catholic university is scheduled to open.

The state of religion in education in Slovenia is in flux, and as such the CIE reports are far from definitive on their stance on it. The following phrases appear in all the reports from 1999 to 2003: "The appropriate role for religious instruction in the schools continues to be an issue of debate. The Constitution states that parents are entitled to give their children "a moral and religious upbringing".<sup>97</sup>

The fact that the EU makes no comment on any of these situations is significant. While the majority of them would appear relatively benign, with no significant enforcement of a particular religious position, or the limitation of any one religion from the education system for anything other than practical purposes, there are certain specific instances that it might be expected would be a matter of, if not concern, then interest, on the part of the EU.

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<sup>97</sup> Slovenia Regular Report 1999, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/slovenia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovenia_en.pdf) (accessed 22.8.2012)



The principle example of which would be the case of Poland, and the dominance of the Catholic church in its system (for mostly practical reasons, but some parts of the issue, such as the dominance on the board of textbook selection, seem less than purely circumstantial in their arrangements). The fact is curious that the USSDOIRF reports mention that the Ombudsman has got involved, and yet in several other instances where complaints have been made, the EU has drawn attention to the issue. In those instances however, it was religious organisations who made the criticisms and complaints. Individual issues seem to concern the EU less in these reports.

Although it is not at all clear how the EU regards the question of religious education, since it is not mentioned in the regular reports, it is important to include the USSDOIRF reports content, since it needs to be made clear exactly what the EU is ignoring, at least in this instance.

## 2.6 Conclusion

On the basis of what has been seen of the EU reports in this chapter, and what has been seen when comparing and contrasting their content to that provided by the USSDOIRF, it is indeed extremely difficult to comment in any concrete fashion as to what the EU's understanding of religious freedom may or may not be. This is because, in the vast majority of cases where religious practice and relations between religious groups and the government are discussed, the EU uses an exceptionally 'matter-of-fact' tone about the issues concerned. For example, although the EU reported both on the fact that in Slovenia, several small religions had managed to obtain religious recognition from the government, and that in the Czech Republic and Slovakia, smaller religions had criticised their governments for having overly restrictive policies with regard to official recognition, in neither case did the EU provide comment as to whether the former or the latter was preferable. Certainly, in neither

case did the EU regard it as significant enough for it to significantly alter the movement of that given country towards membership.

Perhaps the most telling indication of how the EU views freedom of religion in this group of countries is to be taken from a phrase that appeared repeatedly in the reports from the year 2001 onwards. This is the example from the Estonian report: “The principals of freedom of religion and freedom of expression are enshrined in the Estonian constitution and no particular problems have been reported in this respect”. Although once again, there is no specific reference to whether this is a good or bad thing, it is difficult to make the observation that the EU would view this as negative, given how it comments about the lack of problems involved. It would seem then that the most important element of the freedom of religion concern that affects the EU is whether or not a given country accepts the principle of freedom of religion, and enshrines it in their constitution. It is interesting also to note that the EU locates freedom of religion as being conceptually similar to freedom of expression, both in the case of Estonia and several other countries, thereby potentially implying that the primary concern of the EU when dealing with freedom of religion concerns is that of a negative freedom issue, IE to what extent is the state restricting the ability of individual religious worshipers to practice their faith without interference from the government. This would also be expressed in the single most comprehensive discussion of the expectations of acceding countries with regard to religious freedom, which is made in Cyprus’s report in 2002 “The freedom to profess a faith and to manifest a religion or belief, in worship, teaching, practice, or observances can be freely exercised in practice.”

This focus on negative, rather than positive freedom, can also be seen in the coverage of the Slovakian case, and the earlier focused on use of the word “however”. The quote makes the point that the Slovakian religious groups did clearly feel that they had not received their dues from the state, but that this did not constitute a serious blow against religious

freedom in this matter. Thus we see the positive freedom of the ability of these groups to receive funding from the Slovakian government being side-lined as less important than the fact that freedom of religion is enshrined in the Slovakian constitution.

What is also revealed by the EU within the quote taken from the Estonian report is that there is a certain amount of “bottom up” understanding of religious freedom on the EU’s part. The relevant sentences in this matter are where the EU says “no particular problems have been reported in this respect”. The fact that it refers to the question of “reported” problems suggests several important things. Firstly, there is the method of the EU’s reporting, implying that it is not perhaps seeking out and investigating the systems to establish whether or not the state is in fact observing religious freedoms correctly, but rather that they are behaving more passively, and making overarching investigations, but are more interested in direct reports from individuals or organisations of a religious nature.

This also tells us, secondly, that the EU is not, strictly speaking, interested in an externally constructed definition of religious freedom. It would appear from this language that the EU is also significantly concerned with whether or not the individual religions feel that their freedoms have been restricted, asking them to report concerns rather than always specifying an external standard by which a state’s actions should be judged. This is further reinforced by the various mentions of complaints from religious groups surrounding issues of numerical restrictions on religious groups registering with the government. Although this would seem a commendable inclusion, it does also create the very strong possibility for inconsistency, as the reported violations in religious freedom are being reported alongside the general overarching acceptance.

One factor that can be very clearly seen from this instance is that none of the countries in the 2004 wave had their accession process towards membership impacted in the slightest by developments that arose from freedom of religion concerns. All countries in this listing

continued, at all points during the accession proceedings, to be able to advance onto the next stage, and achieve full membership status within the EU. While this might suggest that it is the case that the EU does not value religious freedom significantly, it is equally arguable that none of these states committed an offence significant enough to warrant a reprimand of that kind. Therefore, in order to answer the question further, more states need to be considered.

## **Chapter Three: The 2007 Enlargement Round**

### **3.1 Introduction**

This chapter will focus on the two countries that make up the 2007 wave of EU enlargement (Romania and Bulgaria). As was the case in chapter two, the organisation of the focus will not be country specific. Thematic areas raised by the EU's regular reports will be the specific focus of these works. In that regard, the areas that will be focused upon here include registration of religious groups, state-religious group relations, restitution of religious property, and discrimination on the grounds of religion.

### **3.2 Registration of religious groups**

In terms of EU reports discussing the question of official registration of religion in Romania and Bulgaria, it is immediately apparent that there is far more material upon which to base a discussion of the question of the EU's implementation and interpretation of religious freedom than in the previous 2004 enlargement wave. This is not because of an increase in the number of reports themselves. With ten countries over a five-year period, contrasted with two countries over a seven-year period, it is quite clear to see that numerically, the amount does not compare. However, what is interesting is that the EU makes far more mention of freedom of religion in these reports, and one subject that regularly emerges is that of religious registration groups. There is a certain amount of overlapping between the question of registration systems and relations between religious groups and the state in general, however for the purposes of this thesis, the important distinction lies in the fact that in the case of religious registration, we are dealing with the initial inception of official relations between the government and a given religious group, rather than the situation with regards to later ongoing relations between the two actors.

Not only does the EU make far more mention of religious recognition within the reports concerning these two countries, they also make clearer their position regarding the events they are reporting on. Whereas previously in Chapter Two there were some rare instances of specific comment on particular issues of the nature of religious registration systems (most notably the Czech and Slovak cases, where the legal requirements of 10,000 and 20,000 adult permanent residents respectively were discussed) without any clear indication as to whether these comments were meant as a positive mention, or a reprimanding highlight, in these reports the mentions that come up come along with language that makes the EU's position slightly clearer.

In both cases, unlike the case of the 2004 enlargement wave, no specific mention is made to the means by which registration is achieved. There is no discussion of subjects such as membership numbers required, whether the religious group in question has to submit to any kind of investigation by the government, or whether a religious group must conform to a certain set of standards of behaviour or practice before the government will recognise it.

Earlier in the reports, there is a suggestion that the rights of non-religious groups would be considerably restricted by any passage of a draft proposal explored by the Romanian government in 1997, although no clear reason is given to exactly why. The USSDOIRF reports are equally vague on this question, simply saying in its 1999 report that "Members of some religious minorities complain that the revised law on religions, if enacted, would not recognize their status as religious groups".<sup>98</sup> There appears to be no available sources on the law in English, so it is unclear exactly what its provisions were. However, on the basis of these two sources we can infer that it is very likely to have had some kind of numerical limitation on religious groups, which up until that point in Romania had been negligible (the USSDOIRF reports point out that to register as a religion in Romania,

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<sup>98</sup> Romania Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_romania99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_romania99.html) (accessed 22.8.2012)

although the process was exceptionally bureaucratic and tediously slow, the central requirements were five members, financial backing presumably so as to be sustainable, and some form of organisational structure). Thus it would appear once again, that the EU is to some extent concerned with the notion of a government limiting religious recognition on the grounds of numerical membership provisions, although there may also be concerns about the specific definitions of the religion that are not made clear.

What is particularly interesting about this mention, and indeed this represents a phenomenon that emerges again later in this chapter and others, is the EU's use of language surrounding this particular criticism. The phrase is found in the 1998 Romania report, and it states "Further efforts need to be maintained to foster religious freedom".<sup>99</sup> What is interesting here is the use of the word "need". It implies that there is a definitive issue here that needs resolving, and that until the Romanian authorities act on it, it will remain problematic to say the least. However, the use of the word "need" implies a negative consequence that would arise as a result of the failure of the Romanian government to accomplish the goal set forth here.

At this point, it is important to remember the context of the EU's regular reports. Unlike the USSDOIRF reports, and similar other reports by different charitable, academic, or otherwise motivated researching entities, the EU's reports have a specific purpose that is not directly related to accurately and comprehensively detailing the human rights situation in each country here discussed. The purpose of these reports is to detail the readiness or otherwise of each country for full EU membership. Therefore, given the context of a report specifically geared towards EU membership readiness, rather than simply information gathering or situational exposition, the meaning of a normative judgement of "need" is exceptionally significant. You would not find such a normative judgement in a document

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<sup>99</sup> Romania Regular Report 1998, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/romania\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/romania_en.pdf) (accessed 22.8.2012)

seeking merely to report the situation. Therefore, since the context is a more functional one than the USSDORIF reports, it is reasonable to infer that the consequence of failing to meet the “need” here mentioned is more than the obvious loss of freedom that would be experienced by those religious individuals if the government does not act. Were the EU reports not primarily concerned with EU membership readiness and more concerned with overall human rights situations, we might expect that the EU’s regular reports be far more detailed, and also that they would be far more closely matched in content to the USSDOIRF reports.

So the consequences for failing the need would be reasonably interpreted as being related to the prospects, or otherwise, of EU membership, however that does not appear to be the case. Despite the mention of a “need” on the part of the Romanian authorities to foster more substantial religious freedom, there does not appear to be anything like a substantial consequence to the failure to do this on the part of the EU. We can fairly assume that if the reports claim that more needs to be done to foster religious freedom, it is not an unreasonable suggestion that not enough is being done at the present time. Therefore, it would be expected that any consequence of the failure on the part of the Romanian government to foster further religious freedom would already be being felt. However, that appears to not be the case. Thus, the question is aptly asked, exactly what, if anything, does the EU mean when it says that there is a “need” for the Romanian authorities to take any kind of action in regard to religious freedom?

The EU does not make purely abstract criticisms, and indeed it does take some significant objection to the language used in the regulations here dealt with, and what it calls “notions” used by the Romanian legal system’s categorisations when applied to various religious groups. In the 1999 report, the EU makes the point that the 1948 law on religious freedom which is still in effect makes references to “non-recognised cults and sects” and



should therefore be amended.<sup>100</sup> Further mention of the 1948 law will be made in other sections, but for the purposes of this section, the focus will be the discussion that is made regarding this particular incident. It is exceptionally curious that the EU makes mention of the language of the law, rather than its content. Other mentions of the law in its relations to the religious registration system do emerge later, without specific negative or positive comment. Both the 2002<sup>101</sup> and 2003<sup>102</sup> reports point out that “Non-recognised faiths are able to operate without restriction but do not benefit from the same legal advantages as recognised religions”, but there is not a clear suggestion that this in itself is a negative thing.

The very curious factor about this incident is the use of the fact that it is the language that the EU uses to make the objections that it does. The actual specific use of the word “notion” in this context is very curious. The initial inference that it was in fact the language that was being objected to, was based on the fact that it is quite clear that the EU has no specific problem with the idea that a religious group can be registered with the government or not. Other religious groups are registered with the government in the case of Romania, as well as Bulgaria, and several other countries that have been and will be discussed during the course of this thesis. It is however exceptionally unclear what is meant by the EU’s objection to the “notion” of “non-recognised cults and sects”. It is perhaps not an unreasonable inference to suggest that the language is somehow derogatory, in the use of the phrase ‘cult’ or ‘sect’, as opposed to putting all religious groups on some kind of parity. This would certainly seem to fit in with the level of concern that some religious groups were reported as having over the potential law changed discussed as possibly going forward in 1997. The fact that the EU objects to the very notion of what is proposed as a religious registration system in

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<sup>100</sup> Romania Regular Report 1999, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/romania\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/romania_en.pdf) (accessed 22.8.2012)

<sup>101</sup> Romania Regular Report 2002, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/ro\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf) (accessed 22.8.2012)

<sup>102</sup> Romania Regular Report 2003, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2003/rr\\_ro\\_final\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_ro_final_en.pdf) (accessed 22.8.2012)

part with regard to the 1948 law is very significant. It demonstrates that there is a clear and fundamental principle with which the EU disagrees with. More discussion of the specifics of this law will be made at other points in this chapter.

The USSDOIRF report discusses the Romanian situation regarding religious registration in more detail. In particular, it points out that technically the responsibility for whether a religion is registered or not ultimately resides with local courts, rather than the government directly. This is a significant development, as the fact that this is not mentioned by the EU demonstrates that the EU does not conceive of religious freedom as being something limited to one particular branch of government. It tolerates not only the use of courts as a means of implementing decisions about religious freedom made by the central governing authority, but also the use of courts for what is effectively jurisprudence on religious matters.

As has been mentioned, the USSDOIRF reports also point out that the religious registration process is noteworthy for its slowness, but it also notes the specific restrictions given to non-recognised religious groups. Lack of recognition from the government not only means that ceremonies such as marriages, funerals, baptisms etc are not officially recognised, nor is its impact limited to the significantly limited nature of government funding when compared to the situation for recognised religious groups. It also consists of a prohibition on the construction of any religious building by that religious group since 1997. The EU does report on this issue, but it is not mentioned until the 2001 report. This is significant, as in previous USSDOIRF reports covering other situations akin to this, the limitations were simply a matter of not being able to own property as a community. In this instance, the language is quite different, and instead discusses the fact that non-recognised religious groups will not in fact have the ability to build any religious buildings for their own purposes. While this may be functionally the same as not being able to own property communally, since

logically if a religious group cannot own property communally, it will also by extension not be able to construct a building for its own religious purposes. That is because any building that is constructed by individuals from that religious group would not be listed as being used for religious purposes, the fact that the language used in the reports from the same source is so different, it suggests that there is enough of a distinction between the two sets of behaviours to consider it noteworthy.

In contrast to the situation in Romania, the EU's reportage on the Bulgarian process by which religious groups are recognised and registered with the government resembles the style of reporting on the same matter that was observed in the case of the 2004 enlargement wave. In the earlier reports, we see suggestions that the EU is potentially more enamoured of the current situation than it was had the situation remained unchanged from the pre-1998 situation. The phrase that the EU uses regarding religious recognition is "As regards the registration of "non traditional" religions and their registration, the climate seems to be more relaxed and practical solutions are usually found".<sup>103</sup> The use of the word "usually" is something of a bellwether for the tone of the discussions that the EU makes surrounding religious freedom in Bulgaria, and will be returned to for further discussion at a later point. Later reports also point out that with regards to registration, there is a certain expectation in Bulgaria that once a religious group is registered, it will have equal access to the media, and will have similar or equivalent airtime devoted to itself, and its particular causes/ceremonies/holidays etc. as other religious groups. Just like the Romania reports however, there is no discussion of the mechanics of exactly how a religious group would go about getting registered with the government, implying therefore that the EU is either fundamentally satisfied or indifferent with regards to the method the Bulgarian government uses in these matters.

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<sup>103</sup> Bulgaria Regular Report 1998, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/bulgaria\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/bulgaria_en.pdf) (accessed 22.8.2012)

In terms of the USSDOIRF reports, the issue of religious registration is much more serious, and has led to some significant consequences. The most notable of these is the difficulty with which Mormons and Jehovah's Witnesses have had exercising what might be considered their religious freedoms. Particularly noteworthy is the fact that religious registration in Bulgaria occurs not only at the national state level of government, but also at the municipal local level also. Not only is this unconventional in terms of the various states so far covered, according to the USSDOIRF reports, it is actually unconstitutional within Bulgaria itself, and contravenes international law.

...several municipal governments including those of Burgas, Plovdiv, Pleven, Gorna Oryahovitsa, and Stara Zagora have, within the period covered by this report, established local registration requirements and/or adopted other restrictive laws curtailing the free practice of religious activities, often in contravention of the country's constitution and international law. These laws, variously, have imposed bans on such things as distribution of religious literature, proselytizing in public, references to faith-healing, preaching to minors without parents' express permission, and holding of prayer services at facilities not registered with the municipal authorities. Some municipal ordinances have also imposed intrusive financial reporting requirements that apply specifically to church organizations.<sup>104</sup>

It is exceptionally significant that the EU chose not to mention this. The closest it comes to discussing this fact is when in 1999 the EU mentions "However, there continue to be cases where local authorities and police interfere arbitrarily with the activities of such groups".<sup>105</sup> The reports go on to point out that these incidents were resolved later with legal challenges, and from 2002 onwards, the USSDOIRF reports point out that these registration procedures have not been strictly enforced. However, they do mention that in the 2001 report "there were no reported incidents during the period covered by this report of street-level harassment of religious groups by the authorities, as was seen in previous years".<sup>106</sup> What this is referring to

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<sup>104</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

<sup>105</sup> Bulgaria Regular Report 1999, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/bulgaria\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/bulgaria_en.pdf) (accessed 22.8.2012)

<sup>106</sup> Bulgaria Regular Report 2001, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/bu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/bu_en.pdf) (accessed 22.8.2012)

specifically is an area that will be covered in more detail when discussing the question of state-religious group relations. The fact is, however, there is no mention at all of the practices of these municipal authorities.

One potential interpretation of this action is that the EU is ultimately dealing with the case of Bulgaria as a whole, and not the specific municipalities in question. It may be argued that the reason the EU did not discuss these municipalities is because ultimately what they are doing is unconstitutional in Bulgaria, and therefore the Bulgarian constitution recognises freedom of religion, which is ultimately more important to the EU. This interpretation does have a certain amount of legitimacy, in that in chapter two, we saw how very often it was discussed that a given country would have freedom of religion guaranteed within its constitution, or comparable constitutional documentation. However, there have been examples in the past of other countries that have had municipal areas cause disputes which have been raised by the EU specifically, even when the incident in question is condemned by a national government. Perhaps the most significant incident of this kind is the city of Usti and Labem which was mentioned in the regular report of the Czech Republic's 2000 accession proceedings where Roma citizens were separated off from the rest of the city with a wall. This was further commented on as having sparked a fierce condemnation from the Czech government, responding by sending a negotiator to the area to deal with the situation. So here we see a precedent of the actions of a single municipality being reported, even though the central government's attitude is one of opposition, and indeed the actions are not representative of the central government. Although it may be argued that the incidents here are less dramatic (no one is suggesting building a walled village specifically for Jehovah's Witnesses or Mormons) the fundamental freedoms lost as a result of these rules are very concerning. Freedom of expression, with regard to the limitations on evangelism, the ability to disrupt assembly, with laws that allow for intervening during attempted miracles or faith

healings. Nor are these entirely theoretical issues, since various USSDORIF reports regularly cite incidents of members of unrecognised religions being the subject of intensive and repeated harassment and intimidation by various authority groups. The following is an extract from one report discussing an incident a Mormon group experienced:

In April 1997, customs officers at the Sofia airport confiscated religious and other literature from a group of U.S. citizen Mormon missionaries entering the country. A group member who later came back to the airport in order to retrieve the confiscated material was arrested on narcotics possession charges. Customs authorities alleged that among the confiscated material, methamphetamines were found in a bottle of over-the-counter dietary supplements. In January 1998, the case was dismissed.<sup>107</sup>

Although the EU makes little to no specific mention of the situation regarding freedom of religion in terms of the religious registration in the case of Bulgaria, it is interesting to note that unlike the cases of the 2004 enlargement wave, where the phrase “freedom of religion is enshrined in the constitution” or words to that effect were often repeated, in the case of Bulgaria, this phrase does not appear at all. The closest that such a phrase is reached to is in the case of the 2000 Bulgaria regular report where it states “In practice, freedom of religion is considered as satisfactory by most religious denominations and NGOs”.<sup>108</sup> It is exceptionally surprising that the EU would consider it to be a satisfactory situation by most people’s regards, when the following incident is reported by the USSDOIRF in the same year.

On July 15, 1999, a member of Jehovah’s Witnesses was required to pay approximately \$250 (500 leva) because of his participation in a June 1998 Bible study meeting in Plovdiv, which was deemed unlawful because Jehovah’s Witnesses was an unregistered denomination. Jehovah’s Witnesses alleges that the accused man and his lawyer were not present for the hearing at which the fine was imposed because the venue was changed without notice, and they therefore arrived 5 minutes late for the proceedings. Two other members of Jehovah’s Witnesses who have been ordered to pay approximately \$250 (500 leva) fines for similar offenses still await a final determination on their cases.<sup>109</sup>

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<sup>107</sup> Bulgaria Report 1999, *USSDOIRF*,

[http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_bulgaria99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_bulgaria99.html) (accessed 22.8.2012)

<sup>108</sup> Bulgaria Regular Report 2000, *Europa*,

[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/bg\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/bg_en.pdf) (accessed 22.8.2012)

<sup>109</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

A further issue that is raised in the EU's regular reports regarding religious recognition and registration policy is that of military service and the laws surrounding it and how an individual's religion may affect that service. In Romania, the EU describes the fact that conscientious objection can be seen as legitimate for recognised religions but not for unrecognised ones as what it calls an "issue". However, once again, as with other issues like this, it is unclear as to whether or not this is a negative or neutral issue in the EU's eyes. It is certainly difficult, albeit not entirely impossible, to understand how the EU might view this in a specifically positive light, but it would be inaccurate to suggest that the language is anything akin to unambiguously condemning.

### 3.3 Relations between States and Religious Group

As has been observed before, this is a fairly crucial area of concern regarding EU policy on the matter of religious groups in general. A key area of the 2004 enlargement wave's policy regarding this was the inclusion of representatives from the religious groups with interests in particular concerns of the state in the negotiations surrounding those concerns. This type of concern is again represented in the 2007 enlargement wave, as we can see that the EU is concerned once more with the presence of religious groups as a part of the discussion process regarding laws that ultimately are drafted with the regulation of religious groups in mind. This is seen specifically in the case of the Bulgaria reports in 2001 and 2002, where concerns were raised regarding a new law on "Denominations" which was designed with the intention (according to the 2003 report) of giving all religions an equal legal footing (although it is interesting to note that the law also gave specific legal personhood to only one religious group, the Bulgarian Orthodox Church).

It is important to note that there is a definite shift in the way the language is used in this instance. Rather than in previous reports and other publications, where the language was

more matter-of-fact and simply reported the details of the event, in this case there is specific reference to concerns raised about the fact that there has been a lack of inclusion of all interested parties. This would very definitely suggest that one of the EU's fundamental concerns in matters of religious freedom, and specifically state – religious group relations, is that all religious groups should be able to, if they so desire, work with the government of their given state on matters that directly affect them. Not only do certain reports praise the fact that the inclusion of all interested parties will occur, but the EU's motivation is also made clear, as the report states that it believes that with more inclusion will come a greater probability that the new law will abide by human rights principles more completely and properly.

In terms of relations between states and religious group more broadly, the EU is repeatedly of the mind that, in the case of Romania, reforms are distinctly required. The reports make regular reference to the 1948 decree on religions which is still in effect even up until the final regular report in 2004. What is not made clear is exactly why it needs reform, but the comments repeatedly make the point that the law is significantly out of date. Thus it is relatively difficult from this series of comments to make a proper judgement about exactly how the 1948 law, and the EU's objection to it, can be used to assist our understanding of EU interpretation and implementation of religious freedom as part of the accession process.

One aspect of the Romanian case that does appear interesting is that it seems that intent to change the law is at least as important, or of a comparable level of importance, to actually having the law changed in and of itself. The EU regular reports do not suggest at any stage that the 1948 law has been successfully repealed or amended to bring it into line with what the EU might expect from a law designed to regulate religious affairs in a manner befitting the EU's democratic human rights standards. However, at no point does the EU specifically criticise the Romanian government for failing to accomplish this reform. Rather,



they simply say that they “need” to reform this law, but continue to report on their failure. Later research of course reveals that the Romanian government does indeed reform this law prior to EU membership, but only by a matter of weeks. What is most curious however the specific language is used by the EU in this case. In several instances, the EU describes how the Romanian authorities “need” to reform the 1948 decree. However, what is not remotely clear is why they need to reform it. This lack of answering that question is not to suggest that the 1948 law may have been an acceptable system for managing religious freedom in Romania. Rather, the question is about the consequences of what is meant by “need” in this sentence. As has been mentioned previously, the purpose of these reports is fundamentally one of answering the question of whether or not a given country is ready to accede into membership of the EU. Therefore, given that context, there is a certain reasoned expectation that if a country is described in one of these reports as needing to do something, then it would be expected that such an act, if not performed, would have a detrimental effect on that country’s chances of joining the EU. However, no such affect is measured. At no point during these reports is Romania ever described as failing to meet the Copenhagen criteria for EU membership. This despite the fact that the EU describes there being a need for Romania to act on its situation regarding the 1948 decree. So the question that very naturally arises as a result of this is, to what extent can it truly be believed that the EU considers such actions a “need” when inaction on the matter does not result in any detrimental effects to the process as a result.

Regarding the notion of relations between states and religious group , there is once again an example of the EU being fundamentally concerned as to the presence of representatives from various religious groups in discussions regarding policy that is specifically related to said religious group, or religious groups in general. The regular reports in the case of Bulgaria pointed out a “concern” over the period 2000 to 2002 that not all the

groups who were affected by the Denominations Law that was under development in the Bulgarian Parliament had been directly consulted. In 2002 the final report commenting on this demonstrated that this issue had seemed to be resolved to the EU's relative satisfaction, and that by the final stage all substantially involved parties had been consulted.<sup>110</sup> The fact that the EU used as specific and negative a term as "concern" suggests very definitely that the EU believes that freedom of religion is something that must be implemented from a bottom up perspective, and that only by defining it with reference to the religious groups themselves can any definition be said to have any true legitimacy.

However, the reports from 2004 then go on to point out that there were some rather severe and serious problems regarding the implementation of this law. The vagaries of this act are also commented upon by the USSDORIF reports.

A Council of Europe review of the 2002 Confessions Act, prepared in early 2003, highlighted that the provisions dealing with the process of registration specify neither the criteria establishing the basis on which the Court should grant registration nor the grounds on which such registration can be withheld. The act also fails to specify the consequences of failure to register as a religious community or outline any recourse if a competent court refuses to grant registration.<sup>111</sup>

However, once again the EU has not commented specifically on whether the problems with the implementation that have occurred can be said to constitute a violation of religious freedom. The reports merely state that difficulties in implementation have occurred. It is unclear if this is in fact some kind of relatively oblique reference to the issues that Bulgaria was having with various municipalities using their own systems of registration, however this seems unlikely given that discussion on that point occurred very late in the EU's reports, whereas the question of municipal registration systems and the harassment that emerged as a result of them was ongoing from 1999 to 2001. What does appear to be the case from this

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<sup>110</sup> Bulgaria Regular Report 2002, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/bu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/bu_en.pdf) (accessed 22.8.2012)

<sup>111</sup> Bulgaria Report 2004, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2004/35446.htm> (accessed 22.8.2012)

report is that the EU is more concerned with the content of the law, and the means by which it was drafted, than it is concerned with the direct implications of the law's practical implementation. There appears to be a certain amount of subsidiarity to this question, and it would appear that the EU does not consider it apt to get involved with minutiae of the administration of a given law.

In terms of the question of relations between states and religious groups more broadly, in the case of Bulgaria, the USSDORIF reports bring up several instances of state intervention and control of religious groups. Not all of this happens at the state level, but there is little to suggest that the state is acting in opposition to more intrusive elements of local governmental control. For example, the USSDORIF reports mention that in 1999 regions within the municipal authority of Sofia banned all religious services that made explicit reference to miracles or healings, a provision that is based on part of a law on religious practice that dates back to 1949.<sup>112</sup> This regulation was suspected by those reporting it to USSDOIRF to be aimed at Evangelical Charismatic Christian groups in Bulgaria. This is just one of several incidents of the Bulgarian authorities placing significant pressures on minority religions. The following are examples taken from the 2001 USSDOIRF report

...in July 1999, police in Stara Zagora interrupted a Mormon church service, demanded that worshippers produce their identity documents, and recorded the names and identification numbers of everyone present. They also required that church leaders present registration papers and a contract for the use of the building, which the church representatives did not have with them. The police alleged that the Mormon church was not registered properly with the city authorities.<sup>113</sup>

On July 15, 1999, a member of Jehovah's Witnesses was required to pay approximately \$250 (500 leva) because of his participation in a June 1998 Bible study meeting in Plovdiv, which was deemed unlawful because Jehovah's Witnesses was an unregistered denomination.

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<sup>112</sup> Bulgaria Report 1999, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_bulgaria99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_bulgaria99.html) (accessed 22.8.2012)

<sup>113</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

Jehovah's Witnesses alleges that the accused man and his lawyer were not present for the hearing at which the fine was imposed because the venue was changed without notice, and they therefore arrived 5 minutes late for the proceedings. Two other members of Jehovah's Witnesses who have been ordered to pay approximately \$250 (500 leva) fines for similar offenses still await a final determination on their cases:

In December 1999, police in Pernik interrupted a meeting of Jehovah's Witnesses. The police examined and recorded the identity documents of those present, and warned that such meetings should not be held in the future. The group was cited for violation of a city ordinance.<sup>114</sup>

In March 2000, two members of Jehovah's Witnesses in Turgovishte were detained briefly by police and charged with disruption of public order under a city ordinance because of their public proselytizing.<sup>115</sup>

In April 2000, several Mormon missionaries in Plovdiv were challenged by police while distributing literature and were required to go to the police station. They were charged with distributing brochures without a license.<sup>116</sup>

In April 2000, a member of Jehovah's Witnesses was refused entry into the country by border police, reportedly on the grounds that she had been deported from the country in 1997 for practicing her then-unregistered faith.<sup>117</sup>

These kinds of actions are commonly cited and are referenced by the EU in this instance as “cases where local authorities and police interfere arbitrarily with the activities of such groups [minority religions].”<sup>118</sup> Although the language used would suggest a negative connotation here (even without explicit condemnation, it is exceptionally difficult to imagine that the EU would either be ambivalent or positive regarding arbitrary police interventions of any sort) there is no reference to any significant urgency regarding efforts to correct these problems, nor is there any suggestion that these actions are specifically considered serious enough to warrant any action by the EU that might result in slowing of the membership

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<sup>114</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

<sup>115</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

<sup>116</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

<sup>117</sup> Bulgaria Report 2001, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2001/5578.htm> (accessed 22.8.2012)

<sup>118</sup> Bulgaria Regular Report 1999, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/bulgaria\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/bulgaria_en.pdf) (accessed 22.8.2012)

acceptance. At all points during the negotiations, the EU describes Bulgaria as conforming to the Copenhagen criteria. No specific mention is made of these incidents causing the EU any kind of concern that merits an actual response.

### 3.4 Redistribution of Religious Property

Redistribution of religious property is an area that is more specifically important to the 2007 wave, since in this case all countries involved had previous autocratic regimes which in some form or other sought to limit, control, or otherwise curtail the effective freedoms and level of influence of religious groups. In the case of the 2004 wave, this subject was far more sporadic, given that countries such as Malta and Cyprus were included which had no specific history of the kinds of religious intrusion seen in the Communist and Fascist regimes of several other countries.

The question of restitution of religious property is discussed by the EU far more significantly in the reports on Romania. Although restitution of property is discussed in a general sense in reports earlier than this (usually specifically relating to questions of agricultural land), the first mention of the specific concerns of the religious community in Romania occurs in the 2002 report. There, the EU comments that laws were passed which extended a presumably already existing process for dealing with the restoration of property to churches that had lost items during the Communist period. However, though it points out that this is an “important” development, it also says that there are clear limitations, as the issue only deals with church property, rather than the church buildings themselves.<sup>119</sup> The report highlights the issue has been of particular importance for the Greek-Catholic Church, who has not had a legal redress up to this point for the large number of church buildings lost during the Communist era.

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<sup>119</sup> Romania Regular Report 2002, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/ro\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ro_en.pdf) (accessed 22.8.2012)

The report then points out that the Romanian government has promised movement on this issue, but there have been delays in preparing specific legislation. Later reports comment on this issue in a similar vein, citing specific numbers, and the ineffective nature of various organisations set up to deal with this concern (including a joint Orthodox-Catholic committee that is devoted to the subject). An observation worth noting is the final judgement on this matter before the EU makes a judgement that Romania is ready for membership. It mentions that a governmental order which had been issued in August of 2004 which would provide free access to justice regarding the issue of restitution of Greek Orthodox churches. This section is then concluded by the following sentence “Its [the governmental order’s] effective implementation and impact on the restitution process will have to be followed up”.<sup>120</sup> The language in this section is slightly ambiguous. It is unclear if what is meant by “follow up” refers to the EU’s monitoring of the situation, in that the EU must follow up its investigations by continuing to check on the situation created by this governmental order, or if they are using the terms “follow up” in a similar way to how one might use the phrase “follow through” as in, it is a question of the EU encouraging the Romanian Government to follow through on their commitment to this policy. In either circumstance however, what is made clear is that the decision to allow Romania to enter into the EU has already been made. Therefore, the most important aspect of this decision would appear to be not in fact the consequences of the decision, but the fact that it was taken at all. While it of course would be unreasonable to expect the entirety of the EU’s decision making process about the entry of Romania to be based on a single policy as specific as the restitution of religious property, it is interesting to note that unlike other policies that have been previously mentioned in other cases, there is no unambiguous mention of any kind of specific need to take action in this case.

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<sup>120</sup> Romania Regular Report 2004, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_ro\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_ro_2004_en.pdf) (accessed 22.8.2012)

Furthermore, even if the language in this incident is analysed as meaning that Romania needs to follow up on the Governmental order, it is not made explicitly clear that this is a matter that the EU believes is directly linked to concerns about religious freedom. The placing of the discussion of property redistribution to religious organisations is such that though it does indeed fit into the section on human rights, it is not joined with the sections discussing religious freedom. Therefore, it is possible to infer that the EU regards these concerns as primarily relating to equality before the law, rather than specifically freedom of religion.

By contrast, the USSDOIRF reports have been covering this issue for a substantially longer period of time, and in much more substantial detail (however, as has been previously mentioned, there is a primarily functional explanation as to why this may be the case). In particular the USSDOIRF reports point out that prior to 2002, there was no law at all that provided restitution of communally owned property seized by the former communist authorities. The EU therefore can be seen as being unconcerned about the lack of restitution instruments available to communal property, as in the case of churches. The USSDOIRF reports also go into significant detail about the fact that since 1990 all cases regarding the restitution of Greek Catholic churches have not been dealt with by the courts, but rather have been referred to a joint committee created by a governmental order. USSDOIRF points out that this committee has been largely very ineffectual, since the government has not enforced its work. The 2002 USSDOIRF report points out that it did not meet for the first time until 1998, met three times in 1999, had one meeting in 2000 and one more in 2001.<sup>121</sup> Given that, at the time of banning, the Greek Catholic Church had 2600 churches, this level of activity from this committee can be seen as considerably below par. However, there is a very strong political element to the discussions, as the USSDORIF report points out, since it is the case

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<sup>121</sup> Romania Report 2002, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2002/13957.htm> (accessed 22.8.2012)

that if a given area has either one or the other of the two largest denominations in Romania (Orthodox or Greek Catholic) that is the church that the majority of the local residents will frequent, Therefore, debates about the restitution of churches will impact which church has the majority of members which in turn affects how the government resources are distributed between the various officially recognised denominations.

Apparently, the EU did also not see fit to comment, not only on the official activities of the restitution process, but also the responses that the process provoked from the public. The 2003 USSDOIRF report points out that October 2002, a large number of Greek Catholic believers, both from within Romania, and around the world, signed a memorandum which was delivered to the Romanian government complaining about various forms of discrimination that they believed that their group had suffered during the restitution process.<sup>122</sup> There was no action taken by the Romanian government in response to this popular action, but a letter written by the Orthodox Patriarch – which condemned decisions by the joint committee to award certain churches to the Greek Catholic community, calling them “illegal” and “abusive” – was redistributed to all courts of appeal by the Romanian minister of justice who called for careful consideration.

The central state of the negotiations between the Greek Catholics and the Orthodox believers is as follows “The restitution of its former cathedrals and district churches, and the return of one church in localities where there are two churches and one of them had belonged to the Greek Catholics (or at least to hold the religious service in turns). The Orthodox Church in turn stressed that the will of the majority of believers should be taken into account with regard to restitution and opposed the idea of holding religious services in turns”.<sup>123</sup> The EU has made absolutely no comment on the state of these negotiations, and has only

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<sup>122</sup> Romania Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24429.htm> (accessed 22.8.2012)

<sup>123</sup> Romania Report 2003, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2003/24429.htm> (accessed 22.8.2012)



discussed the laws relating to them outside of the section of the report that would appear to be specifically dedicated to freedom of religion concerns.

In the case of Bulgaria, there is a much smaller discussion of restitution of religious property in the EU reports, although it is a good deal more specific. Unlike the case of Romania, the EU reports only mention Bulgaria's religious restitution property once, and it is not strictly speaking related to the process of restitution itself (which is never mentioned in relation to religious property or buildings in the entirety of the EU reports on Bulgaria) but rather to the results of that process. The results being that July of 2004 more than 200 churches of the Bulgarian Orthodox Church were raided by police as a result of a conflict within the restitution process. The EU reports then point out that "The property rights of local churches will need to be clarified".<sup>124</sup> This is a significant point to note with regard to the EU's commenting on freedom of religion, which will be referenced at the end of this chapter in the concluding section.

In general, the USSDORIF reports are praising of the Bulgarian efforts in terms of restitution policy, citing regularly between 1999 and 2001 the fact that there is apparently no discrimination in the process itself between the various religious groups making claims. However, from 2002 to 2004 the reports do point out that there have been substantial practical difficulties for many groups, specifically in areas such as providing proof that they are in fact successor organisations to those whom properties were seized from in the 1940s.

### 3.5 Discrimination on the Grounds of Religion

In both cases here referenced, discrimination on the grounds of religion is mentioned on several occasions. However, none of those occasions are the specific mentions found within sections of the EU regular reports that are specifically tasked with examining the question of

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<sup>124</sup> Romania Regular Report 2004, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_ro\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_ro_2004_en.pdf) (accessed 22.8.2012)

religious freedom. They are instead discussed in sections that are tasked with social policy, employment regulation, and other similar areas. In both countries, the EU is seen very clearly to be supportive of the fact that these countries have made moves that would ban discrimination on religious grounds.

By contrast, the USSDORIF reports make several mentions of discrimination, although most of these are more of a social nature, rather than governmental policy. In the case of Bulgaria, the reports repeatedly point out that evangelical denominations are routinely viewed with suspicion by Bulgarian Orthodox churches, but are not officially discriminated against. Of particular note however are cases of American evangelical missionaries who have reported repeated problems getting visas, with officials demanding extra payments or bribes, as well as some missionaries having their resident status cancelled due to undisclosed national security issues.

In the case of Romania, the USSDORIF reports cite the reporting of several incidents where minority religions claim that the Orthodox Church makes active moves to limit or otherwise curtail their activities, especially proselytising, with the police intervening on several occasions to curtail proselytising. The EU makes no remarks on these issues at all.

### 3.6 Conclusion

There are several things that can be drawn from examining the cases of Romania and Bulgaria in detail, as has been attempted in this chapter. First, the issue of restitution of religious property would not seem to be, in and of itself, an issue that the EU directly links to religious freedom. Rather, it is an issue which has the capacity to link into religious freedom. The only way in which the EU can be said to care about restitution of religious property with regard to religious freedom is in terms of the outcomes of the policies, rather than the policies themselves. This is noted by the fact that the only occasion where the restitution policies of

either state in this example are referenced directly within the section of the EU's regular reports that is explicitly linked to freedom of religion is the case of the police raids of Bulgarian churches. Thus we can see that the EU's only concern regarding religious restitution policy is that its outcomes do not affect the ability of others to worship. This preference may also be said to explain the reasoning behind the EU's seeming ambivalence to the cases of the Greek Catholics and the Orthodox Churches in Romania. The USSDORIF reports point out that in many cases, the Greek Catholic communities, though unable to reclaim their initial Churches, do in fact make alternative arrangements with relative success. The USSDOIRF reports also point out that a significant factor in the Romanian dispute is less the question of the religious freedom of the Greek Catholic community in Romania, and more the political shifting of both the Greek Catholics and the Romanian Orthodox communities in order to make maximum financial gain. The ambivalence towards the Greek Catholic situation is also mirrored in other incidents where the EU has noted that while minority religions perhaps cannot register with the government in the standard way, alternate solutions are found.

The EU's inconsequential mentioning of the regular arbitrary intrusions by the Bulgarian police forces into the affairs of minority religions indicates that while the EU is concerned by actions of groups like this, it is far more concerned with events at direct government level. This is borne out by a number of other factors also, such as the lack of mentioning of the popular protest made in favour of the Greek Catholic community in Romania, or the letter opposing the Greek Catholics issued by the Romanian Orthodox Patriarch which was then circulated around the Romanian judiciary by the government, and the silence on the actions of various Bulgarian municipal authorities, as well as the silence on social attitudes in both countries. It would seem then, that on the basis of these incidents that

the EU's primary concern is that of the actions of the national governments with regards to religious freedom.

There is a continuation of the theme noted from the previous chapter that the EU regards direct religious involvement in the making of policy that directly affects them as a desirable goal that should be reached by all applying member states. The precise meaning of a condemnation of a reprimand from the EU is still unclear. There are references to areas such as the question of consciences objection only being an option for members of recognised religions as being an "issue", and there are incidents where the EU cites a law as being out of date and in "need" of reform. However, there is little in the way of clarity regarding specific definitions and consequences laid out if these "needs" are not met. Given that the EU regularly reports both these countries as meeting the Copenhagen criteria, there is therefore a certain expectation that the requirements in these cases are somewhat fluid.

The theme of the importance of non-discrimination returns again, however given its placement in the reports, it can be inferred that this is not in fact an issue specifically linked to freedom of religion. It also would seem, given the lack of coverage by the EU of the incidents with foreign missionaries, that the EU is only concerned where there is distinct and direct proof of systemic discrimination by the state, rather than specific incidents that can be readily interpreted as being discriminatory.

The fact that so very much is described in the USSDOIRF reports as having happened in these cases, yet so very little changes in terms of the EU's estimation of these country's readiness to enter the EU, is of significant concern. There does not appear, from the analysis of this thesis, to be significant linkage between the question of freedom of religion and the reasoning behind Bulgaria and Romania's later entry into the EU. The closest possible explanation is that both countries were at a later stage of development with their legal systems in this regard, with both countries employing, to one extent or another, codes on the

subject of religious freedom that were drafted in the late 1940s. In order to better understand the EU's position on religious freedom, it is now necessary to examine states that are not yet members, but are in the latter stage of accession, i.e. states that have not only applied but have been granted candidate status and are in the progress of negotiations (or, in the case of Croatia, having had those negotiations completed). By examining countries that are at different stages of the negotiations, more can be learned.

## **Chapter Four: Croatia and the Candidate Countries**

### 4.1 Chapter Introduction

This chapter will be focusing on the countries which have been accepted into the accession process, but, with the exception of Croatia, have not at this stage been granted full membership (specifically Croatia, Iceland, Turkey, the Former Yugoslavian Republic of Macedonia, Serbia, and Montenegro). This is an important distinction to make, because the final chapter will be focusing on countries which have applied to be members, but have not at this stage been accepted into the accession process.

This chapter will provide the thesis as a whole with some exceptionally useful incites. Not only will we be seeing countries at more varying stages of development in the accession process than in previous chapters, but also this is the chapter in which we are most likely to see countries being regarded as not being successful in adhering to the Copenhagen Criteria. Thus, with the question of failure to meet the criteria now entering the frame, there are the expanded questions to be asked, such as why this might be the case in dealing with various countries. It is more likely in this section that we will encounter countries which have differing levels of accomplishment with regard to implementing the levels and kinds of religious freedom that the EU expects. There will also be considerably more data available, with countries such as Turkey having been involved in the accession process from 1998 until 2012 (the most recent report available).

Turkey is another reason that this chapter will be an exceptionally important and relevant part of this thesis. Up until this point, the countries that we have been focusing on have been dominantly or nominally Christian in their religious demographic makeup, and thus by extension in their broader political culture. Although some will have more significant minorities than others (most notably, minorities of an Islamic nature) the overall trend is that

Christianity appears to be the dominant force and feature of the religious landscapes of these countries. In the case of Turkey, however, that is not at all true. Christianity is very much in the minority and Islam is dominant, not only in terms of nominal religious demography, but also in terms of the political landscape, with the Justice and Development party often being described as ‘mildly Islamist’, possibly meaning that it is Islamic in so far as the German Christian Social Union and Christian Democrat Party are broadly Christian in their political outlook. By this meaning, they have no desire to impose Islam upon the state in the form of criminalising that which Islam decries as sinful (although at certain times, they have been under immense pressure to do so), but take inspiration for the direction of their legislative portfolio from a specific interpretation of their religious ideology (In a somewhat comparable fashion to the way that Aneurin Bevan was informed by his Christian principles when he made the initial moves to found the National Health Service in Britain in the first half of the 20<sup>th</sup> Century). In analysing an Islamic country, and the EU’s reactions to its policies, we shall see if there are differing treatments which could be potentially attributed to the religious differences, or if the EU is in fact consistent in its application of religious freedom principles across all states.

As was the case with other chapters, this chapter shall be broken down into several sections based on thematic areas that emerge from reading the EU’s regular reports on each of these countries, and the areas relating to religion as a whole that emerge. In this case, those areas are religious education, state-religious group relations, registration and recognition of religious groups, discrimination on the grounds of religion, and conscientious objection.

#### 4.2 Conscientious Objection

This is an area which has not, up until this point, been raised as a part of the section within the EU’s regular reports dedicated to religious freedom. However, in this group of reports, specifically in the cases of Turkey and Serbia.

Croatia's mention of conscientious objection is very limited, but quite detailed. It only occurs once in all the reports, specifically in the 2005 report. It highlights several areas of the constitution which permit conscientious objection and mentions that alternative civilian service is available. This shows us that the EU does not have any specific objection to the notion of enforced service for the government.

In the case of Turkey, the EU did not take any interest at all in the question of conscientious objection, on religious grounds or otherwise, until the 2005 regular report. Prior to that time the phrase "conscientious objection" does not in fact emerge at all in the report. This, despite the fact that in 2006 the EU reports describe the situation in the following terms. "There was no progress in relation to the right of conscientious objection to military service, which Turkey still does not recognise".<sup>125</sup> The language use in this context is interesting. The report says that Turkey 'still' does not recognise the right of conscientious objection, despite the fact that the EU has only taken an interest in the matter one year earlier (thereby supposedly implying that the EU believes itself to have a great deal of influence over Turkish internal policy). The use of the word "still" in this seemingly exasperated tone would suggest that the EU regard the right to conscientious objection as a serious issue. It seeks to further highlight the issue in the 2012 report by pointing out that Turkey is the only country in the Council of Europe that does not recognise the right to conscientious objection. Certainly, serious enough to warrant the raising of the example of the case of *Ülke vs. Turkey* from the European Court of Human Rights (ECHR) where Turkey was told that it could not imprison a citizen of its own country simply for refusing to take part in military service, and that the imposition of what the ECHR called a "civil death" could not at all be considered a proportionate punishment and was unbecoming of a democracy. Given that from 2005

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<sup>125</sup> Turkey Regular Report 2005, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf) (accessed 22.8.2012)



through to 2012, the EU continually includes the question of conscientious objection in the section of the regular report ascribed to religious freedom, it would very clearly be seen to be an issue that the EU regards as linked to religious freedom in some significant fashion. The EU's response seems to be not one of objection to the banning of conscientious objection itself, but more to the issue of the lack of alternative civilian service, as in the 2012 reports, the EU regards the development of possible civilian alternatives to military service as being "progress".<sup>126</sup>

In the case of Serbia, conscientious objection is mentioned far more sparingly within the section of the EU's regular report specifically dedicated to the issue of religious freedom. The only direct mentions of the issue emerges are in the 2005 (incidentally, also the only report where Serbia and Montenegro are examined within the same document) and 2011 reports. The first instance concerns the fact that the decree which was put in place to deal with religious objections to military service (which involved providing an alternative civilian service for those raising the objection) have not been implemented effectively (with the provision of alternative placements being insufficient), have involved "undue" restrictions and have been drafted and deployed in a less than transparent manner.<sup>127</sup> The EU reports do highlight the fact that the Serbian Ministry of Defence has attempted to clarify the situation by insisting that all the actions it has taken has been in the attempt to make sure that all the cases brought before them are in fact genuine cases of religious conscientious objection. However, in this rare instance, the EU does make a definitive judgement statement, and rather than simply mentioning the situation, describes the Serbian government's actions in this regard in negative terms. In calling the regulations and restrictions surrounding the policy of conscientious objection "undue" it shows that the EU regards Serbia's actions as

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<sup>126</sup> Turkey Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf) (accessed 22.8.2012)

<sup>127</sup> Serbia Regular Report 2005, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1428\\_final\\_progress\\_report\\_cs\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf) (accessed 22.8.2012)

unnecessarily restrictive and potentially harmful to religious freedom. However, unlike in some other cases that have been highlighted throughout this thesis, the EU has not mentioned a specific need to act in this case.

The second mention of these laws, which can be found in the 2011 report, which makes the point that laws making conscientious objections on religious grounds were passed in 2009, is not the only mention of conscientious objection in these reports.<sup>128</sup> It is merely the second, and only other instance, of where the matter of conscientious objection is raised specifically within the section of the reports dedicated to religious freedom. The issue emerges again in the 2009 and 2010 reports, and in the former, it points out that laws that dealt with the issue of alternative service have not in fact been passed yet (the 2005 report stated that it was the implementation of a decree that was proving problematic).<sup>129</sup> This fact, combined with the fact that it was not until 2011 that the EU saw fit to mention the conclusion of the issue of conscientious objection based on religion, shows us that there is a gap of several years where the EU failed to mention the issue of conscientious objection on the basis of religion.

There are several possible explanations to this, but none of them clear. The simplest explanation would be that from between 2006-2009 implementation of the decree was satisfactory according to the EU, and therefore not worthy of mention. However, in previous cases where a situation has improved, the EU has made specific report of the fact, and has praised the given country for their improvement. Another possible explanation is that the situation was too static to be worth discussing further. Continued repetition of the same situation over and over again in every report could be considered unproductive. However, as

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<sup>128</sup> Serbia Regular Report 2011, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/sr\\_analytical\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf) (accessed 22.8.2012)

<sup>129</sup> Serbia Regular Report 2010, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/sr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf) (accessed 22.8.2012)

has been seen in earlier reports (and will be seen again in this chapter, specifically in the discussion of the case of Turkey) we note that the EU does repeatedly mention various issues, both negative and positive (two examples of this, one negative and one positive, are the fact that the EU mentioned the constitutional protection of religious freedom in several countries in the 2004 wave on a regular basis, and the continued comments made regarding Turkey's continued restrictions regarding international travel of non-Islamic clergy into the country) if they are an ongoing concern. Thus it is reasonable to state that it is far from clear exactly why in the case of Turkey between 2006-2010 the question of conscientious objection on religious grounds was not mentioned in the section of the report specifically dedicated to freedom of religion concerns.

In contrast to previous reports, the USSDOIRF reports do not cover the issue of conscientious objection in any of its reports of either Serbia or Turkey. The closest thing to a specific mention that the USSDOIRF reports make is the fact that in the case of Croatia, rules regarding military service for specific religions were negotiated by each individual religion separately with the government. There appears therefore to be no specific overarching policy, other than the fact that conscientious objection on religious grounds is permitted, although it should be pointed out that the EU reports do not specifically mention the situation with regard to religious grounds specifically, instead merely pointing out that conscientious objection was permitted. Although the reports do highlight issues within various country's militaries, such as the use, or lack thereof, of chaplains and whether the state pays for them, or the fact that in Serbia there has been ongoing issues with the inability of the Serbian armed forces to supply appropriate alternative diets for Muslim soldiers due to cost issues, there is little to no specific discussion of the situation regarding conscientious objection on religious grounds.

### 4.3 Discrimination on the Grounds of Religion

In terms of discrimination on the grounds of religion, as has been seen in other reports on other countries, the issue is clearly one that is exceptionally central to the EU's policies regarding religion. However, it is unclear and possibly unlikely that the question of discrimination on the grounds of religion is considered by the EU to be under the banner of the issue of religious freedom itself.

For example, in the case of Turkey, the issue of discrimination on several grounds including religious belief is brought up on several occasions, with specific mentions of notions such as "EU standards", "needs" and "expectations". However, these requests do not appear in the sections of the report specifically dedicated to the issue of religious freedom. There are other issues mentioned within the reports on Turkey that could be easily considered to be related to discrimination on the grounds of religion, however these issues are not specifically related by the reports as being matters of freedom of religion. Other countries also have this phenomenon occurring in their reports. In the case of Serbia, several reports make reference at several points to the fact that they have made various levels of progress towards opposing discrimination of "all forms" which presumably includes religion, although the reports make very little in the way of specific reference to that fact. Macedonia's report makes similar references, while Iceland's have more specific concerns with issues relating to a lack of specific focus upon issues of discrimination on ethnic grounds. There is clearly much more focus upon the question of discrimination on the grounds of religion, given that the reports repeatedly highlight it as a part of, not only the expectations and standards applied to the applicant countries in a general sense, but also in a specific sense with regard to the *acquis communautaire* and various international conventions on diverse subjects (although none of them specifically focusing upon the issue of religious freedom. The only area specific issues covered are those of gender discrimination and ethnic and racial discrimination).

The USSDOIRF reports, by contrast, do report some discrimination, however they do not frame it in the same way. In many cases, such as in Serbia, Montenegro and Croatia, they report discrimination as being linked to ethnicity, as ethnicity and religious affiliation are heavily tied together in the Balkan region. They point out that there have been several violent incidents, however the EU has reported on these, but in other sections of the reports. We can conclude therefore that the EU does not regard social attitudes that have bearing on people's opinion regarding religion as being specifically linked to the issue of discrimination, and that rather discrimination is in fact an issue solely to do with treatment before the law. In this regard, the USSDOIRF reports are largely in agreement with the EU ones, although in some instances they do go into significantly more detail, highlighting for example the fact that Turkey's constitution explicitly condemns discrimination on the grounds of religion.

On the basis of what we can see from this section, it seems increasingly logical to conclude that the EU does not regard discrimination on the grounds of religion as itself being an issue directly linked to religious freedom more broadly. However, it is indeed plausible to argue that it views discrimination on the grounds of religion more seriously than it does religious freedom in general, as it makes continuing reference to discrimination of all forms as making up part of the *acquis communautaire*, whereas religious freedom itself does not have a relevant component of the *acquis communautaire*.

#### 4.4 Religious Education

Religious education is an issue that is discussed at some length by the EU in the reports made regarding the countries at this stage of the accession process. This would suggest then that as a trend, it would seem that an important issue related to religious freedom that marks a country as being better prepared to move up the chain of accession is that of religious education. However, as shall be demonstrated in this section of the reports, the conclusions

that you may come to on the matter of exactly what the EU expects with regards to government policies relating to religious education may not, in fact, be all that consistent.

The two most egregious cases regarding this policy area in the reports are those of Turkey. A particularly substantial incident regarding religious education emerged when an judgement by the ECHR comes into play On October 9th 2007, the ECHR passed judgement in the case of Hasan and Eylem Zengin v. Turkey. The details of the case were as follows:

Eylem Zengin was attending the seventh grade of the State school in Avclar, Istanbul. As a pupil at a State school, she was obliged to attend classes in religious culture and ethics. Under Article 24 of the Turkish Constitution and section 12 of Basic Law no. 1739 on national education, religious culture and ethics is a compulsory subject in Turkish primary and secondary schools.

Mr Zengin submitted requests in 2001 to the Directorate of National Education and before the administrative courts for his daughter to be exempted from lessons in religious culture and ethics. Pointing out that his family were followers of Alevism, he claimed that, under international treaties such as the Universal Declaration of Human Rights, parents had the right to choose the type of education their children were to receive. He also alleged that the course in question was incompatible with the principle of secularism and was not neutral as it was essentially based on the teaching of Sunni Islam. All his requests were dismissed, lastly on appeal before the Supreme Administrative Court in a judgment of 5 August 2003, on the ground that the course in religious culture and ethics was in accordance with the Constitution and Turkish legislation.

The applicants maintained, in particular, that the way in which religious culture and ethics were taught in Turkey infringed Miss Zengin's right to freedom of religion and her parents' right to ensure her education in conformity with their religious convictions as guaranteed under Article 2 of Protocol No. 1 (right to education) and Article 9 (freedom of thought, conscience and religion).<sup>130</sup>

The investigation revealed that the state curriculum gave disproportionate weight to study of Sunni Islam (encouraging such techniques as memorising verses from the Koran by heart) and instruction of the central pillars of the Muslim faith. By contrast, Alevism, despite being followed by a large body of Turkey's population, received comparatively little serious examination until ninth grade, and even then only in a very limited capacity. The final

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<sup>130</sup> Hasan and Eylem Zengin v. Turkey, *Netherlands Institute of Human Rights Utrecht School of Law* <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/0/890d6714703b60e3c125736f002da351?OpenDocument> (accessed 23.8.2012)

judgement of the ECHR was that Turkey had breached Art 2 Pro 1, but that there was not an issue under Art 9.

Reaction to this judgement in the EU's progress reports on Turkey was both severe and yet minimal. Despite the fact that a very clear case had been highlighted, and there was a clear course Turkey had to take to correct it, the EU did not significantly change its attitude towards Turkey in the reports. It did make stern reference to the incident in several reports, such as these selections from between 2008-2010:

The Court requested Turkey to bring its educational system and domestic legislation into conformity with Article 2 of Protocol No1 to the ECHR. This ECtHR judgment needs to be implemented. In August 2008 an Alevi Federation applied to the Committee of Ministers of the Council of Europe complaining that this judgment is not being implemented and claiming that the new textbooks include superficial information on Alevis part of which could also be considered misleading.<sup>131</sup>

In October 2007 the ECtHR found that these classes did not just give a general overview of religions but provided specific instruction in the guiding principles of the Muslim faith, including its cultural rights. The court requested Turkey to bring its education system and domestic legislation into line with Article 2 of Protocol 1 to the ECHR. Implementation of this judgment is still pending.<sup>132</sup>

[u]nder Article 24 of the Turkish Constitution and Article 12 of the Basic Law on national education, religious culture and ethics classes remain compulsory in primary and secondary education. The October 2007 ECtHR judgment – which found that these classes did not only give a general overview of religions but also provided specific instruction in the guiding principles of the Muslim faith and requested Turkey to bring its education system and domestic legislation into line with Article 2 of Protocol 1 to the ECHR – has still not been implemented.<sup>133</sup>

These incidents are clearly of significant seriousness if they are related in such detail and on repeated occasions within the EU's regular reports on this matter. However, the language surrounding these incidents remains nonspecific and less than instructional in their

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<sup>131</sup> Turkey Regular Report 2008, *Europa*, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf) (accessed 22.8.2012)

<sup>132</sup> Turkey Regular Report 2009, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf) (accessed 22.8.2012)

<sup>133</sup> Turkey Regular Report 2010, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf) (accessed 22.8.2012)

judgements. The EU does not make it in any way clear that the Turkish education authorities need to change their position on the Alevi community if they wish to progress in their desire to become fully fledged members of the EU. In fact, during this period, there is significantly less of the kind of definitive statements about the situation of Turkey regarding the Copenhagen Criteria than there was in earlier reports, such as between 1998-2002. However, although there is not explicit expectation of any specific action, the fact that once again the EU uses the word “still” in the case of the 2009 and 2010 reports, there is a certain amount of expectation on the part of the EU that Turkey should be doing its utmost to comply with the judgement rendered by the ECHR and actually seek to solve the issue of Alevi representation in the compulsory part of the Turkish religious education system.

By contrast, the EU’s treatment of Croatia with a similar situation is very different indeed. Almost every single discussion of Croatia’s status regarding religious freedom in these reports comes to an identical conclusion. Whenever the reports reach the section that is marked as dealing with religious freedom, the reports repeat a phrase to the effect of “no particular problems have been located in this area”. However, there is a single occasion where there is a small picece of extra specific information provided, and it specifically concerns an issue where Croatia was also reprimanded by the ECHR on the issue of religious education. The case is described by the Strasbourg consortium in the following terms:

Based in Zagreb and Tenja, they are churches of a Reformist denomination which have been registered as religious communities under Croatian law since 2003. The case concerns the applicant churches’ complaint that, unlike other religious communities in Croatia, they could not provide religious education in public schools and nurseries or obtain official recognition of their religious marriages as the domestic authorities refused to conclude an agreement with them regulating their legal status. They relied on Article 6.1 (access to a court), Article 9 (freedom of thought, conscience and religion), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 12 (general prohibition of discrimination). In a chamber judgment issued 9 December 2010, the Court found no reason that Croatia's argument that other religious communities satisfied the criterion of being "historical religious communities of the European cultural circle" could not equally be applied to the applicant churches. The Court concluded that the criteria were not applied on an



equal basis to all religious communities, and that this difference in treatment did not have an objective and reasonable justification, in violation of Article 14 in conjunction with Article 9.<sup>134</sup>

It is fairly clear then that, given the highly specific invocation of art. 9, that this is indeed a case that specifically relates to religious freedom. It is also clear that the EU specifically regards it as being so, since unlike the issues surrounding discrimination, this incident has been cited quite definitively in the section of the EU's report dedicated to the question of religious freedom. However, not only is it raised in the final report before the production of documentation relating to the final stages of Croatia's accession to EU membership, and thus it cannot be considered a de-railing factor towards EU membership in the slightest, the mentioning of this incident in the report is also immediately preceded by the words "There have been no particular problems with exercising the freedom of thought, conscience and religion". Thus, somewhat bizarrely the EU seems to regard this issue of the Croatian government's educational authorities being told by the ECHR that they have violated article nine of the European Convention on Human rights as being not at all a serious issue with regard to freedom of thought, conscience and religion.

While this is not expressly contradicted by the situation regarding Turkey's own ECHR judgement, it does seem strange in the extreme that the EU should regard such a judgement as not being a problem in the slightest. There is very definitely a significant expectation on the part of the EU that Turkey change its ways on the issue of the education system. This fact is particularly compounded by the important point that the case of the Zengin family in Turkey was ultimately not considered to be an art. 9 case, whereas the case of the Churches from Zagreb definitely was. So we have the curious circumstance where the EU regards a case that is deemed not to be an art. 9 case as an indirect problem for religious

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<sup>134</sup> Savez Crkava Rijeè Zivota and others v. Croatia *Netherlands Institute of Human Rights Utrecht School of Law*, <http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/1e62c7f36852f4eec12577f5004e255f?OpenDocument> (accessed 22.8.2012)

freedom in one country, but a case that is ruled to be a violation of article nine to be a non-issue in another.

The inconsistency here makes it very difficult to make a conclusive hypothesis as to the level of impact that judgements levelled by the ECHR have on proceedings. However, at the very least it would appear that the EU regards the Turkey case as being more serious, and thus it is important to consider exactly what the implications of that case are.

The most notable difference between the cases is the significant factor of the fact that in the Turkish case, the EU reports repeatedly note the fact that the Turkish education system has compulsory Islamic instruction as a definitive part of the system. It is not impossible for a member of a different religion to gain an exception to this treatment, most notably if you are a member of any of the religious groups officially recognised by the Lausanne Treaty of 1923. But for any other group to get an exception is extremely difficult. By contrast, in the case of Croatia there is no compulsory religious instruction involved. The case in question was about the ability of religious groups to become involved in the system who had been excluded, rather than about specific religious groups being denied the right to have their children educated in a manner consistent with their values.

This links into an important point that is raised with regard to the question of the Turkish case in terms of religious freedom and education. The EU's regular reports repeatedly state that the Turkish state run education system has a mandatory religious education program that instructs Sunni Islam. This fact in and of itself is not commented on in an opinionated fashion by the EU at any point during the reports. The only direct implications that the EU do not regard this as an acceptable practice is the inclusion of the judgement of the ECHR, and the fact that the EU suggests that an initiative proposed by the Ministry of National Education that involved Christian communities drafting new passages to describe their religion which would then be included in the curriculum needed to be followed

up. Despite this supposed need, there is no mention as to whether or not the initiative was followed up at later dates. Thus, it can be inferred that the EU has no direct objection to the notion of Sunni Islamic religious instruction as part of the state education, or at least that any objection it had was made on the basis of the ECHR's judgement, rather than its own.

Although the most significant cases regarding religious education occurred in Turkey, with the emergence of ECHR judgements adding a definitive level of importance to the report's proceedings, other countries do have their own issues also. However, as is so often the case, the EU's reportage on these incidents is unclear and ambiguous in terms of its approval or disapproval of the outcome.

One such example of this is found in the case of Macedonia, where during its reporting period, there is a discussion of a law which intended to make religious education compulsory for children of primary school age. It is important to note that unlike the case of Turkey, this education proposal was not based around a specific religion. Nor was it strictly speaking, compulsory religious instruction. Children would have the option of religious instruction (taught by priests or other religious leaders) or they could learn instead about the history of religion (as taught by qualified teachers). The EU's interest in this case is less definitively about freedom of religion, although unlike some other tangential cases of discussion of religious matters it is centred in the section of the report dedicated to religious freedom, rather it is more concerned with the passage of the legislation that would enact these requirements, and the independence of the judiciary in Macedonia, and their ability to take a decision that would seem to defy the Government's wishes on this matter. At no point in the reports is mention made of whether or not the EU regards this policy as sufficiently neutral in matters of religious education. In fact, so little is made clear on this point, that it is not possible to definitively establish that neutrality is a value that the EU could be considered to

prize highly in the matter of the delivery of, or allowance for, religious education in a given country.

By contrast, the issues raised by the USSDOIRF reports do not correspond completely with what is produced by the EU's regular reports, and in several noticeable instances, there are substantial issues which are in fact completely ignored by the EU in its proceedings. Quite possibly the most notable of these is the EU's complete and utter silence on the issue of the headscarf ban instituted by the Turkish government on the campuses of all Turkish higher education institutions. This ban was initially instituted in the 1970s, but was interpreted by Turkish courts to have a broader impact in 1997, banning the wearing of headscarf's in all of Turkey's universities, a very short while before the EU's period of regular reporting. This ban has been part of a series of policies that reflect a sustained effort on the part of the Turkish government to limit the ability of what it considers "fundamentalist" Islamic beliefs and practices to impact the public sphere.

There have been a number of other policies mentioned in the USSDOIRF that seek to achieve this aim which have also not been discussed in the EU reports. These areas will be discussed in other sections of this chapter. This would apparently demonstrate that the EU is significantly less concerned with the enforcement of secularity than it is with other forms of restriction of religious behaviour. It is difficult to argue that this move is anything but specifically targeted at believers of specific sects of Islam (and some groups of Christians) who believe women's heads should be covered. The fact that this is not mentioned is very possibly indicative of a situation specific policy on the part of the EU in this regard. The EU is apparently far more concerned by the possibility that Turkey may be, in some of its policy areas, providing specific support and state reinforcement of Sunni Islam's dominant presence in the country. Therefore, any attempt to make a limiting factor on that position may be seen as a form of redress on that part. Although it can be argued that this law did not emerge in a

specific instance, and that it has been a background part of Turkey's political climate for so long (the initial ban is over five decades old) it is difficult to ignore the number of specific instances that relate to this ban that have occurred over the period of reporting. The 2000 USSIDORF report for example, cites an instance where

In June 1999, 75 defendants went on trial in Malatya State Security Court for protesting Inonu University's ban on headscarves: 51 defendants, including 4 women, faced the death penalty on charges of attempting to change the constitutional order by force; 54 of the 75 defendants, including some who face the death penalty, are free pending the outcome of the trial, which is set to resume in late July. The charges stem from the riots in May 1999.<sup>135</sup>

While it is technically true that the freedoms surrounding the ability to protest in this manner without receiving what could be very easily regarded as excessive state reprisal (particularly given the nature of the charge, the description of a peaceful protest as 'attempting to change the constitution by force' and also the fact that such charges can be responded to with the death penalty) could indeed not be seen to fall directly within the purview of the issue of religious freedom, it is exceptionally telling that the EU does not even mention the word headscarf in any section of any of the fourteen reports that have been produced up to the present time. It can therefore be very quickly inferred that the EU is either completely ambivalent to the situation regarding the head scarf controversies and the reaction to the protests, or it regards the situation positively, possibly due to the perception that these are the actions of a state very vigorously attempting to defend the barrier between the considerable influence of a more than nominal Sunni Islamic majority.

Although the ban is enforced on all students on these campuses, it is also important to note that this is not the only area in which such a ban operates. It is also enforced on those working within the government, with the 2000 USSDOIRF report pointing out that nurses, teachers, and other people who work within government spheres of employment have either

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<sup>135</sup> Turkey Report 2000, *USSDOIRF*, [http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_turkey.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_turkey.html) (accessed 22.8.2012)

had promotion opportunities significantly limited, or have been dismissed directly on the basis of wearing the Islamic headscarf. This provides further information of the EU's attitudes since the EU does not seem to be directly interested or concerned regardless of whether the anti-headscarf policies are impacted on the population at large (even if they are operating within specific institutions at the time) or if it something unique to the government itself, and its employees.

In terms of the situation in other countries, there is less to report, but there are a number of notable things which are not mentioned in the EU regular reports. In the case of Serbia, there has been some criticism mentioned in some of the USSDOIRF reports regarding the fact that in state funded schools, pupils have the option of religious instruction from one of seven officially recognised "traditional" religions, or they can have a civic instructional class instead. This goes further to undermine the suggestion that the EU will act and mention a situation if there is protest regarding a particular piece of legislation or situation. There is mention made in the reports looking into Serbia of a situation in Kosovo, but it is quite natural that the EU would not cover this subject matter, given its specific focus upon Serbia.

The situation in Croatia regarding religious education is noted in generally procedural terms, pointing out the fact that though there are religious instruction classes available in Croatian Schools, attendance is very much considered optional, and they are not in any way enforced. This is very much similar to the situation in Macedonia, where there are elective religious education classes, or alternatively there are classes in the history of religion or in lieu of either of these, a foreign language class. The only restriction in Macedonia that is mentioned on this subject is that children under the age of ten can only receive religious education outside of the school environment (so for example, a Sunday school in a Church) if the parents of that child have signed a written letter expressing their agreement to said teachings. However, repeated mention was made of the fact that in the case of Croatia, in

certain areas it would appear as though the massive nature of the Catholic majority has led to some pupils being unwilling to attend Orthodox classes, for fear of being “singled out”. Equally, the issue has spread to the parents, who are also unwilling to identify the issue to the teachers. Thus we see that the EU is not concerned directly with the issue of what the USSDOIRF reports have identified as a kind of systemic problem of cultural discrimination in Croatia’s schools.

A similar concern is raised regarding situation seen in Iceland, where the USSDORIF reports point out that although it is indeed the case that religion, and specifically Christianity (cited by the government as a matter of natural heritage according to the reports), is taught in Iceland, the classes are often missed with informal exceptions. But there is concern that such exceptions result in singling out or bullying from other class members, as those who do choose to be exempted from these classes are not offered alternative classes in areas such as civics, ethics or some other form of more secular education.

#### 4.5 Registration and Recognition of Religious Groups

In terms of registration and recognition of religious groups by the state, for most of the countries within this group, there is relatively little discussed by the EU reports. The only two countries where what could be considered substantial energy is devoted to these subjects are Serbia and Turkey. In the case of Serbia, the EU expresses perhaps the most profound levels of dissatisfaction with a religious registration and recognition system that has been seen so far in this thesis. There are several complaints regularly raised, regarding a multitude of issues. The most persistent are to do with the significant lack of transparency by which the registration procedures operate, and the fact that a relatively small number of the religious groups that apply to be recognised ever actually do. The level of opacity is clearly reflected in

the reports themselves, as there is not any mention of something akin to factors relevant to the decision making process that appeared in previous reports on other countries.

There is not any mention of something like a required membership of permanently residing adults, or if religions that have been present in the country for a significant part of the country's history will be given preferential treatment. While it does state that there are seven officially recognised "traditional" religions, there is no indication as to how that status was achieved, nor any suggestion that such a status can be or will be given to any other religious group in either the near or distant future. The 2009 report notes that of the 170 religious groups that the EU knows to be active within Serbia, only 13 have been officially registered with the government (not including the seven traditional religions).<sup>136</sup> By 2012 that number had increased to 18.<sup>137</sup> The EU reports cite things such as arbitrary decisions being made, and that the practices of the system need to be brought up to "international standards". They also make several references in the concluding sections of the Human Rights focused portion of the reports, that while Serbia has made some progress each year, more still needs to be done. It is not difficult to conclude, given the very damning nature of the language in the reports, that the EU's regard for Serbia's registration system is exceptionally low, and given that it is consistently mentioned within the section of the reports dealing with religious freedom, it is not difficult to conclude that this is an important factor in the EU's judgement of a country's religious freedom proceedings.

It is however important to point out that there is little to no discussion of the consequences of the registration, and the abilities of those various unregistered religious groups compared to those who operate with the government's blessing. However, it is clear that there are some severe consequences, since the 2012 report makes reference to situations

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<sup>136</sup> Serbia Regular Report 2009, *Europa*,  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/sr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf) (accessed 22.8.2012)

<sup>137</sup> Serbia Regular Report 2012, *Europa*,  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf) (accessed 22.8.2012)



involving the limiting of the rights of Church services that were conducted in a foreign language. Unlike several other countries covered both in this section and in others throughout the thesis, Serbia has not received what could be considered a comprehensive condoning of their human rights record from the EU. Thus, we can definitively see the EU's fundamental concern with registration systems as part of a human rights issue.

In the case of Turkey, the issue is far more broad and pervasive. There is little to no explicit discussion of anything that could be described as a registration system. In fact, the reports make repeated mention of the fact that non-Muslim religious groups have several problems in various spheres to do with the fact that they are unable to acquire legal personhood in Turkey. This is not because of a flawed or somehow less than perfectly functioning Turkish religious registration system. As far as can be established from the reports, there is no system for allowing non-Islamic religious groups to gain legal personhood in any way. Although the reports do highlight that reform packages have been brought forward on two occasions (2002 and 2008) neither of these substantively improved the situation. In the case of the 2002 reform package, the new provisions only applied to religious communities that had "foundation" status, and as the reports point out there is no path for other religious groups to gain foundation status since they do not have legal personhood.<sup>138</sup>

This has resulted in several problems, most notably in the issue of collective property ownership, as well as the recognition of the usage of buildings for worship purposes. The group that is particularly focused on by the EU regarding these matters is the Alevi Muslims. Although the reports do point out that in some cities and towns Alevis and their Cem House worship buildings do have de facto recognition with the local authorities, the national picture remains generally unchanged throughout the course of the reports, with practically every

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<sup>138</sup> Turkey Regular Report 2002, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf) (accessed 22.8.2012)

report mentioning the question of the lack of collective property ownership rights is brought up in practically every single report.

However, despite this blanket coverage of the issue, there is not nearly as much of the same kind of definitively condemning language that was seen in the case of Serbia. There is a certain amount of possible exasperation in the earlier reports, which often discuss the fact that the system of recognition that does exist (although not registration, since there appears to be no way to increase the number of recognised religions) is based upon the Lausanne Treaty, a treaty that had been signed in Switzerland more than seven decades earlier. This exasperation can arguably be seen in the use of the word “still” in the EU reports, as they discuss the fact that Turkey still uses the Lausanne treaty as the basis for the treatment of the various religious groups within Turkey.

There is however a definite suggestion that Turkey does need to change its pattern of behaviour with regard to the issue of legal personhood, but there is some curiousness with the manner in which the EU regular reports cover this situation. We find the 2005 report delivering the following opinion “As regards freedom of religion, despite some ad hoc measures, religious minorities and communities still lack legal personality. There is an urgent need to address their problems through the adoption of a comprehensive legislative framework in line with European standards”.<sup>139</sup> There is also use of the language of “Progress” needing to be made, suggesting the situation is significantly less than satisfactory. Again here, we see an example of the language of ‘need’. Turkey has a problem with its human rights, specifically its freedom of religion protections, that in the EU’s opinion, it is required to fix. However, with regard to the Copenhagen criteria as a whole, the situation with Turkey is very unclear. The 2005 report is quoted as saying “Political transition is on-

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<sup>139</sup> Turkey Regular Report 2005, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf) (accessed 22.8.2012)

going in Turkey and the country continues to sufficiently fulfil the Copenhagen political criteria".<sup>140</sup> The strangeness of this statement lies in the use of the word "continues" since up until the 2005 report, Turkey is not once described as having fulfilled the political and human rights portions of those same criteria. So we have a situation where on the one hand, the EU is saying that Turkey "needs" to change its policies on issues regarding collective property ownership for religious groups not recognised by the Lausanne treaty, that it needs to bring its policies into line with "European standards" which suggests that it is somehow not ready to be considered EU member material at the present stage.

Yet, in the very same report, the EU is stating that Turkey has fulfilled the Copenhagen Criteria, which would imply that it is ready to join. While it is understandable, and even to a certain extent expected, that there might be a certain amount of inconsistency between the standards required for two different countries, or even for the same country over a number of years, there is a certain amount of expectation that there should be a significant degree of consistency within the same report. By contrast, when looking at the USSDORIF reports, once again there is considerably more data available, which again informs us of the situation in various other settings, and the consequences of what it means that the EU did not report these issues.

One area where the EU did not go into significant detail is that of Croatia's policy regarding religious registration. This policy changed in 2003 to create a new law whereby religions could only be registered with the government, and thereby achieve the status of legal personhood, if they had a membership numbering at least 500 people permanently residing within the country. According to the law, religious groups that had been present in the country prior to the passage of the law would remain unaffected, but other groups would

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<sup>140</sup> Turkey Regular Report 2005, *Europa*, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf) (accessed 22.8.2012)

have to go through the procedures here outlined and adhere to the outcomes expected. By and large, this has been considered a relative non-issue, although it is worth noting that the 2010 report does point out that certain smaller religious groups have been claiming that the Croatian authorities have been applying the legal criteria regarding recognition in an inconsistent manner.<sup>141</sup> The fact that the EU did not report on the Croatian system of recognition would go some way towards suggesting that a numerical registration threshold is acceptable in principle, provided the number is not unreasonably high (as was the case with the Czech and Slovakian cases in earlier chapters).

In Iceland, the recognition system for religious groups is much more specific than has been described in any case found in either the USSDORIF reports or the EU regular reports. The USSDORIF reports note that in Iceland, in order to register a religion, a three judge panel is required, consisting of a social scientist, a theologian and a lawyer. There is also a specific judgement criteria which could very easily be seen as being ideological. The report quotes the criteria as being the following. Any group seeking registration must “practice a creed or religion that can be linked to the religions of humankind that have historical or cultural roots...be well established...be active and stable...have a core group of members who regularly practice the religion in compliance with its teachings and should pay church taxes...”<sup>142</sup> There are other further regulations also, for example the fact that the leader of any given religious group in Iceland that wishes to be legally recognised must be over the age of twenty five and must pay taxes to the Icelandic government. They must also submit detailed reports regarding their activities to the government on an annual basis, but since restrictions similar to these have been seen before, it is the ideological statement that requires a further examination. The fact that the EU did not comment at all upon this point is a matter of

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<sup>141</sup> Croatia Report 2010, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2010/148924.htm> (accessed 22.8.2012)

<sup>142</sup> Iceland Report 2012, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dclid=208324> (accessed 22.8.2012)

potential importance. There are specific privileges granted to registered religions in Iceland, most notably the fact that every citizen of Iceland is required to pay a “Church tax” of a value equal to approximately 70 US Dollars, which is then collected and redistributed among registered religious groups in the form of a state subsidy. Although there are no specific restrictions on the activities of unregistered religious groups, the fact that there is a specific ideological criteria, in the form of statements such as “practice a creed or religion that can be linked to the religions of humankind that have historical or cultural roots” would suggest that the EU is accepting of what others might regard as excessive demands of new groups. While it is indeed conceivable that such rules have been put in place to prevent fraudulent groups from attempting to profit from the Icelandic government’s benevolence towards religious groups, there is also the possibility that must be considered that Iceland is intrinsically hostile to the creation of new religious groups.

It is certainly the case that these rules would prevent people creating churches dedicated to the flying spaghetti monster (the ‘deity’ of a protest movement formed in the US which was created as a means of ridiculing creationist advocates who wished to see literal seven-day-creationism taught in schools alongside other scientific theories about the origins of life, such as evolution) but a legitimate question to be asked is, if L. Ron. Hubbard had been a citizen of Iceland under these rules, would he have been permitted to found Scientology and have it recognised? From a lack of EU response to this piece of legislation, it would appear that the EU is tolerant of not only closed recognition systems, where governments will only accept certain religions as “traditional” and others as a ‘lower’ class, recognised and given only certain limited privileges, but it is also tolerant of registration systems that effectively choke religious innovation. Of course, it is important to point out that there is no suggestion within the USSDORIF reports that Icelandic governments seek to repress alternative religions that do not conform to their specifications. They just do not

provide them with the privileges of subsidy that other religions enjoy. But even while this is merely disadvantaging, rather than repressing, alternative religious expression, it is still noteworthy and should be considered as significant. The EU it seems, has no objection to state's disadvantaging religious innovation.

In Macedonia, the situation with their religious registration system further reveals a tolerance of the EU in regard to the level of acceptance for recognition of schismic activity. According to the USSDOIRF reports, although the regulation system itself is not mentioned in significant detail, what is mentioned is the issues surrounding the various factions within the various churches and whether or not more groups can be recognised as a result of disagreements within the churches. In the cases mentioned in the reports, several groups are mentioned as wanting to register, but are ultimately considered too close to other groups to be allowed as to be considered independent groups in their own right, and thus they are not worthy of distinct recognition. The following example is taken from the 2006 USSDOIRF report:

In November 2004 the State Commission on Relations with the Religious Communities denied the registration application of the "Orthodox Archbishopric of Ohrid." It cited a number of grounds for the denial, noting that under the law only one group may be registered for each confession, and arguing that the name "Orthodox Archbishopric of Ohrid" was not sufficiently distinct from that of the Macedonian Orthodox Church, which is also known as the Orthodox Archbishopric of Ohrid and Macedonia. Similar arguments were used to reject three registration applications for small Christian groups using the names "Free Protestant Church," "Good News Church," and "Reformist Movement of Adventists" during the period covered by this report.<sup>143</sup>

Thus we can infer that the EU it seem has no problem with the state defining in very exacting manner the nature of, and seriousness of, the schisms between various religious groups. A very similar situation is observed in Serbia and Montenegro, where we see that Churches cannot register if they use the terms "Evangelical" or "Orthodox" because those words are in

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<sup>143</sup> Macedonia Report 2006, USSDOIRF, <http://www.state.gov/j/drl/rls/irf/2006/71394.htm> (accessed 22.8.2012)

use by other Churches that are already registered (thus making it impossible for the Macedonian, Romanian or Montenegrin Orthodox Churches to register under their own name). In essence, the EU permits the state to define the levels of diversity within which a single religion may be allowed to extend. Although again, it should be pointed out that this system is not enforced in the physical sense. There are no records in either the USSOIRF or the EU's reports of Macedonian police forces forcibly reunifying congregations that have moved to meet in separate buildings at different times for reasons of theological divergence. Although this may seem something of a trite observation, it is important to note as it serves as an important marker towards the fact that the EU may not be fundamentally concerned with issues surrounding religious recognition and registration systems provided they do not result in physical restrictions of a given religious group to worship.

In Montenegro, there is something of a local curiosity to the registration system, in that it is the only country so far noted in this thesis to have a system of registration where the state requires religious groups to register with the police, rather than a specific agency, and also that they do so within fifteen days of their founding. This is curious, as it suggests that the EU is also not concerned with potential police action against non-registered religious groups. Although there is not concrete evidence to suggest this based on the USSDOIRF reports, the evidence would seem to imply that failure to register within the allotted time would result in action from the police, which would in turn possibly mean a physical restraint of those partaking in worship. Although that fact is unclear here, one thing is certain. It would appear that the EU has no issue with the idea of the police being the central line of religious relations within a given country. It is not difficult to imagine that many in the religious communities in question could view this as a somewhat aggressive and indeed adversarial policy towards religious groups. It is relations between religious groups and individuals and the state at large that shall be discussed in this final section of the chapter.

#### 4.6 Relations between States and Religious Groups

In this final section, it will be discussed exactly how the EU responds to issues of relations between state governmental systems and religious groups and individuals. This relates to both areas such as sacred-secular forums or other inter-institutional events, or just general policies that relate to individuals because of their religious status.

Perhaps the most problematic participant on this point is Turkey. In the EU reports, several issues are raised relating to the question of how Turkey manages its system of relating state apparatus to religious individuals. Some of these areas are discussed with an specific judgement used in the language, however many of them are not. And although as has already been discussed, Turkey is not described with regard to the Copenhagen criteria without a significant degree of inconsistency, however there is still much to discuss. One of the most substantial repeated areas of concern is the fact that the Turkish government is repeatedly reported as ban on training non-Islamic religious leaders and the difficulty for individuals such as pastors or other leaders of religious groups to enter the country for the sole purpose of teaching or spreading the religion in general. This is an example of state religious relations since it is a policy that specifically affects individuals because of their religious affiliations. The EU does not provided a uniform specific judgement on this point, however it does point out that many people regard this policy as a threat, and the EU's repeated coverage of it would suggest that it is considered an issue of some significant note. There is also an element of implied previous condemnation when in the 2008 report, a change in policy of a more lenient kind is described as "progress" when the Ecumenical Patriarch's various incoming



visa requests were heeded, and Turkish officials met with leaders of non-Muslim religious groups to discuss travel and other issues further.<sup>144</sup>

It is clear that at several points in the reports, efforts are made on the part of the Turkish government to improve relations between religious groups, in particular Alevi Muslims and Christians. This is seen for instance in the 2000 report where mention is made of events organised to celebrate the “Christian Jubilee” of the year 2000 and in the later reports mentions are made of Alevi cultural exchange programs and developments in dialogue on multiple levels.

However, even up until the most recent report of 2012, there are serious concerns. One of the most objective moments of direct contradiction concerns the manner in which Turkey regulates religious practice in such a way that citizens may be allowed to participate to a different extent to foreigners. The EU report specifically mentions this with regard to religious elections. The 2012 report also highlights the fact that Turkey has failed to observe ECHR judgements on the matter of the presence of information about an individual’s religious affiliation as part of their official documentation.<sup>145</sup> The report points out that this has led to substantial numbers of discriminatory practices. While it is not clear that the EU takes a specific line on the issue of Turkey’s adherence to ECHR judgements, the overall comments on Turkey’s adherence to European standards on the matter of freedom of religion shows there is much to be desired. While the EU would appear to be pleased with the few instances of overt attempts by the government to offer olive branches in the direction of Non-Muslim and Alevi Islamic believers, it also points out that discriminatory practices do persist. From the observations that the EU makes (such as the fact that Cem Houses, the Alevi buildings of worship, often have difficulty registering themselves as such, and the fact that

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<sup>144</sup> Turkey Regular Report 2008, *Europa*, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf) (accessed 22.8.2012)

<sup>145</sup> Turkey Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf) (accessed 22.8.2012)

they are required to pay out of their own funds for utilities such as water, electricity, telephone and internet connections, etc. whereas Mosques would be able to receive funds from the government to fund these, or the fact that the Turkish Intelligence agency regards foreign missionaries as threats) it would be reasonable to conclude that a culture of suspicion and somewhat covert hostility definitively exists in Turkey towards non-Sunni Muslims and people practicing non-Islamic beliefs in general. While the specific condemnations are few and far between, the general condemnation would suggest that the areas cited in the EU reports relating to Turkey in this instance are something of a case study in what not to do in order to garner EU favour on the issue of state-religion relations.

It is also interesting to note that in the conclusion of the 2012 report's discussion of freedom of religion, it notes that not only is the Turkish non-Sunni Muslim religious community under pressure from discriminatory actions of government, but also from "threats from extremists".<sup>146</sup> It would therefore seem to imply that the EU believes that the Turkish government's responsibility to respond to extremists who threaten minority religious groups is an issue which falls under the purview of the question of religious freedom.

Despite all this however, there is still a significant degree of internal confusion within the report, as the EU regularly makes the statement at the beginning of the section concerned with the issue of religious freedom that Turkey's situation regarding religious freedom is that "freedom of worship continues to be generally respected". Given the level of condemnation of various kinds of actions within Turkey, it is unclear to what extent the EU regards the issue of religious freedom as problematic. On one hand, the problems of state-religious relationships are listed in substantial number, with discrimination of various kinds documented in some considerable detail. Yet in other instances, we see that the EU believes that Turkey 'generally respects' freedom to worship. Exactly what is meant by this is unclear.

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<sup>146</sup> Turkey Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf) (accessed 22.8.2012)

In the case of Serbia, the EU raises issues which are linked to, but not specifically about, the question of registration of religious groups. However, unlike other discussions of registration, in this case the EU's language is more generic, failing to go into detail about the process itself (there is no mention of a residence number requirement or anything of that sort) but rather talking in sweeping terms about the relationship between the government and the religious groups, with registration being a singular specific focus. In particular, several of the reports looking at Serbia mention the fact that Serbia's processes surrounding official decisions relating to religious groups have sometimes appeared arbitrary and that the process leading to those decisions lacks consistency and transparency. This issue is clearly very important to the EU, since they actively go so far as to suggest the level of transparency on some of the decisions made was "insufficient". This implies that there is a level of transparency regarding these decisions that is expected. Furthermore, the fact that the issue of transparency regarding these issues is brought up in the section of the report specifically dealing with religious freedom is significant. It is very possible that issues surrounding transparency of decisions made by government could be grouped into a broader section regarding general governmental openness. However, the fact that it is included in the section on freedom of religion suggests that the mere proximity of a general issue of the quality of government functionality to the issue of religious freedom is enough to qualify the issue as relating to freedom of religion in the minds of the EU's regular report drafters. This gives us an important insight into how it is that the EU regards freedom of religion.

The EU's reports also mention the fact that media outlets in Serbia routinely propagate negative imagery and hate-speech towards smaller churches. Again here we see, as was the case with the EU's discussion of extremists in the case of Turkey, that the question of the actions of the government is not the only one at issue here, and that the EU regards non-governmental activities to be directly related to the issue of relations between the government

and the state. In the case of Serbia, the link between the question of extremists and governmental responsibility as was mentioned in Turkey was developed further, as the EU reports that several crimes committed against minority religious groups were not properly investigated by the Serbian authorities and that no conclusive action was taken as a result.

In the case of Montenegro, the situation as described by the EU is somewhat unclear. There is very little specifically mentioned, but one point that is discussed is the fact that the legislation that was in place to deal with relations between the government and religious individuals and groups was not considered to be fit for purpose with regards to article 9 of the European Convention on Human Rights and Fundamental Freedoms and its case law. However, this fact is mentioned without any specific discussion as to the exact nature of the failings or any specific problematic cases that have arisen as a result.

In the case of Iceland, very little is discussed with specific relation to relations between the government and religious groups. As was the case in Turkey, the EU makes mention of various outreach and consultation-style events organised by the government. In Iceland's case, it was a collection of seminars and other discussion forums organised around the issue of freedom of religion. The Iceland reports also note that the government is making moves to make humanist and secular organisations on a legal par with religious organisations. There is no mention of the EU's specific opinion on this development in the relations between religious groups and the government, but the lack of specific condemnation would suggest a tolerance, and the mention would mean such a development is considered noteworthy.

By contrast, the USSDORIF reports highlight considerable other issues with regards to relations between religious groups and governments.

One of the most striking aspects of the relationship in the case of Turkey is the immediately adversarial nature of the relationship that is painted by the USSDOIRF reports

when discussing Article 219 of the Turkish Penal code “Article 219 of the Penal Code prohibits imams, priests, rabbis, or other religious leaders from "reproaching or vilifying" the Government or the laws of the state while performing their duties. Violations are punishable by prison terms of one month to one year, or three months to two years if the crime involves inciting others to disobey the law”.<sup>147</sup> Although there is no specific mention within the USSDOIRF reports of individuals being punished by this law, it does bring to light an exceptionally confrontational and adversarial nature to the relationship between religious groups and individuals and the government. Although later parts of the reports go on to point out that in Turkey, insulting a religion recognised by the government also has a legislative penalty attached to it, as has been discussed in the EU and USSDORIF reports, Turkey’s policies on the religions that it officially recognises is exceptionally limited.

The USSDOIRF reports confirm and further extend the EU’s reporting on the issue of Turkey’s relations with Churches and religious groups on the matter of international participation, particularly on the matter of elections “The Government long has maintained that only Turkish citizens can be members of the Greek Orthodox Church's Holy Synod and participate in patriarchal elections, despite the Ecumenical Patriarch's appeal to allow non-Turkish prelates”.<sup>148</sup> Thus we see here an example of the Turkish government directly interfering with the internal affairs of a particular religious group’s internal institutional architecture, something that the EU does comment on but does not specifically condemn or condone.

Although the USSDOIRF reports also agree with the EU in that they state that the Turkish government requires individuals to put religious affiliation as part of their identity documentation, they also point out that individuals are able to leave the pages blank. But there is also the issue that if people do want to state their religious belief, only certain groups

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<sup>147</sup> Turkey Report 2009, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2009/130299.htm> (accessed 22.8.2012)

<sup>148</sup> Turkey Report 2009, *USSDOIRF* <http://www.state.gov/j/drl/rls/irf/2008/108476.htm> (accessed 22.8.2012)

are actually allowed to be noted on the cards. The notable exception that the USSDOIRF reports point out is the Baha'i faith.

The USSDOIRF reports also go further than the EU in pointing out that not only is it the case that the Turkish government use their intelligence services to monitor foreign missionary activity, police forces are also used to actively intervene against them. In the 2009 USSDOIRF report, mention is made of several South African missionaries who were arrested on charges related to being missionaries, but then were later released without charge.<sup>149</sup>

In terms of specific instances regarding extremists, the USSDOIRF reports also go further, pointing out in the 2009 report that events related to the Israeli Palestinian conflict that had emerged in a specific offence in Gaza had resulted in a renewed wave of anti-Semitism, with some shops stating that there was to be no admittance to "Jews, Armenians or dogs".<sup>150</sup> There is no mention of any attempt by the Turkish government to prosecute people on this point, or any attempt to make an overture to counter the new cultural phenomenon.

In the case of Croatia, the 2005 USSDOIRF report makes it very clear that relations between the Catholic Church and the Croatian government are such that the state funded television network often gives extensive coverage to Catholic events and ceremonies, while giving other religions as little as ten minutes coverage per month.<sup>151</sup> It is very clear that this is grossly disproportionate, but no significant discussion is made of it by the EU regular report for this year. Thus we are lead to conclude that the EU does not take any issue with this kind of relationship between a governmental media outlet and a religious organisation. However, later USSDOIRF reports make it clear that more equal representation of various religious groups is achieved at a later stage.

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<sup>149</sup> Turkey Report 2009, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2009/130299.htm> (accessed 22.8.2012)

<sup>150</sup> Turkey Report 2009, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2009/130299.htm> (accessed 22.8.2012)

<sup>151</sup> Croatia Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2005/51546.htm> (accessed 22.8.2012)

#### 4.7 Conclusion

There are several conclusions that can be drawn from this selection of countries, the group that has made an application and though they have not joined yet, their applications have been accepted.

The biggest noteworthy phenomenon is that of inconsistency among the reports. There is often an initial mention to the effect that a given country can be said to “generally respect” freedom of religion, however what then follows is a list of various highly concerning situations, some of which the EU gives their specific objection to. It is very unclear therefore the extent to which there can be said to be a significant and specific definition of what is meant by freedom of religion with regard to the EU’s perceptions. Although as we go further and further into the group of countries that have progressed less and less far up the chain towards membership, we increasingly see there is more and more in the way of explicit condemnation from the EU on various issues, we still equally see that there is praise and condemnation often found in exceptionally close, and even in some cases, overlapping proximity.

There is also inconsistency in the application of EU responses to specific policies. The most notable case of this being the differing EU reactions to the delivery of negative judgements from the ECHR on the matter of religious education in the cases of Croatia and Turkey. Although the cases were to some extent different, one being about the education of a child into a specific religious system, the other being about the ability of religious groups to participate in the education system, it is not difficult to see that the two cases have similar issues running throughout. In particular, the way in which the situation in Croatia’s case was casually glossed over with the repeated use of a phrase to the effect of the notion that Croatia has had no real problems or complaints with regard to religious freedom, and then in the very

next sentence the case that the ECHR levied against Croatia is discussed. What is particularly striking about this is that it is the incident where article 9 is declared as having not been violated that receives the greatest attention from the EU, and the case where it was decided to have been violated that was deemed to be an effective non-issue. While it is true that the issue continues to be relatively under-resolved by the Turkish educational authorities (although the 2012 EU report does suggest that Alevi involvement in solving the issue of the unrepresentative textbooks is underway) the issue of a concrete judgement from the ECHR does not even seem to slightly stall the EU's process of acceptance for Croatia.<sup>152</sup>

That is perhaps one of the most substantial points to notice in this section. Croatia's status of almost having been accepted into membership and its comparatively light discussion of religious freedom affairs when compared to several other countries here listed. Although the evidence is neither of the kind nor the quantity to suggest that there is a definitive causal link between the EU's perception on the matter of religious freedom and the speed to which a country is accepted for membership, given the level of data here presented it is very difficult to deny the correlation.

There is a further suggestion in this group of reports that the EU is not only interested in the attitude of the government, but also of society as a whole and how it responds to the issues here presented. There is even some suggestion that the EU membership prospects of a given country is actually affecting the level of anti-religious violence in some countries, with the USSDOIRF report for Serbia in 2012 citing a belief among minority religious groups that a decline in violence is due to the general population's desire to join the EU.<sup>153</sup> However, while EU reports do cover issues of crimes and inter-religious as well as state-religious

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<sup>152</sup> Turkey Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf) (accessed 22.8.2012)

<sup>153</sup> Serbia Report 2012, USSDOIRF, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208364> (accessed 22.8.2012)



relational incidents, this coverage is far from extensive, as the far more detailed and substantial coverage provided by the USSDOIRF reports demonstrate.

The reports in this group also provide further evidence to support the notion once more that the EU is concerned with a negative freedom issue, rather than a positive one, when it comes to the question of religious registration procedures. This is seen very clearly in the case of Iceland, where no mention at all is made of the fact that in Iceland it is effectively impossible to receive state funding for a religion that is entirely original and unlinked to other religions. This discrimination is purely one that would affect these potential new religion's positive freedom (IE their access to funding) rather than a negative freedom (IE prohibiting them from assembling). The Icelandic government has no interest in prohibiting entirely original religions, but it also has no interest in funding them directly. The lack of EU discussion of this fact is a definitive example of an incident of preference for negative freedom over positive. Although it can be said, this is not a uniform trend, as the EU does make mention of the fact that Iceland has extended its legal definition of religious group to include secular and atheistic associations also, and that they are able now also to receive state funding. However, this issue is only commented on, which is the bare minimum of EU involvement in religious affairs that has been demonstrated to be possible, and as we have seen with other incidents of EU condemnation of activity, it emerges when the state intervenes to restrict activity, rather than failing to support it, such as in the case of the Turkish ban on the training of non-Islamic clerics or other religious leaders, and the ban on involvement of foreign religious individuals in religious elections, such as to Synods or other councils.

On the basis of trends presented here, it is not unreasonable to state that what concern the EU does have with religious freedom, it is linked to a perception of negative freedom, with the most substantial mentions and condemnations being reserved for moments when

individuals are limited by the government, rather than when they fail to be supportive. This can be seen in the case of the Turkish education examples. In the Turkish case, which was condemned, a young girl had her education options restricted. Where as in the Croatian case, a religious group failed to be elevated. The fact that the former received far more focus and condemnation definitely shows a preference towards concerns of a negative freedom nature, although there is a significant degree of institutional inconsistency.

## **Chapter Five: Applicant Countries**

### **5.1 Introduction**

In this chapter, the thesis will examine the last group of countries to be processed as a part of the enlargement system as it has been understood since 1998. That group consists of countries that are potential candidates, ones which the EU's status approval system describes as having been "promised the prospect of joining when they are ready" as opposed to accepted candidate countries which are described as being in a situation where they are "still negotiating – or waiting to start".<sup>154</sup> There are three countries that fall into this group, Albania, Bosnia and Herzegovina, and Kosovo, and in the case of all three countries the period covered by the reports is 2005-2012. This group can be considered those who have made the least progress towards accession, as their membership negotiations have not begun yet, and they have the least amount of official recognition for their situation from the EU. Therefore, there is a certain extent to which we would expect these countries to have the least developed freedom of religion situations (although it is also the case that there are numerous other intervening factors that make up the EU membership negotiating process). The specific thematic areas that will be focused upon will be religious education, religious registration and recognition systems, discrimination on the grounds of religion, state-religion relations, and the restitution of religious property.

### **5.2 Religious Education**

In contrast to some other instances mentioned earlier in other chapters in this thesis, there is relatively little discussed regarding the issue of religious education in the EU reports for this period. There is only one explicit mention of the issue of religious education, and that is

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<sup>154</sup> European Commission – Enlargement – Check Current Status, *Europa*, <http://ec.europa.eu/enlargement/countries/check-current-status/> (accessed 22.8.2012)

found in the case of Kosovo in the 2008 report.<sup>155</sup> The specific mention is that Kosovo's new law on Education is contradicted in part by its new law on religion, which has led to some groups claiming that their freedom of religion has been restricted. The EU does not make specific mention as to the exact nature of these confusions, nor does it provide a specific judgement on the issue, mentioning the existence of the conflict rather than the substance. By contrast, the USSDOIRF reports do indeed make significant mention of various issues regarding religious education in all three of the countries in question.

In the case of Albania, the school system is aggressively secular. In the 2005 USSDOIRF reports, mention is made of the fact that due to a difficult registration system, many religious schools do not engage with the official procedure required to operate as a private religious educational institution, and thus such institutions are shut down.<sup>156</sup> Later reports however mention that the registration system for such schools has not been the subject of any complaints or reports by religious community members. The 2005 report also highlights the fact that due to media accusations that a number of suicides committed by young people were caused by the teachings of Jehovah's Witnesses the government moved to investigate and examine all groups they labelled as "suspicious sects".<sup>157</sup> However, no specific definition was given as to how a group qualifies as receiving this definition. There was a ban imposed on the distribution of religious literature in what it described as "public places" (which is inferred by the USSDORIF report to refer to government buildings and public schools). The lack of EU coverage on either of these issues would suggest a relative amount of ambivalence to the issue, and in fact the EU does make regular reference to the fact that Albania is an excellent example of religious harmony in the area.

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<sup>155</sup> Kosovo Regular Report 2008, *Europa*, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/kosovo\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf) (accessed 22.8.2012)

<sup>156</sup> Albania Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2005/51536.htm> (accessed 22.8.2012)

<sup>157</sup> Albania Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2005/51536.htm> (accessed 22.8.2012)

The other major question of religious education that goes seemingly unmentioned by the EU, in the case of Albania and Kosovo, is that of the Islamic headscarf and whether or not it can be worn in public schools that use a school uniform policy. It is possible, albeit unclear and difficult to confirm, that this is in fact the conflict between the religious law and the education law that is mentioned in the Kosovo EU regular report for 2008.<sup>158</sup> In Kosovo, this controversy has resulted in the dismissal of some school teachers (one of whom it was later revealed had been proselytising in class time) and some students, as well as discrimination in hiring new teachers. Student suspensions due to headscarves also happened in the case of Albania, and in that instance USSDORIF reports that of the two pupils who were suspended, one of them went on to study at a private religious school with a scholarship, while the other remained out of the education system. There was a similar issue in Kosovo also regarding a student who wished to wear a beard for religious reasons, who was suspended until the beard was removed. In Kosovo, there is some considerable frustration about the issue of students being suspended as an Ombudsman opinion from 2004 pointed out that the law on banning of headscarves only applied to teachers and other official school personal and not students.<sup>159</sup> In later reports, a small number of cases are reported to have been won by the student wishing to wear the head scarf and the reports mention the fact that later Ombudsman opinions report that the Kosovan state has no legal basis to support any kind of head scarf ban.

An issue that arises in the case of Bosnia and Herzegovina in regards to religious education that is cited in the USSDOIRF reports is the difficult problems relating to religious groups being majorities in different areas. Although there are legal provisions for schools to provide education of a religious nature, they only come into effect if there is a certain percentage of the school's student body that subscribes to a particular religious tradition, and

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<sup>158</sup> Kosovo Regular Report 2008, *Europa*, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/kosovo\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf) (accessed 22.8.2012)

<sup>159</sup> Kosovo Report 2005, USSDOIRF, <http://www.state.gov/j/drl/rls/irf/2005/51578.htm> (accessed 22.8.2012)

because of a combination of factors, including the relative sparseness of certain populations of particular religions over rural areas and a lack of sufficiently qualified teachers. This has arguably resulted in some concerning policies, such as the teaching of religious symbolism in art classes, with schools in majority Muslim areas instructing the painting of Mosques, while children in areas where Catholicism is the majority religion are being taught to paint crosses. The USSDORIF reports provide a specific value judgement on this issue, describing in terms of being a “problem” that required solving.

### 5.3 Religious Recognition and Registration Systems

In significant contrast to other countries in other sections of this thesis, the discussion of systems of religious recognition and registration present in the EU regular reports on these countries is extremely limited. While there is some discussion of the systems put in place, there is no discussion of the mechanisms (no suggestion of numerical membership basis for example) and very little discussion of systems that allow for states to receive enhancements in their status as officially recognised or otherwise.

The most notable discussion in the very limited frame of reference that is available on this matter is that of the case of Albania. In discussions on Albania, it is established that in November 2010 the Albanian Evangelical Alliance signed an agreement with the government to make Protestantism the fifth official religion of Albania (in this regard it is joined by Sunni Islam, Bektashi, the Orthodox Church, and the Catholic church). The EU report cites the fact that as a result of this recognition, the Protestant community is entitled to state funding.<sup>160</sup> This again represents a critical provision of evidence regarding the EU’s implementation of freedom of religion rules. We can see once more that the EU does not regard the situation of

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<sup>160</sup> Albania Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf) (accessed 22.8.2012)

a set of official religions, and privileged, limited access to state funding as being a violation of religious freedom. What is particularly noteworthy in this case is not only the fact that this development was raised here, but that it was not raised in earlier reports. There is not even any discussion of the method by which the Albanian Evangelical Alliance managed to make its ascent to this grand position within the Albanian governmental circle. Thus it would seem that whichever method the Albanian Evangelical Alliance used, and whatever system the Albanian government uses to determine which religious groups should and should not be on the list of potential new official religions, are both considered not only acceptable by the EU, but also not in fact worthy of note. The one interesting fact that is revealed by the EU's reporting on Albania is that the EU does regard the Albanian situation as a model of religious harmony in the region. Thus there is an implicit suggestion that the model the Albanian government uses to recognise and register religions is in fact one that is worthy of substantial praise.

Though there are more specific provisions for discussion in the case of Bosnia and Herzegovina, they are also more limited. There is no discussion of a system of official recognition as such, but there is mention made of a new law on religious freedom that was passed to provide comprehensive rights to religious communities, and crucially grant them a legal status. What is not made clear is how exactly religious communities go about gaining this legal status, but whatever the method is, it does not seem to concern the EU in any significant manner, since it does not mention this issue in the form of a problem in and of itself. This law is first mentioned in the 2005 report, but in 2006, the discussion points out that there have been some difficulties in implementing the law, but later reports seem to suggest that such problems either have been mitigated, or are no longer worth reporting on.

In the case of Kosovo, a law specifically regulating and managing religious freedom is not in itself discussed until the 2007 report, thus we can see that Kosovo is very much in

the bleeding edge still of state building and institutional construction. Furthermore, it seems that the EU respected this fact, since neither in the 2005 nor 2006 reports was Kosovo criticised for its failings in these regards. The law that was promulgated in 2007 provides tax exemptions for religious organisations, along with allowing them to receive income from property, activities, and charitable and voluntary contributions. The law also makes explicit mention of a lack of official state religion.<sup>161</sup> This is a critical discussion point with regard to the EU's interpretation and implementation of religious freedom. The case of Kosovo is more significant, as it is in the process of creating an entirely new state. It could be argued that in the cases of older, more established polities, the EU is reluctant to make substantive comment unless the situation is exceptionally egregious. However, in the case of Kosovo, the institutions and systems are very much in their embryonic stages, therefore the EU has substantial opportunity to display its opinion very openly, and have the Kosovar authorities respond far more substantially. But in this case, as in many others seen in this thesis, the EU offers no substantive opinion, and states the law's functions in the initial mentioning, but little else. However, at later dates the EU does offer a specific opinion on one aspect of the law. In 2009, the EU specifically criticises Kosovo, calling the legal framework for religious activities "inadequate" and in need of adaption, because the religious communities are required to register as NGOs in order to be given legal identity.<sup>162</sup> Although in the 2011 report it is mentioned that consultations between religious groups and the state aimed at reforming this law and putting in place a more comprehensively specific system of religious recognition is underway. There is also some suggestion in this report as to the importance of religious freedom to the ascension of Kosovo. The last sentence of the section of the report

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<sup>161</sup> Kosovo Regular Report 2007, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/kosovo\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/kosovo_progress_reports_en.pdf) (accessed 22.8.2012)

<sup>162</sup> Kosovo Regular Report 2009, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) (accessed 22.8.2012)



dedicate to religious freedom reads “Ensuring the full respect of religious freedom is a key European Partnership priority”<sup>163</sup>

The USSDORIF reports do reveal some curious contrasts to what is discussed in the EU regular reports. For example, while the reports covering Albania generally agree with the picture of the situation that the EU provides, albeit with significantly more detail, such as the fact that one of the main benefits of official religious recognition in Albania is the recognition and implementation of religious festivals and holidays as national holidays, the USSDOIRF reports also very clearly mention the fact that though the registration system in Albania is not at all compulsory, it is not one that recognises religious groups specifically. This extract is taken from the 2006 report: “Religious movements may acquire the official status of a juridical person by registering with the Tirana District Court under the Law on Non-profit Organizations, which recognizes the status of a non-profit association regardless of whether the organization has a cultural, recreational, religious, or humanitarian character”.<sup>164</sup>

The lack of discussion of the fact that Albania uses a generic non-profit organisation registration system, would suggest then that the EU does not have issue with this kind of system. However, it is not at all difficult to see this as a contradiction of the criticism that was levelled against the Kosovar authorities and their system which required religious institutions to register as NGOs. Thus, there would seem to be a certain level of contradiction, although it may be the case that in Kosovo, the problem was more that there was no specific procedure for religious groups and that therefore they were being required to register as NGOs as a means of acquiring legal personality any way they could. This would then suggest that the EU requires from its members a system specifically designed for religious groups to get their

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<sup>163</sup> Kosovo Regular Report 2009, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/ks\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf) (accessed 22.8.2012)

<sup>164</sup> Albania Report 2006, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2006/71364.htm> (accessed 22.8.2012)

legal personality. A system that is distinct and different from the generic one providing services for NGOs.

In the case of Bosnia and Herzegovina, we see again a situation where there is a religious recognition and registration system in place, but that the EU has failed to make a comment on it. The Bosnian system, according to the USSDOIRF reports, is that any group of 300 or more adult citizens may apply to a section of the Bosnian Ministry of Justice to become recognised as a religion. The decision is usually made within 30 days, and the USSDORIF reports do not mention significant problems for minority groups, and once again we see that the rights and privileges granted any recognised religious group are considered analogous to those received by an NGO. Although the state level laws do not recognise religious holidays, the regional laws do allow for four religious holidays to be recognised (Orthodox Easter and Christmas, Catholic Easter and Christmas, Eid al Adha and Eid al Fitr). It should be noted that the official system of government recognises the rights of the three major ethnic groups of the country (Bosniaks, Serbs and Croats). This policy, and the resultant system of a kind of tripartite consociation representation model that exists within the military, government and judiciary, has effectively given recognition and prestigious positions to the three largest religious groups in the country (religion and ethnicity being of course significantly intertwined in the region). However, discussions of the results of that will be covered in more detail in other sections of this chapter, but suffice to say that this has led to a de-facto position where the three largest religious groups are effectively the three traditional religions of Bosnia and Herzegovina, even if the law does not overtly reflect this to be the case.

The case of Kosovo is also discussed in more detail by the USSDORIF reports. It too agrees with the EU reports regarding the situation of registration being akin to NGO provisions, pointing out that not only is it a problem externally observed, but internally

dissented about, with religious groups explicitly complaining about the results of the system. The most notable victims are the Protestant community who cite the problem of not being able to identify themselves as a legal entity beyond their tax identifying number as causing them a large number of issues. This issue being raised by complaint lend further credence to the notion that it is generally true that the EU will take more significant notice of an issue if it is discussed by the religious groups themselves, rather than using an externally implemented set of rules to define what is and is not a situation of substantial religious freedom. The USSDOIRF reports also point out that the Kosovar authorities recognise certain religions' holidays on a national level. The lack of specific ability to register however has resulted in several practical challenges for various groups, including inability to collectively register ownership of property and vehicles, opening bank accounts, and paying employees' income taxes.

#### 5.4 Discrimination on the Grounds of Religion

In the EU's regular reports for the countries here being discussed, there is precious little discussing the question of discrimination on the grounds of religion that is specifically situated in the section of the reports that deal with the question of religious freedom. This further adds credence to the suggestion that the EU regards the questions of religious freedom and discrimination on the grounds of religion as relatively separate and discreet from each other.

In the case of Albania, there are only two reports that explicitly mention discrimination on religious grounds, and in neither of these cases is the material on the matter to be found within sections of the report linked with freedom of religion. Instead, the sections are part of discussions on discrimination more broadly, and in the 2005 report it is stated that

Albania is below EU accepted standards on matters of preventing discrimination.<sup>165</sup> The second discussion, found in the 2007 report, does point out initially that discrimination on religious grounds is prohibited, along with racial and gender based discrimination.<sup>166</sup> However, it does on to say that there is a significant lack of official definition of what constitutes discrimination, and therefore there is an issue that needs resolving. It is important to note that in both of these cases, the EU made specific mention of a specific opinion on these matters. It was fairly clear from the tone here being employed that the EU was dissatisfied with the situation and wanted it resolved (although this is less clear in the 2007 case than in the 2005 one).

In the case of Bosnia and Herzegovina, we do see some significant mention of discrimination on religious grounds mentioned in the section of the report dedicated to religious freedom. Specifically, this arises in the cases of the 2010<sup>167</sup>, 2011<sup>168</sup>, and 2012<sup>169</sup> reports. What is notable is that these reports highlight the fact that religious discrimination cases are often entwined with ethnic and racial discrimination, specifically citing in 2010 that ethnic tensions can lead to religious intolerance, with the later reports simply stating that incidents of religious discrimination continued. However, outside the section on religious freedom, there is what is arguably an exceptionally significant mention of religious issues regarding discrimination. It is not specifically dealing with the issue of discrimination on the

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<sup>165</sup> Albania Regular Report 2005, *Europa*,  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1421\\_final\\_progress\\_report\\_al\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1421_final_progress_report_al_en.pdf) (accessed 22.8.2012)

<sup>166</sup> Albania Regular Report 2007, *Europa*,  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/albania\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/albania_progress_reports_en.pdf) (accessed 22.8.2012)

<sup>167</sup> Bosnia and Herzegovina Regular Report 2010, *Europa*  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf) (accessed 22.8.2012)

<sup>168</sup> Bosnia and Herzegovina Regular Report 2011, *Europa*  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/ba\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf) (accessed 22.8.2012)

<sup>169</sup> Bosnia and Herzegovina Regular Report 2012, *Europa*  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ba\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf) (accessed 22.8.2012)

grounds of religion, but rather on the ability of religious groups to themselves actively discriminate.

In the section of the report dedicated specifically to anti-discrimination policies, the reports highlight the fact that a new state wide law on the subject of discrimination includes within it special exemptions for religious groups. Although there is not an outright condemnation of this decision, the structure of the paragraph does give a strong suggestion that the EU does regard this development in at the very least a somewhat negative light. The paragraph in question begins by highlighting the fact that local level ‘state and entity’ laws guarantee equal treatment for all and that after some clearly noteworthy delays, a new law has been put in place to prohibit discrimination on a state wide scale. It then moves into a different tone and highlights issues where the situation is not yet ideal by using the word “However” to segue across and begins to list a number of other situations, including the fact that religious organisations are exempt from this law, along with the fact that there has been no official condemnation from the government on the matter of violence against various communities of minority sexual orientations, and that there needs to be more thorough and effective investigation and prosecution to deal with those responsible.

This would then suggest that the EU does not regard the ability of religious groups to discriminate as being an ideal situation. There is what appears to be a certain amount of gradation and movement in terms of severity here, with the less significant positive and negative issues mentioned earlier in their respective sections of the paragraph, and the more significant ones being seen later. We see discussion of the continuation of anti-discrimination policies at a local level mentioned first, followed by the new instalment of a nationwide anti-discrimination law coming in second. We then see mention of this exemption for religious groups being mentioned before discussion of social mistreatment of LGBT individuals, and later violent attacks against them. The fact that the EU fairly clearly condemns, even slightly,

the fact that religious groups are permitted to discriminate, shows a very important point that, up until now, has not been explored in these EU reports. The extent to which religious freedom permits religious groups the right to act in ways that would not be tolerated/expected by other groups. For example, although we have seen in many instances throughout this thesis the fact that many countries would regard religious registration systems as simply registering religious groups under the banner of NGOs, it is highly likely that no other NGO would be permitted to discriminate on the grounds of gender or sexual orientation as a part of their employment systems and criteria. However, religious groups may want to do this because they may have particular interpretations of the sacred texts or time honoured traditions that require them to only be led by people with a specific set of characteristics. Thus, the question of whether a religious group would be allowed to operate its own internal architecture using its own systems and criteria with regard to leadership and other official and informal positions is a significant one for religious freedom matters. Does the EU regard it as a religious group's right to be able to resist laws aimed at regulating employment and discrimination rules, or does it accept that religions are a special case, and as such warrant exceptions and other distinct treatment. Based on what we have seen thus far, there appears to be some contradiction on that front.

In the specific instance, we have the fact raised here in the form of this case, where we see that the EU has, somewhat subtly, condemned the decision of the Bosnian authorities to allow religious groups exception from anti-discrimination laws. However, we also have the general where we see the EU condemning Kosovar authorities for treating religious groups the same as NGOs. Also complicating matters is the fact that the condemnation of Bosnia's infraction is more subtle, whereas Kosovo's is more explicit, thereby resulting in an exceptionally confusing state of affairs in this regard.

In the case of Kosovo, there is almost no discussion that is explicitly linked to the issue of discrimination on the grounds of religion. The only explicit mention of the principle as a whole is found in the 2007 report which points out that the law of Kosovo proclaims non-discrimination on religious grounds.<sup>170</sup> This statement is to be found in the section of the report specifically given over to religious freedom. There is also a single specific mention of an individual incident, with the 2010 report making mention of the fact that some smaller denominations have claimed to be discriminated against by the Kosovar authorities, who have not permitted them land to build cemeteries.<sup>171</sup>

As is to be expected, the USSDOIRF reports provide an alternative picture of the situation. Arguably the most significant example of this is to be found in the form of ethnic consociationalism that is found in Bosnia. The USSOIRF reports point out that since the ending of the various conflicts in this region since the end of the Cold War, there is now a form of ethnic consociationalism in Bosnia and Herzegovina that has the Bosniaks, the Serbs and the Croats as official communities that have their rights protected. Although the USSDOIRF reports point out that the official line is that this is an ethnic question, with government, judicial, military, police and other civil positions divided up proportionally between the three groups, there is an extended by product that results in this also becoming a religious issue, since ethnicity and religion are issues that are exceptionally closely intertwined in the Balkans. The USSDORIF reports point out that the end result of this system is an effective form of constitutional discrimination against those groups that do not fall neatly within this tripartite collection. It is clear, according to the reports, that the authorities in Bosnia and Herzegovina recognise this problem and have sought to solve it in

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<sup>170</sup> Kosovo Regular Report 2007, *Europa*,  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/kosovo\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/kosovo_progress_reports_en.pdf) (accessed 22.8.2012)

<sup>171</sup> Kosovo Regular Report 2010, *Europa*,  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed 22.8.2012)

part by placing a Jewish individual in a position of senior authority in the civil service (although this decision is as much practical as it is equality-minded ideology, as it means there is an somewhat religiously impartial leader of a group that is supposed to perform the government's tasks with professional impartiality). Although officially this is a matter of ethnicity, it is known by the Bosnians to have religious discrimination related consequences, so it is therefore highly surprising that the EU did not mention or discuss this issue with relations to any issues of religious freedom or even taking a separate view on discrimination on the grounds of religion. There are however possible explanations for this, given the sensitivity of the region with regard to inter-ethnic harmony. Given that the USSDORIF reports point out that the decision is the outcome of post war negotiations, the EU might wish not to undo peace-making agreements with entrenched situational specific ideologically opinionated comments. However, if there is one thing the EU has consistently demonstrated itself to be expert at throughout these reports is the ability to comment on a subject without specifically stating any opinion that could be used to draw an explicit conclusion about what it is the EU thinks on the matter. There have been several instances where the EU has raised a matter, but not commented on it. While it is true that because of the relative sparseness of comments on specific instance, the mere act of commenting does indeed bring on a certain amount of significance to a specific instance, but in this case it is perfectly possible to be descriptive without being judgemental, or indeed while providing an explanation of the somewhat unique and specific set of circumstances that make this kind of behaviour understandable. The fact that the EU makes no mention at all of the issue of this consociational system with reference to its religious discrimination consequences is quite significant and shocking.

In the case of Albania, there is very little discussed on the subject of discrimination on the grounds of religion to be found in the USSDOIRF reports. The two incidents of any



significant note are both generic and do not apply or in some way advantage or disadvantage any one religion or religious group over any other. The first of these is that the reports do make mention of the fact that foreign missionaries coming into the country often are only able to get the one year visa, rather than the five year one. This is not an official rule it seems however, and it applies to all religions equally, so it is difficult to say with any certainty that this is discrimination on the grounds of religion. The other point is that in 2010 the Albanian government set up the Office of the Commissioner for Protection from Discrimination, an office that will investigate cases of discrimination of all kinds.<sup>172</sup> However, the reports go on to criticise the Albanian authorities for not funding this body sufficiently. The fact that the EU reports do not make mention of this development is not a clear indicator of a specific direction with regard to freedom of religion policy.

In the case of Kosovo, there is a very specific discrimination concern raised by the USSDOIRF reports in 2011 that is not discussed in significant detail by the EU's regular reports. That case is the situation regarding the Protestant community in Kosovo. The USSDOIRF reports make several mentions of problems stemming from the fact that they have to use their tax identification number as their only proof of legal status as an organisation.<sup>173</sup> They have reported on several occasions that they have been unable to purchase and register land for the purposes of establishing a Protestant graveyard, and have on several occasions been buried in a Muslim graveyard, and had an Islamic funeral ceremony conducted on their behalf. This, many Protestants claim, violates the right to freedom of religion exceptionally egregiously, because it results effectively in local government policy causing the imposition of one religious tradition onto another, thereby limiting significantly the freedom of the Protestants to practice their own faith. This is

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<sup>172</sup> Albania Report 2010, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2010/148905.htm> (accessed 22.8.2012)

<sup>173</sup> Kosovo Report 2011, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dclid=192825> (accessed 22.8.2012)

perhaps one of the few occasions in this thesis where it can be argued that freedom of religion has been limited in a fashion that would be considered a breach within a conception of freedom of religion that regarded the right in a negative capacity. The idea of a practical and legal limitation on the practice of a religious belief is indeed a definitive example of the ability of an individual to practice their belief being curtailed. So the fact that the EU only discussed the fact that the religious group in question was denied a cemetery, not the fact that they were being forced in effect to bury their dead in the manner befitting a different faith, is most significant. It is further important when it is noted that the EU did not offer a specific opinion on the matter in its reports. It does not state definitively that the Protestants in question are being discriminated against, instead the report only cites the fact that they are claiming to have been discriminated against.

This lack of mention is further compounded when the issue of discrimination against Protestants on the matter of worship building construction is not mentioned at all. The Protestant community of Decan/Deciani has been repeatedly denied permission to build a church on property that the church organisation definitely owns. The municipal authorities have reported that their reasoning behind the lack of support for this has been negative attitude towards this project from the local community. This has been further reinforced by the Kosovar Supreme Court, who not only supported the ban on construction of the church, but also significantly delayed their delivery of the decision to the Protestant community in question. Although the USSDORIF report points out that the court claimed that they did not send the judgement until several months later than the initial judgement had been made because of confusion over an address, this claim seems highly unlikely, given the amount of paperwork necessary to enact a claim to such a degree that the Supreme court can investigate it, and there is significant suspicion from the Protestant community that the court was simply hesitant because of the religious sensitivities involved. It is far from difficult to see this case

as an example of religious freedom being overruled in favour of compliance with the sensitivity of the masses. Although a comparison could be made to the controversial opposition to the Islamic community centre that was opposed by many Americans to being set up in the vicinity of the site of the former world trade centre, in this scenario there is no known incident of significant political or social sensitivity that could be causing this kind of outrage from the local population. From the descriptions, this appears to be a very basic form of religious populism, which the government has failed to protect the Protestant community from.

### 5.5 Relations between States and Religious Groups

The EU regular reports make it very clear in the cases of these three potential candidate countries that the issue of relations between states and religious groups and inter-religious dialogue is one the EU considers to be of some significant importance. To one extent or another, it emerges as a question in the reports of all three countries here discussed.

In the case of Albania, the EU regularly makes the point of highlighting the fact that they consider Albania to be a model of religious harmony in the region. Although specifics are rarely mentioned, the reports discuss how the government supports “positive relations between religious communities” and that “the inter-faith climate continues to be positive and mutually tolerant”. In the 2009 report, this dialogue and general amicable relations, both between religious groups and the government, and between the various religious groups themselves, was formalised with a signing of an agreement between what the report calls the three main religious communities and the Albanian government, alongside the adoption of something the report calls “The National Strategy for the Alliance of Civilisations” which supported inter-faith and inter-cultural dialogue. The issue of state-religion and inter religion relations seems to drop off the report’s agenda between 2011-2012, but it should be noted

that in the 2006 report, the EU makes mention of the fact that the climate of relations between religious groups still marks it out as a “valuable example of religious harmony in the region” despite the presence of what it refers to as “isolated incidents”.<sup>174</sup> It is interesting to note that these references are only relative references. There is no clear mention as to whether or not the EU regards the standards of religious harmony being achieved by Albania as being up to EU standards, merely that the standards are a good example for countries in the local area (many of which have been ravaged by inter-community, ethnic, and occasionally religiously motivated violence in many wars since the end of the Communist era). It is also interesting that the EU does not offer a clear example of any of these “isolated incidents”, thus not giving context for their meaning here. Also, the exceptional praise given to Albania as a model for others in the region does not continue in the reports from 2008 onwards.

In the case of Bosnia and Herzegovina, it would appear as though the EU’s tolerance for strife between different religious communities is considerably lower than in the case of Albania. In several reports, the EU makes mention of the fact that “religious intolerance is still present in the country” on occasion citing incidents such as physical attacks on buildings and other facilities which serve as places of worship, and members of religious communities or religious officials becoming targets of violence themselves. This level of concern for specific incidents is not seen in the case of Albania, as it would be fair to say that religious intolerance would be “present” in the country if there are still isolated incidents. It would appear from the way in which the report is being phrased in the case of Bosnia and Herzegovina that the problem is more endemic and systemic as part of the overall situation, but this is not made explicitly clear. There is no specific mention of a number of crimes committed or the level of violence involved (the question of whether it is murder, assault, grievous bodily harm, etc. is not irrelevant in this instance). More importantly, in terms of the

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<sup>174</sup> Albania Regular Report 2006, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/al\\_sec\\_1383\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/al_sec_1383_en.pdf) (accessed 22.8.2012)

thesis itself, there is no mention of exactly how, if at all, the EU regards this situation as relevant towards Bosnia and Herzegovina's membership prospects, and what the country should expect in terms of EU toleration of levels of violence. Although this is not an inconsistency on the EU's part, several other countries have been mentioned by the reports as having issues with regards to religiously motivated violence, it is not clear the extent to which this is important to the EU. It is not unreasonable to suggest that there is a question of whether it is in fact the Bosnian government that is being investigated by the EU, or whether it is the Bosnian people also. The only mention of specific suggestions or policy plans relevant to this situation is that in some of the earlier reports it is stated that the police need to be more thorough in their investigation and prosecution of crimes of a kind which can be linked to religiously motivated attacks.

There is also an interesting question raised in the report regarding the involvement of religious leaders in the public sphere, particularly their input into the public consciousness with regards to the political process. The reports cite the fact on two occasions that religious leaders have been getting involved in the country's political process, with one of those occasions being an incident where the EU considered the intervention of these religious groups as being "divisive". Although the usage of the word "divisive" would suggest that the EU viewed that instance in a negative light, in terms of the incident where it is just reported that they are involved, there is a question whether this is viewed by the EU in a positive light or otherwise. There is also some suggestion in the reports regarding the usage of religious symbols and buildings for political purposes has had a specifically negative impact on religious dialogue and interethnic relations. This question raises the issue as to the level to which the EU expects religious groups themselves to be a part of the focus of the EU's scrutiny, in so far as their behaviours and involvement in the political sphere is concerned.

In the case of Kosovo, inter religious relations as well as relations between religious groups and the state is seen as being something of a highly important focus throughout all the reports covered in this period. Early reports were concerned with the fact that because of the link between religion and ethnicity in Kosovo, many Kosovar Albanians were suspicious of the Serbian Orthodox Church and relations were difficult. However later reports cite several incidents in the development of relations between religious groups in a positive light, with a meeting between leaders of the Serbian Orthodox Church and the Albanian municipal Islamic council occurring in April 2006 in Orahovac/Rahovec, and then President Sejdiu visiting the Visoki Decani monastery on the occasion of Orthodox Easter. However, from 2007 onwards relations appear to deteriorate. In 2007 the EU reports a lack of follow up to a previously held inter-religious conference, and that there have been a number of acts of vandalism against various religious buildings (including the use of mortars).<sup>175</sup> In 2008, not only is this lack of dialogue again mentioned in the reports<sup>176</sup>, but it is also pointed out that religious leaders have been supporting extremist political candidates during electoral campaigns. 2009 reports “limited dialogue” and the necessity for security forces to be deployed in order to protect pilgrims visiting various holy sites in Kosovo.<sup>177</sup> 2010’s report continues to cite issues of vandalism to buildings and cemeteries of both Orthodox and Islamic believers.<sup>178</sup> There is some optimism to be found in 2011, with students working to clean the Jewish cemetery, and although there were religiously inspired protests in Pristina the report describes them as being peaceful in nature, and that other religious groups were involved in conducting joint activities together at various nonspecific points. All this focus tends to give the suggestion that the EU,

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<sup>175</sup> Kosovo Regular Report 2007, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/kosovo\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/kosovo_progress_reports_en.pdf) (accessed 22.8.2012)

<sup>176</sup> Kosovo Regular Report 2008, *Europa*, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/kosovo\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/kosovo_progress_report_en.pdf) (accessed 22.8.2012)

<sup>177</sup> Kosovo Regular Report 2009, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ks\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf) (accessed 22.8.2012)

<sup>178</sup> Kosovo Regular Report 2010, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf) (accessed 22.8.2012)

at least in these cases, is not looking at the actions of the government alone, but also the actions of the wider society and examining whether the group of people that constitute the state as a whole can be said to be ready for EU membership. There is a clear focus on the need of Kosovo to resolve and improve the situation with regard to inter religious relations, as the 2010 report uses the word “need” in reference to the situation, demonstrating that the EU regards this as an important issue, and one that requires resolution.

The USSDOIRF reports, as they have done in the past, cover the situation in more detail. In the case of Albania though, they do not offer a significantly divergent or differing picture. The reports point out that Albania has a specific section of its constitution which encourages distinct and separate bilateral agreements between the state and individual religious organisations in order to facilitate state monitoring and regulation of relations between religious groups and the government. The exact content of these agreements is not made explicitly clear in the reports, however it would appear to be the case that they are not compulsory, and that up until 2008, the only community that had successfully finalised one of these agreements had been the Catholic Church.<sup>179</sup>

The USSDORIF reports into the situation in Bosnia and Herzegovina is also very similar to the EU reports, with some more details. There is some exceptionally condemning and direct language directed towards local government and police forces, as this extract from the 2005 report demonstrates “The RS and Federation Governments, local governments, and police forces frequently allowed an atmosphere in which abuses of religious freedom could take place. Reported attacks on religious buildings, officials, and minority believers increased significantly during the reporting period.”<sup>180</sup> The USSDOIRF reports also point out the involvement of religious leaders in the political system, specifically discussing the fact that

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<sup>179</sup> Albania Report 2009, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2009/127295.htm> (accessed 22.8.2012)

<sup>180</sup> Bosnia and Herzegovina Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2005/51544.htm> (accessed 22.8.2012)

there is religious support for parties that are dominated by a single ethnic group. The following is an extract from the 2006 report discussing some instances of religious/political involvement:

For example, in June 2006, the Serb Orthodox bishop in Trebinje signed a petition calling for a referendum on whether the RS [Republika Srpska – one of two constituent political communities that make up Bosnia and Herzegovina, the other being the Federation of Bosnia and Herzegovina] should be "independent" from BiH [Bosnia and Herzegovina]. Also in June, Cardinal Puljic made public statements in which he stated that the hostile attitude of local Muslims contributed to the low numbers of Bosnian Croat returns. In a lecture in June 2006, Reis Cerić compared recent meetings between Catholic and Orthodox officials without the presence of Muslim representatives to the 1991 meetings between former Croatian President Franjo Tuđman and former Serbian President Slobodan Milošević at which they discussed the potential partition of BiH.<sup>181</sup>

In general however, the situation as described in the USSDORIF reports is not significantly divergent from the account of affairs presented by the EU regular reports.

In the case of Kosovo, the situation with regards to inter-religion relations is also described in more detail. Again, the situation of the Protestant community is singled out as being in particularly difficult trouble. The 2009 report cites the fact that a collection of personal details of several prominent Kosovar religious leaders and their families and place of work have been made publically available on approximately 100 public websites hosted in Kosovo. This information became public after it was posted on the website of the Gjakova/Djakovica branch of the Kosovo Islamic Community.<sup>182</sup> There is also repeated mention of various issues related to the protection of religious sites of various different traditional groups. Transfers were made during the time covered by these reports to ensure that it was the Kosovar police that were now responsible for the situation in these cases. There were some difficult incidents of religious friction within the Kosovar government in

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<sup>181</sup> USSDOIRF Bosnia and Herzegovina Report 2006, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2006/71372.htm> (accessed 22.8.2012)

<sup>182</sup> Kosovo Report 2009, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2009/127318.htm> (accessed 22.8.2012)



2011 with the introduction of what are called Specially Protected Zones which are designed to protect areas of specific religious significance to various groups.<sup>183</sup> However, the majority of the areas in question selected are owned and operated by the Serbian Orthodox Church, and the USSDORIF reports indicate that there were exchanges within the Kosovar government which became incredibly heated over the concern that these laws would allow for special protection only for Serbian cultural objects and buildings. However, the exchanges were not reported on by the EU and it would appear that the policy of specific protection does not in and of itself concern the EU in any significant manner.

#### 5.6 Restitution of Religious Property

The issue of restitution of religious property is one that emerges regularly throughout the course of the EU's regular reports for these three countries. Although the end result is not exactly clear cut in terms of the policy the EU would like to see emerge, the focus given to the issue and its specific placement within the area of the reports dedicated to the question of religious freedom demonstrates a specific importance which the EU places on the issue.

In the case of Albania, the reports that the EU produced between the years 2005-2009 all make reference to the fact that either little or no progress has been made on the issue of restitution of religious property seized during the communist era. The fact that the EU repeatedly uses the term progress, as well as the use of the word "however" as a qualifier after it has repeatedly praised the Albanian example as being one of exceptional religious harmony that can be seen as a model for the area, demonstrates that this is an area where the EU expects there to be progress. However, the lack of discussion of this issue in the 2010-2012 reports is curious and unexplained. Given the focus on the issue in the period 2005-2009, it would be expected that this would be mentioned, especially if there had been some

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<sup>183</sup> Kosovo Report 2011, *USSDOIRF* <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192825> (accessed 22.8.2012)

change or positive development. Though there is a mention in 2012 of new city planning discussions considering issues related to new religious buildings in the capital, there is no mention if the property these building will be raised on had anything to do with restored property returned to the religious communities.<sup>184</sup> This is particularly important as a religious freedom issue because the EU made repeated mention of the fact that the lack of solution to this problem was causing problems in turn for the religious communities of Albania, thus suggesting that this is an issue of some importance to the EU.

In the case of Bosnia and Herzegovina there is no specific discussion of the situation regarding restitution of property in any section of the reports dedicated specifically to freedom of religion. The case of Kosovo too has very limited discussion of this issue, with the only mentions of the situation being that in 2007 some Orthodox and Catholic churches has been rebuilt with financial support from the EU and the Kosovar Government, and in 2009 the EU regarded development of the reconstruction and handover of Orthodox sites under the Reconstruction Implementation Commission as a positive development.<sup>185</sup>

The reports produced by USSDOIRF provide significantly more detail. In the case of Albania, the 2005 report provides specific details about the nature of the Albanian religious property restitution program.<sup>186</sup> For example, although in large numbers of cases the Albanian government has returned religious groups to the appropriate representatives of the successor organisation, the land surrounding these buildings that was previously owned is not available for return. This is due in large part to the fact that during and in the aftermath of the communist era, private citizens began making developments and reverting the land to other uses, such as agriculture and other forms of farming. Thus, because the Albanian state does

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<sup>184</sup> Albania Regular Report 2012, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf) (accessed 22.8.2012)

<sup>185</sup> Bosnia and Herzegovina Regular Report 2009, *Europa*, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ba\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ba_rapport_2009_en.pdf) (accessed 22.8.2012)

<sup>186</sup> Albania Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2005/51536.htm> (accessed 22.8.2012)

not have the resources to purchase or in some way reclaim the land that is owned, not all of the land will be returned. As a result of this and other circumstances, the restitution of religious property will only extend to 150 acres, but in 2006 the state has provided monetary compensation to attempt to partially alleviate the loss.<sup>187</sup> The reports cite several different incidents of failure and slow paced work by the Albanian authorities in their efforts to both provide restitution and provide adequate permits and other bureaucratic necessities for the construction of new buildings. This has resulted in some groups being offered land in different areas to where they previously owned it.

In the case of Bosnia and Herzegovina, the situation is very different from the EU's report which contained no data on the situation at all. According to the USSDORIF reports, between 2005-2006 there was no nationwide policy on restitution of religious property seized after the rise to power of the communists in what was Yugoslavia. What restitution activity there was had therefore to be organised at the municipal and local levels, and was set up on an ad hoc basis. Between 2007-2012 the reports repeatedly discuss the back and forth progress of a law that will attempt to deal with this situation, however at the final report, the bill had not been passed and there was no permanent consistent resolution to the issue. The EU does discuss the progress of the law itself in several of the reports, however it does not provide any description of its relevance to the problem of restitution of religious property, nor does it provide any opinion or other form of judgement as to whether the law in question being discussed by the Bosnian legislature is up to task in its eyes. The USSDOIRF reports also make mention of the fact that some religious groups have also lost archives to the communist era Yugoslavian rule.

In contrast to the EU reports however, the reports covering Kosovo by the USSDOIRF do not cover the issue of restitution of religious property at all.

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<sup>187</sup> Albania Report 2005, *USSDOIRF*, <http://www.state.gov/j/drl/rls/irf/2006/71364.htm> (accessed 22.8.2012)

### 5.7. Conclusion

In this final group of reports, we see a trend of EU silence on a startling number of issues, giving grave concern to the question of exactly how seriously the EU regards the issues of freedom of religion.

One of the most notable of these is the complete and utter absence of debate or discussion of the issue of headscarves in Kosovar and Albanian schools, and whether or not it is acceptable for the state or the school authorities to pass rules and administer punishments as a result of violations of a school uniform code that emerge as a result of adherence to a given religious tradition's dress code. It could be argued that the EU did not pass a judgement on this matter for political reasons, in that similar controversial cases have emerged in parts of Europe that are already well established members of the EU, and it would be somewhat hypocritical for the EU to be passing judgement on a matter that has not been resolved within its own borders. However, that explanation does not account for the fact that as has been seen repeatedly throughout this thesis, the EU has a talent for making comments on subjects in such a way as to not pass anything resembling explicit judgement on them, as well as describing things in an opinionated manner. Therefore, while it is true that situations in France and the UK have arisen over the same problem, the EU would have no problem mentioning the situation without passing judgement, as has been observed previously. What is more likely is in fact based on the fact that the EU has already had similar issues within its borders. The UK and France have resolved the issue of the Islamic headscarf being part of the dress code in two very different ways. In the UK, the high court battle that ensued ended in a victory for the young girl who wished to wear the headscarf, whereas in France a law was passed and upheld that required the removal of all religious symbols from a child's person as part of a school uniform, thus enforcing secularity within the school system. Thus, we see

that the EU has within itself a conflicting attitude on this matter, and thus we see the principle of subsidiarity coming into play. This is very important for our understandings of freedom of religion in the EU as it means that the EU is prepared to let some matters drop to state level discussion. However, at present there does not appear to be a clear and consistent pattern as to what decisions can be left to state level and what decisions are best allocated to EU wide principles and expectations.

An area of silence that is less easy to explain, but must be highlighted, is the treatment of the Protestant community within Kosovo. The Protestant community was discriminated against with regard to issues all the way from ability to build a new church to whether or not when they died if they would be able to be buried in a fashion of their own religious choosing. It is exceptionally striking that the EU would not investigate or mention a situation that has led to people being buried in the traditions of a different religion out of necessity. While it is true that the case of the cemetery is to a certain extent a practical one, the fundamental concern of both the incidents of permission to build a church and permission to build a cemetery is the administrative systems that permit them to build these structures. The fact of the matter was that in the case of the construction of the church, populism was permitted to be a primary driving force behind the decision making process in regards to the construction of the building or lack thereof. This raises an important question. What strength does the EU have to resist populism in matters of religious freedom? This is a major incident which has gone completely unreported (the issue of the cemetery was alluded to by the report, but the church was completely ignored). This is an example of an incident where the EU fails to act on religious freedom in a manner befitting its apparent status as a negative right in terms of what Isaiah Berlin would describe it as. In the instance of the treatment of the Protestants in Kosovo, in particular the situation regarding the cemetery, this is an example of the ability of a group of believers to practice their religion being restricted. It is

important to note of course that it is in fact unintentional restriction. There is no specific law that requires everyone who dies in Kosovo to receive an Islamic funeral, however the effective result for this particular community is the same. It is a clear example of a religious group's practicing being hampered by the state.

There is also, if not silence in all cases, then certainly a lack of discussion of the issue of religious restitution policy. The question of the adequacy of Bosnian ad hoc policies is exceptionally prescient, as a system without any degree of consistency may produce results that are discriminatory towards one group or another. The lack of mention of this policy is significant given the situation, although it is difficult to define a specific policy direction from the EU that this lack of mention signifies.

What is made very clear by these reports which was only touched on by reports from previous chapters is the fact that the EU seems deeply concerned about the issue of inter-religious dialogue. On several occasions, the EU mentions the lack of dialogue or the presence of it and gives it a significant amount of attention. However, it is unclear exactly how dialogue between religious groups can be understood in the framework of the right to freedom of religion, or religious freedom more broadly. It would appear though that given the proximity of the discussions to other issues relating to violence against religious communities and other similar issues, that the discussion of religious dialogue is not so much intended to be an issue in its own right, but is more of an issue that is considered by the EU as a means of resolving other issues which could potentially threaten religious freedom.

There is a certain amount of contradiction in the EU's discussion of religious registration systems, as it seems that at one point the notion of a registration system that deals specifically with religions as a different and unique class of social entity is something to be expected, while in another that NGO style registration is acceptable. However, this case is resolved and explained by the fact that the USSDORIF reports point out that in the case of

Kosovo's religious registration system, the various communities not recognised and only able to get NGO status made complaints on the matter. Thus further confirming a theory that the EU does like to define, at least the issue of religious registration policy, by issues raised by those it affects.

A further somewhat shocking silence is the issue of the ethnic consociational system that is in use in Bosnia and Herzegovina. The consequences of this are so large scale and definitely at least indirectly linked to the affairs of religious groups that it is difficult to see any rhyme or reason to the EU's lack of discussion on this point. As has been stated previously, the EU has made it very clear that it recognises that there are situations where ethnic and religious judgements and discriminations do intermingle because of the history of these various communities and their positions, and that acknowledgement of the existence of these kinds of issues make the ignorance of this large glaring issue of religious institutional indirect privileging make little to no sense.

The one area that perhaps marks out this last group as being the countries that have made the least progress in the EU membership accession proceedings is the judgements made about the various societies and public attitudes on display. While it is the case that Albania's harmonious religious relations are regularly praised by the EU, it always does so in the context of the specific region which Albania finds itself within. There is no clear mention as to whether or not the EU regards the levels of religious tolerance found among Albania's citizenry to be adequate to meet EU standards, even if they definitively do seem to be, at least in the EU's opinion, the best in the region. The fact that the EU regards the actions of the citizenry on trial here alongside the government is exceptionally telling. It is unclear whether the government is regarded as being responsible for the citizen's actions (although it seems unlikely since that would be aggressively paternalistic, and it would also be more explicitly stated) or whether the people's actions are themselves being judged independently. If they

are, then it would suggest that the EU regards freedom of religion as an issue which the government has the most responsibility for, but ultimately it is an issue that the government and the wider citizenry also share in their duties, so as to make a country ready for membership. Given the relatively high level of discussion and presence of violence against religious communities, it is perhaps this that marks out this group as distinct from some others.



## **Chapter Six: Conclusion**

### **6.1 Introduction**

In this final section, I seek to offer an answer to the question of exactly how it is that the EU both interprets and implements religious freedom as part of the enlargement system. Twenty-one countries have been examined in relation to specific themes. In each case, this thesis has compared the EU reports with the USSDOIRF reports. This final chapter will examine the overall trend on each of the thematic areas discussed in this report, and will then come up with an overall reflection based on those judgements. Those thematic areas will be religious education, relations between states and religious groups, registration and recognition policies, property restitution, discrimination on the grounds of religion and conscientious objection.

### **6.2 Religious education**

This is an area where EU policy would appear to be more fluid than others. The complete lack of discussion of the subject in chapter two suggests either a very definitive lack of interest or implicit tolerance of all of the various systems put in place by the countries that make up the first wave. While for most of them, which offer either elective classes in religion, or classes which can be opted out from, there are instances where we see exceptional intervention into the sphere of education, such as the powerful influence over the curriculum that the Catholic Church possesses in Poland. However it appears that this right is approached in a decidedly negative fashion in so far as Isaiah Berlin would describe it, as is exemplified by the examples of Croatia and Turkey and the judgements that went before the ECHR regarding their education systems. The EU did not regard it as an issue that Croatia was not permitting various Protestant and other Church groups to take part in supplying services to their religious education programs, however it did take issue with Turkey's instituting of

compulsory education in Sunni Islam, and made regular mention of the fact that the EU would expect Turkey to solve the problem of Alevi Islam and other religions either being underrepresented or misrepresented in their curriculum. Here we see an example of the negative right being important. The EU is concerned at the ability of the individual to get something, in this case a religious education, rather than the involvement of the state in providing something. The EU it seems, does not expect that the state should provide religious education, as it might do if it regarded religious freedom as a positive right in this regard. Rather, it is concerned when the state obstructs access, thus conferring it as a negative right.

What also appears, as a result of comparison between the EU reports and the USSDOIRF ones is that the EU is significantly understanding on matters where the ability to receive a religious education is hampered by practical circumstance. This is seen in several cases in Chapters two and five, where schools are unable to get the teachers they might otherwise wish for because of the way in which the population is distributed, or because of the lack of experts with the necessary training and qualifications, or other various practical concerns. This further confirms the status of education as being considered a negative right. It is acceptable if a religious education cannot be provided because of a lack of resources, or a system of reasonable rules has an unintended consequence (e.g. a system where religious teachers are only assigned if a school has a certain number of pupils of a given religion, but population distribution and demographics mean that such a population is in fact sparsely spread across rural areas) but it is not acceptable if the education is limited as a result of an active decision by the state.

### 6.3 Relations between States and Religious Groups

It is quite clear from the various reports discussed across this thesis that the EU regards good relations between a state's government and good relations between the various religions as important. However, exactly where the lines stop in this regard is unclear. The EU has been

seen as very tolerant of several instances where the state has become deeply involved in religious affairs, and it has not been explicitly critical or even mentioned a number of issues where state religion relations have clearly broken down or become problematic to say the least. Some of the most notable of these cases include the incidents in Turkey regarding foreign missionaries that have experienced harassment and criminal investigations at the hands of the authorities, as well as the ban on training new non-Islamic clergy within the country, and the controversy surrounding the use of the word “Ecumenical”. In all these cases, the EU has reported on the matter, but it has consistently failed to deliver a specific and overriding judgement or even a vaguely implied opinion. The EU, it seems, is willing to tolerate a substantial amount of intrusion into the operating systems of a religion, provided that it does not intrinsically stop the religion from worshipping etc.

The single most notable example of this failure to discuss relations between states and religious groups can be seen in the case of Poland where the incidents involving the explosives put up around newly erected crosses in Poland in response to the possible movement of a cross on a church near a former Holocaust site. The idea that the EU could have been unaware of this situation when the USSDOIRF report was not lacks credibility. Therefore, we must conclude that the EU did not mention this incident for some other reason. Exactly why is unclear, but it would certainly seem to be in contradiction to the discussion given in other countries to sporadic incidents of violence against buildings and other religious property.

The EU clearly regards good relations between states and religious groups and good inter-faith relations as important. This can be seen at the simplest level by the fact that the countries that have made both the least progress in the accession process (those in chapter five) and the country that has spent the single longest amount of time in the accession process with only a limited amount of progress (Turkey) both have significant issues with regards to

both of these concerns. However, the EU does not give nearly enough specific detail on what is expected of a state in this regard to warrant an effective analysis of the situation. Therefore, the only conclusions that can be drawn are of an overarching, somewhat utilitarian trend, viewing such relations as merely a means to an end, not fundamentally necessary, but potentially useful. The EU does not regard positive relations between states and religious groups and healthy inter-faith relations as a necessary part of EU membership, but it does regard them as useful tools to make sure that religious freedom is not being abused or damaged in any way.

#### 6.4 Registration and recognition of religion

The EU's attitude towards the issue of religious registration of religious groups is perhaps the area where it is most clear that the EU takes a line on the issue that is decidedly negative freedom based. It is clear from reading both the USSDOIRF reports and the EU reports in chapter two, that the EU only brought up the issue of the restrictions surrounding new rules being discussed by the Czech and Slovak governments due to the fact that people had complained in both instances that the rules were restrictive. This shows us another useful side to the EU's understanding of religious freedom. To a certain, significant extent, the EU's understanding of religious freedom is defined by the citizens it purports to defend. This can also be seen in the example of Kosovo, where although in several other countries the issue of registering religions in the style that one registers an NGO is not an issue, in Kosovo this was complained about and so it was discussed with some attention within the EU's regular reports.

However, it is quite clear that the EU is more than willing to tolerate a wide variety of different systems of religious registration systems, there are expectations that a given system will function within the broader principles of the rule of law and equality before the law. This

is seen in the case of Serbia, when the registration system is routinely criticised for being opaque and not allowing very many religious groups to be recognised.

But broadly speaking, the EU is unconcerned with religious registration systems as a threat to religious freedom unless lack of such registration prevents a given religious group from practicing in the way it would desire. This is seen in the Turkish case with the difficulty that Alevi Muslims have in registering in such a fashion that they can have their Cem houses recognised as places of worship. In instances where the registration system is not a threat to the free practice of religion, the EU is relatively unconcerned. This principle is adhered to even up to the point of the EU permitting, or at the very least not objecting to the Macedonian government using its religious registration system to ban a particular name for a particular group because it was too similar to one that already existed.

### 6.5 Property restitution

The EU would appear to have relatively limited concern with the issue of property restitution. Discussion of it moves from in and out of the sections of the reports that are specifically geared towards dealing with religious freedom, and in some cases, such as Romania, the issues are left somewhat ambiguous and not by any means finalised by the time a country actually enters into the EU. Although in later sections of the thesis, such as the countries covered in chapter five, the EU does make fairly explicit expectations of the fact that it would like to see 'progress' in areas related to religious property redistribution, there is not the kind of detail or explicit statement of expectations that might be expected if the policy area was an important one for the EU. A notable example of this is the EU's complete and utter lack of discussion of the issues raised in chapter five regarding *ad hoc* negotiations conducted on a municipal and local level.

The very specific mentioning of the issue of religious restitution of property in the case of Bulgaria in 2004 is perhaps yet another example of the EU taking an overall negative rights opinion of the situation regarding freedom of religion. In this case, the issue of rights associated with restitution were brought up because of a series of police raids which occurred after the changing of the law. Again here, the EU takes the most notice when a negative right is being threatened.

#### 6.6 Discrimination on the grounds of religion

Discrimination on the grounds of religion is perhaps the single policy area where the EU has shown the most consistent interest, however it has also shown the narrowest interest. In many of the reports here discussed, the EU highlights either the presence of a principle in a given country's statutes or constitution that there is a prohibition against discrimination on the grounds of religion (this is particularly seen in chapter two). However, what the EU is less consistent on is instances where specific policies have arisen which have the potential to be discriminatory on religious grounds. The conception of discrimination on the grounds of religion that the EU is most concerned with it seems is the issue of employment discrimination. Therefore, several other areas have been left under developed, and there have been substantial silences on a number of matters.

Perhaps the most notable of these being the issue of the Protestant community in Kosovo, who definitely had a negative right violated when they were unable to have funerals for their loved ones that conformed with their belief system, and in fact had to have funerals of an Islamic nature, simply because local authorities were unwilling to provide them with the land necessary to construct their own cemetery. This is perhaps emblematic of the manner in which the EU's conception of freedom of religion works as a whole. The conception is definitely negative, however the EU itself does not significantly investigate consequences

that radiate from a decision that in itself may not be motivated by issues relating to freedom of religion. In the case of the Protestant community in Kosovo, it may be possible that the reason there was no land available to be converted into a cemetery was entirely circumstantial, based on a combination of mundane factors such as the general availability of land, health and safety regulations, and general policies relating to the preservation of the overall aesthetic of a given locality.

None of these policies in and of themselves are related to freedom of religion, but under the circumstances they could theoretically combine to create a scenario that violates a person's freedom of religion rights. Although the EU is definitely concerned with the issue of discrimination on religious grounds, it is not clear that it explicitly regards it as a religious freedom issue (much of the discussion of discrimination on the grounds of religion in the EU's reports occurs outside the section's dedicated to religious freedom) and it is not very effective at dealing with issues that fall outside a clear de jure example of a violation of religious freedom.

### 6.7 Conscientious Objection

The issue of conscientious objection only emerges in the reports examined within chapter four. However, it is an example of one of the very few areas where the EU makes a set of definitive judgements on an issue. In calling the limitations posed by Serbia on religiously motivated conscientious objection "undue" a judgement is provided on a point that clearly marks out an EU expectation that conscientious objection should be provided for on religious grounds.

The case of Turkey definitively marks out the issue of conscientious objection as being an issue that the EU is concerned with, however the sporadic coverage of the issue, only truly beginning in 2005 makes the degree to which the EU requires this rule to be in

place questionable. However, the EU does make it very plain throughout its discussion of Turkey that it regards conscientious objection as being a right that any prospective member of the EU is expected to uphold. It highlights the fact that Turkey is the only country within the Council of Europe to not recognise the right to conscientious objection. However, as is the case with many of these issues, explicit judgement and opinion is lacking and in the light of the explicit judgement for Serbia this is confusing to say the least.

Conscientious objection is clearly an example of a negative right, in that the state should not attempt to prevent you from withdrawing from military service because of religious or other conscience based reasons. And again we see the EU bringing up an issue of religious freedom specifically within the context of a negative right.

## 6.8 Conclusion

It is more than possible that the EU's position on religious freedom and its implementation in relation to accession was in fact summed up in chapter two. When discussing the religious freedom of Cyprus, the EU's 2002 report defined freedom of religion as follows: "the Freedom to profess a faith and to manifest a religion or belief, in worship, teaching, practice, or observances".<sup>188</sup> This it seems would be one half of the EU's understanding of freedom of religion in terms of the accession and membership process. In other words, a conception of religious freedom in a negative sense means that as long as you are permitted to believe, worship, practice, teach and observe in a religious fashion in a given polity, that polity can be said to be observing freedom of religion.

The other half of the equation is that the EU takes a somewhat literalist de jure attitude towards questions of freedom of religion. This is exemplified in the fact that there have been several instances throughout this thesis that have either been ignored by the EU's

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<sup>188</sup> Cyprus Regular Report 2002, *Europa*  
[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/cy\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cy_en.pdf) (accessed 22.8.2012)



regular reports entirely or they have been commented on but without the provision of an effective or clear opinion or judgement, which have been more than capable of violating religious freedom in a negative sense. However, because these violations are often not the direct result of policies relating to religion specifically, they are ignored or left ambiguously observed by the EU.

A final mention should be made of the EU's "bottom up" understanding of religious freedom. Although this is not true universally, there are several examples where a policy might be accepted in one polity, but not in another because in the latter, it was brought to the attention of the EU by mass complaint. The EU took the view that only when the citizens made it felt that their rights were being abused was there the real potential of an actual freedom of religion problem. Thus, a simple characterisation of the EU's understanding of freedom of religion could be said to be a partially bottom-up, *de jure*, negative freedom understanding of religious freedom.

Future avenues of research on the matter of freedom of religion and the EU are many and varied. This thesis has only begun to examine the question of religious freedom policy within the recent enlargement process. Although the regular reports are the most consistent and possibly the most communicative of all the EU's accession related documentary outputs, they are far from the total sum of such outputs, and there are many other forms of documentation that could be examined to provide more detailed perspectives on the processes and outcomes. There is also the EU's internal policy structure to consider. Is it true that the principles that guide the EU's religious freedom policies in the external realm correspond with its internal ones? Or are there discrepancies? An even further question would be to look into the EU's foreign policy outside of accession and enlargement, and examine how the EU responds to religious freedom matters in countries with no plans to join the EU (either through lack of open negotiations, such as Ukraine, or geographical impossibility such as

Morocco). The question of the EU's consistency in regards to policy surrounding religious freedom is one that can span into every aspect of EU policy. There is clearly much more scope for future study.

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