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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir

Addendum

Mission to the former Yugoslav Republic of Macedonia*

* The summary of the report is being circulated in all official languages. The report, which is annexed to the summary, is circulated as received in the language of submission only.

Summary

The present report contains the findings and recommendations of the Special Rapporteur on freedom of religion or belief on her mission to the former Yugoslav Republic of Macedonia, from 26 to 29 April 2009. The Special Rapporteur gives an overview of the international human rights standards, domestic legal framework on freedom of religion or belief and religious demography in the former Yugoslav Republic of Macedonia. Subsequently, she highlights issues of concern for her mandate with regard to religious instruction in primary schools, religious symbols, places of worship, incitement to religious hatred and the application of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group.

The Special Rapporteur concludes that the former Yugoslav Republic of Macedonia is a multi-ethnic, multicultural and multi-religious society. She welcomes the regular interfaith meetings held at the domestic level as well as the Government's initiative in organizing the 2007 World Conference on Dialogue among Religions and Civilizations. However, some issues of concern remain to be addressed and the recent domestic debate on contentious issues, such as religious instruction in primary schools, shows the risk that these issues may be used to divide and polarize the different communities. The Special Rapporteur reminds those religious leaders and politicians who publicly voiced their outrage of the judgement of the Constitutional Court of 15 April 2009 concerning religious instruction in public schools that an independent judiciary was crucial to safeguard freedom of religion or belief and, ultimately, as a foundation for democratic governance. To foster a climate of religious tolerance, political and religious leaders should take a human rights-based approach and clearly affirm the importance of the right to freedom of religion or belief in all its dimensions. In addition to legislation, States have several tools at their disposal to counter religious intolerance, for example by giving space for dialogue, encouraging public figures to make statements denouncing acts of intolerance and providing quality education. The Special Rapporteur stresses that the rule of law and the functioning of democratic institutions are prerequisites for the effectiveness of these strategies, which seek to encourage real dialogue and understanding.

Annex

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her mission to the former Yugoslav Republic of Macedonia (26 - 29 April 2009)

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I. Introduction

1. Following an invitation by the Government, the Special Rapporteur on freedom of religion or belief carried out a mission to the former Yugoslav Republic of Macedonia.¹ From 26 to 29 April 2009, the Special Rapporteur visited the cities of Skopje, Tetovo and Prilep pursuant to her mandate to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles.

2. The Special Rapporteur welcomes the fact that, since October 2004, the Government of the former Yugoslav Republic of Macedonia has extended an open invitation to all thematic special procedures. She is grateful for the positive cooperation during her visit in April 2009. During her mission, the Special Rapporteur had the opportunity to speak with several Government officials, including the Deputy Prime Minister, the Minister for Foreign Affairs, the Deputy Minister for Justice, the Deputy Minister for the Interior, the Deputy Minister for Education and Science as well as the Secretary General of the National Commission for the United Nations Educational, Scientific and Cultural Organization. The Special Rapporteur also met with the Speaker of the Parliament and the Presidents of the Constitutional Court, of the Supreme Court and of the Basic Court Skopje II. She also held talks with the Ombudsman and the Deputy Director of the State Commission for religious communities and groups.

3. Moreover, the Special Rapporteur was able to collect first-hand information and documents on the state of freedom of religion or belief in the former Yugoslav Republic of Macedonia. During her visit, the Special Rapporteur spoke with representatives of various religious or belief communities, including from the Bektash Community, the Evangelical Church, the Hare Krishna community, the Islamic religious community, the Jehovah's Witnesses, the Jewish community, the Macedonian Orthodox Church, the New Apostolic Church, the Orthodox Archbishopric of Ohrid, the Roman Catholic Church, the Seventh-Day Adventist Church and the United Methodist Church.

4. Additional civil society meetings were held with academics, journalists, human rights defenders and lawyers. In addition, the Special Rapporteur met with a number of representatives of international and regional organizations, including from the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the United Nations Population Fund (UNFPA), the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE).

5. The Special Rapporteur thanks all her interlocutors for the information and opinions they shared with her. She sincerely appreciates the excellent logistical support provided before, during and after her visit by the office of the United Nations Resident Coordinator, and in particular by the National Human Rights Adviser.

¹ In Security Council resolution 817 (1993) of 7 April 1993, para. 2, the Council recommended to the General Assembly that the State whose application was contained in document S/25147 be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as "the former Yugoslav Republic of Macedonia" pending settlement of the difference that had arisen over the name of the State.

II. International human rights standards

6. The right to freedom of religion or belief is enshrined in various international human rights instruments.² These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter convention, the former Yugoslav Republic of Macedonia has ratified all of the other above-mentioned human rights treaties.

7. Furthermore, the Special Rapporteur is guided in her mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including those issued by the Human Rights Committee, the General Assembly, the former Commission on Human Rights and the Human Rights Council. Of these instruments, of particular relevance for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights as well as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Special Rapporteur also takes into account human rights instruments adopted at the regional level containing provisions relating to the freedom of religion or belief, for example articles 9 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as related jurisprudence of the European Court of Human Rights.

III. Domestic legal framework on freedom of religion or belief

8. Article 19 of the Constitution guarantees the right to express one's faith freely and publicly, individually or with others. Amendment VII to the Constitution provides that the Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community, as well as other religious communities and religious groups are separate from the State, equal before the law and free to establish religious schools as well as other social and charitable institutions under the procedure determined by law. Article 48 of the Constitution, according to amendment VIII, emphasizes that members of communities have a right to freely express, foster and develop their identity and community attributes, and to use their community symbols. Furthermore, the State guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.

9. According to article 20 of the Constitution, the programmes and activities of political parties and other associations of citizens may not be directed at the encouragement or incitement of ethnic, racial or religious hatred or intolerance. Article 54 emphasizes that the freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution and that such restrictions cannot discriminate on grounds of, inter alia, religion. Pursuant to article 118, the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. The Constitutional Court decides on the conformity of laws with the Constitution and protects the freedoms and rights of the individual and citizen relating to the freedom of

² For an overview of the Special Rapporteur's legal framework, see her reports to the Commission on Human Rights (E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex) as well as the online digest of her framework for communications (www2.ohchr.org/english/issues/religion/standards.htm).

religion, conscience and thought. In addition, amendment XI to the Constitution provides that the Ombudsman shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.

10. Furthermore, the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group, which entered into force on 1 May 2008, regulates the establishment and legal status of churches, religious communities and religious groups, and the performance of religious service, prayer, rites, religious instruction, educational activities and revenues. Churches, religious communities and religious groups acquire legal personality when they are entered into a public register, which is kept by the Basic Court Skopje II. The name and official insignia of a church, religious community and a religious group must be different from the names and official insignia of already registered entities. All churches, religious communities and religious groups registered until 1998 by the body competent for relations between the State and religious communities maintain their existing legal personality and status.

11. According to article 21 of the 2007 law, churches, religious communities and religious groups may conduct religious instruction. This may be carried out at premises at which religious rites and other forms of public manifestation of religion are performed, as well as in other public and private premises and places, provided that the conduct of religious instruction does not violate public peace and order. Churches, religious communities and religious groups also have the right to establish religious schools of all degrees of education, except for primary education, for purposes of educating priests and religious attendants. Religious schools are equal to other educational institutions, and their students enjoy the same rights and obligations. Curricula and programmes of religious schools must not run contrary to the Constitution or domestic laws. The State administration body competent for education may inspect the curricula and programs of religious schools.

12. Article 26 of the 2008 Law on Primary Education allowed for religious instruction to be conducted as an elective subject in primary schools. Further details relating to the organization of religious instruction as well as content, activities and methods of performing a religious curriculum were within the domain of the teaching plan for primary education, as enacted and assessed by the Minister of Education. However, the Constitutional Court recently decided to repeal article 26 of the 2008 Law on Primary Education because this form of religious instruction in primary schools transgressed the academic and neutral nature of the curriculum and engaged the State in organizing such a religious curriculum in direct opposition to the principle of separation of church and State.³ At the same time, the Constitutional Court, in its judgement of 15 April 2009, emphasized the unrestricted opportunity for religious communities to institute religious schools.

13. The 2000 Law on Denationalization defines the terms and procedures for the return or compensation for property that was confiscated after 2 August 1944 for the benefit of the State. Return or compensation may be granted to physical persons or for religious temples (churches, mosques and synagogues), monasteries and religious *vakav* (inalienable property intended for religious and human goals). Also subject to denationalization are the properties of "Jews from Macedonia" who left their properties following the forceful deportation to fascist camps and who have not survived the pogrom and do not have successors. Such property is compensated or returned to the Fund of Holocaust of Macedonian Jews, which is managed by an equal number of representatives appointed respectively by the

³ Constitutional Court, judgement 202/2008-0-1 of 15 April 2009 (see also paras. 24-29 below).

Government and the Jewish Community pursuant to articles 66 to 69 of the 2000 Law on Denationalization.

14. According to article 319 of the Criminal Code, a person who by force, maltreatment, threatening the safety, derision of the national, ethnic or religious symbols, by desecrating monuments, graves or in any other manner that causes or incites to national, racial or religious hatred, discord and intolerance, is punishable with imprisonment of one to five years.⁴ Anybody who commits this crime by misusing his position or if riots, violence or large property damage were caused, may be punished with imprisonment of one to 10 years. The prevention of incitement to national, racial or religious hatred and intolerance falls within the mandate of the Ministry of the Interior. The Government informed the Special Rapporteur that the Criminal Code was amended in September 2009. According to the new article 394 (d), a person who publicly spreads racist or xenophobic written material or other representations of an idea or theory which facilitates, promotes or encourages hatred, discrimination or violence, against any other person or groups on the grounds of race, colour, national or ethnic origin and religious conviction, shall be punished with imprisonment of one to five years. Article 39, paragraph 5, of the amended Criminal Code requires the court to take into consideration, when meting out the sentence, whether the crime has been perpetrated against a person or against a group of persons or property, directly or indirectly, on the grounds of national and social origin, political and religious convictions, social status, gender, race or colour.

15. The 2005 Law on Personal Data Protection prohibits the processing of personal data revealing the religious, philosophical or other beliefs, unless the processing is carried out in the framework of the activities of institutions, associations or any non-profit organizations for political, philosophical, religious, trade union or other purposes, if data processing refers exclusively to their members and such data are not disclosed to third parties without the consent of the data subject. In addition, article 67 of the 2006 Law on Police provides that personal data that are exclusively related to religious belief may not be collected by the police unless exceptionally necessary for a specific investigation.

16. The 2007 Public Holidays Act provides that the religious festivals of Orthodox Christmas and Easter as well as the Islamic Ramazan Bayram shall be public holidays for all citizens of the former Yugoslav Republic of Macedonia and that a number of other religious festivals⁵ are holidays for a particular group of believers only. Similarly, the previous law on public holidays, dating back to 1998, stipulated that Ramazan Bayram and Kurban Bayram were holidays only for citizens of the Muslim faith. In a related judgement, the European Court of Human Rights emphasized that “while the notion of the State sitting in judgement on the state of a citizen’s inner and personal beliefs is abhorrent and may smack unhappily of past infamous persecutions, the Court observes that this is a case where the applicant sought to enjoy a special right bestowed by Macedonian law which provided that Muslims could take holiday on particular days”.⁶ Since the applicant in the case of *Kosteski v. the former Yugoslav Republic of Macedonia* was not prepared to produce any evidence that could substantiate his claim to be a Muslim, the European Court of Human Rights concluded unanimously that there had been no violation of articles 9 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴ See also below the chapter on incitement to religious hatred, paras. 46-48.

⁵ The additional religious holidays are stipulated in article 2 of the 2007 Public Holidays Act, indicating the religious festivals for Macedonian Orthodox Christians (five additional holidays), Muslims (one), Jews (one) and Catholics (three).

⁶ See judgement of the European Court of Human Rights of 13 April 2006, *Kosteski v. the former Yugoslav Republic of Macedonia*, application no. 55170/00, para. 39.

IV. Religious demography

17. The Government informed the Special Rapporteur that, as of May 2008, 11 churches⁷, 7 religious communities⁸ and 2 religious groups⁹ had been put on the public register in accordance with article 9 of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group.

18. In terms of religious demography, the 2002 official census indicates that the Macedonian Orthodox Church has around 1,300,000 believers, which amounts to 65 per cent of the country's population. Less than 2 per cent of the total population are from other Christian communities, including from the Catholic Church (around 7,000 believers), the United Methodist Church (around 1,300 believers) and the Seventh Day Adventist Church (around 500 believers).

19. The second biggest community is the Islamic Religious Community of the Republic of Macedonia with around 674,000 believers. Consequently, Muslims amount to approximately one third of the total population. In addition, the Special Rapporteur was informed of pending applications for separate registration as a religious community by the Bectash community.¹⁰

20. Members of the Jewish Community in Skopje told the Special Rapporteur about the terrible fate their believers had to suffer during the Nazi occupation from 1941 to 1944. Almost the entire Jewish Community, 7,148 people (98 per cent) of the local Jewish population, was deported to Treblinka and killed there in 1943. The Jewish community was restored in December 1944 from almost 50 survivors. According to the 2000 Law on Denationalization, the properties of Jews who were victims of the holocaust and were without legal heirs are transferred to the Fund of Holocaust of Macedonian Jews. At present, more than 70 Jews live in the former Yugoslav Republic of Macedonia, virtually all in Skopje.

21. The Special Rapporteur would like to underscore that higher figures of the number of believers are sometimes indicated by the religious communities themselves, also taking into account believers currently not living or residing in the former Yugoslav Republic of Macedonia.¹¹ Moreover, according to the 2002 official census, around 0.5 per cent of the population is atheist or has not declared any religious affiliation.

22. Many of the Special Rapporteur's interlocutors also pointed to the perceived correlation between ethnicity and religious affiliation, since the majority of Orthodox believers are ethnic Macedonian and the majority of Muslim believers are ethnic Albanian. In addition, they referred to lessons learned following the regional instability, which in

⁷ Macedonian Orthodox Church – Ohrid Archbishopric; Catholic Church in the Republic of Macedonia; Evangelist-Methodist Church in Macedonia; Christian Adventist Church (Seventh-Day Church of Adventists) in the Republic of Macedonia; New Apostolic Church of Macedonia; Christian Adventists Church in Macedonia; Christian Baptist Church “Joyful News”; Evangelist Church in the Republic of Macedonia; Christian Center in the Republic of Macedonia; Church of God in the Republic of Macedonia; and Evangelist-Congressional Church.

⁸ Islamic Religious Community of the Republic of Macedonia; Jewish Community of the Republic of Macedonia; Jehovah's Witnesses – Christian Religious Community; Holy Seat and Crown of the Islamic Erenleric Tarikat Religious Community in Macedonia; Satia Sai Center – Skopje; Vaishna Religious Community; and Proto-Christian Community “Universal Life”.

⁹ Christian Church “Word of Hope”; and the Reform Movement of Seventh-Day Adventists.

¹⁰ See also paras. 40-41 below.

¹¹ Macedonian Centre for International Cooperation, *Address Book of the Religious Communities in Macedonia*, 2004, appendix 3: Differences in the number of believers, p. 33.

2001 contributed to the emergence of an internal armed conflict in the former Yugoslav Republic of Macedonia, with Government forces combating ethnic Albanian opposition groups. The conflict ended with the signing of the Ohrid Framework Agreement on 13 August 2001, providing a framework for addressing the problems that had prompted the armed conflict. This 2001 Agreement was brokered by the international community, which also assisted in post-conflict verification and disarmament.¹²

V. Issues of concern for the mandate

23. The Special Rapporteur would like to highlight some aspects of the status of freedom of religion or belief in the former Yugoslav Republic of Macedonia. In this chapter, she will focus on the following five issues of concern for her mandate: (a) religious instruction in primary schools; (b) religious symbols; (c) the application of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group; (d) places of worship; and (e) incitement to religious hatred.

A. Religious instruction in primary schools

24. Following the enactment of the 2008 Law on Primary Education, an elective subject on religious instruction designed to study substantive tenets of a particular religion was introduced to public primary schools for the school year 2008/09. Alternatively, the pupils could choose a subject about history of religions. However, the Special Rapporteur was informed that pressure was exerted on teachers to have their pupils choose religious instruction rather than the subject on history of religions. Proceedings for the introduction and development of the curriculum on religious instruction as well as the hiring of teaching staff were criticized as non-transparent. In addition, some religious instruction classes reportedly started with prayers and tuition was readily offered for Orthodox Christians and Muslims, but not necessarily for other believers. Furthermore, there were complaints that religious instruction at the primary education level breached the principle of secularity of the State, according to which religious instruction can be organized on a voluntary basis outside the public schools but not in the framework of compulsory primary education.

25. In its judgement of 15 April 2009, the Constitutional Court struck down article 26 of the 2008 Law on Primary Education and thus abolished the possibility of having a subject on religious instruction in primary schools. In its judgement, the Constitutional Court took into consideration the way in which article 26 of the 2008 Law on Primary Education had been implemented since September 2008 and the fact that religious instruction classes were designed to educate pupils about the rules according to which an adherent to that religion should behave. The Constitutional Court emphasized that the State must maintain its neutrality and may not interfere in issues of faith or religious communities or confessional groups, may not motivate adherence to a certain faith, nor may it obstruct the expression of faith and impose religious conformity or demand the practice of religious activities as socially desirable conduct.

26. While this judgement of 15 April 2009 has raised considerable public debate in the former Yugoslav Republic of Macedonia, the Special Rapporteur would like to highlight that it does not in any way impinge upon the freedom to receive religious instruction outside of primary school teachings. The Constitutional Court explicitly referred in its judgement to constitutional amendment VII, which delegated the issue of religious

¹² See the reports by the Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2004/94/Add.2, para. 7 and A/HRC/7/28/Add.4, para. 10).

instruction to the scope of religious communities and confessional groups, within the limits of the freedom to establish religious schools for that end. During the Special Rapporteur's meeting with the President of the Constitutional Court, the latter also confirmed that the judgement of 15 April 2009 only referred to religious instruction at the primary school level, and he emphasized that the content of history of religions could be taught as part of history classes.

27. The Special Rapporteur would like to reiterate that numerous models are being followed throughout the world regarding the teaching of history of religions as well as religious instruction. The Human Rights Committee noted that article 18, paragraph 4, of the International Covenant on Civil and Political Rights permits public school instruction in subjects, such as the general history of religions and ethics if it is given in a neutral and objective way.¹³ The Committee also emphasized that public education, which includes instruction in a particular religion or belief, would be inconsistent with international human rights standards unless provision is made for non-discriminatory exemptions or alternatives accommodating the wishes of parents and legal guardians. Consequently, the judgement of the Constitutional Court of 15 April 2009 is in line with international human rights standards and seeks to protect parents' and children's rights to freedom of religion or belief.

28. Against this background, the Special Rapporteur was astonished by the outrage expressed publicly by certain religious leaders and politicians against the judgement of the Constitutional Court of 15 April 2009. One political party, for example, in a public announcement accused the judges of the Court of delivering verdicts only to the detriment of the government and of acting as "law-makers in the shade", allegedly "abolishing all the laws that they dislike for ideological, political or other reasons". Furthermore, some judges of the Court were described in that announcement as "puppets, who are anonymous for the wider public and who have never appeared before the citizens to get their trust". The Special Rapporteur would like to stress the importance of fully respecting the judiciary's independence and of providing accurate information, especially about contentious judgements regarding religious issues through the media to the public.

29. Several of the Special Rapporteur's interlocutors confirmed that the Constitutional Court has had an important impact throughout the past decade on the interpretation of freedom of religion or belief and equal treatment of all believers. In 2000, the Court concluded that the State could not interfere in religious matters, whether to stimulate religious affiliation or to prevent the expression of a religious conviction.¹⁴ In another judgement, it emphasized that the State and its bodies, without any exception, must remain neutral in order to allow a citizen to choose freely whether or not to accept a certain religion, to profess it and to take part in religious rituals.¹⁵ The Special Rapporteur welcomes such clarifying decisions from bodies which are tasked to protect the constitutionality and legality at the domestic level. In the same line, the Human Rights Committee also emphasized, in its general comment no. 22, that freedom of religion or belief is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. Furthermore, the Committee stressed that article 18 of the International Covenant on Civil and Political Rights did not permit any limitations whatsoever on the freedom to have or adopt a religion or belief of one's choice and that no one could be compelled to reveal his thoughts or adherence to a religion or belief.

¹³ Human Rights Committee, general comment no. 22 (1993) on freedom of thought, conscience or religion; see *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40* (A/48/40), vol. I, annex VI, para. 6.

¹⁴ Constitutional Court, judgement 195/1999-0-0 of 19 April 2000.

¹⁵ Constitutional Court, judgement 42/2003-0-0 of 5 November 2003.

B. Religious symbols

30. The issue of wearing religious symbols, especially headscarves, at schools is another contentious issue in the former Yugoslav Republic of Macedonia. The recent public debate was triggered by the decision of the mayor of Tetovo to dismiss the director of a secondary school of economy, because the director had not allowed a first-year female student to wear a headscarf at school. Subsequently, the State Education Inspectorate assessed that the mayor had no right to dismiss the school director and that the latter should be reinstated as soon as possible. The Inspectorate emphasized that it was not disputing the girl's right to wear a headscarf, however, it referred to the school's rules adopted by the parents' council, according to which students are forbidden to wear religious symbols at the school. Reacting to this decision, the Islamic Religious Community argued that the pupils' rights to religious freedom should be observed and that the school rules should be amended accordingly. The use of religious symbols is reportedly becoming more obvious at schools and it is estimated that up to 3 per cent of female students wear Islamic apparel at high schools and universities.

31. For an analysis of the applicable legal framework and international case law with regard to religious symbols, the Special Rapporteur would like to refer to her report submitted to the Commission on Human Rights at its 62nd session (E/CN.4/2006/5, paras. 36-60). She would like to reiterate that freedom of religion or belief may be invoked both in terms of the positive freedom of persons who wish to wear or display a religious symbol and in terms of the negative freedom of persons who do not want to be confronted with or coerced into it. On the one hand, the right to education of pupils who have been expelled for wearing religious symbols and also the rights of parents or legal guardians to organize life within the family in accordance with their religion or belief may be at stake. On the other hand, the State may invoke the denominational neutrality of the school system and the desire to preserve religious harmony in schools. However, any limitation must be based on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others, it must respond to a pressing public or social need, it must pursue a legitimate aim, and it must be proportionate to that aim.

32. The perceived vulnerability of the persons involved should be taken into account and in all actions concerning children, the best interests of the child should be a primary consideration, in accordance with article 3 of the Convention on the Rights of the Child. There may also be peculiarities of certain institutional settings, as already pointed out by the then Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, Arcot Krishnaswami, in his 1959 study of discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/200/Rev.1, p. 33): "A prohibition of the wearing of religious apparel in certain institutions, such as public schools, may be motivated by the desire to preserve the non-denominational character of these institutions. It would therefore be difficult to formulate a rule of general application as to the right to wear religious apparel, even though it is desirable that persons whose faith prescribes such apparel should not be unreasonably prevented from wearing it."

33. If a policy decision has been taken at the national level to interfere with the freedom to manifest one's religion or belief with regard to wearing religious symbols, issues of proportionality and religious tolerance need to be thoroughly respected. In this regard, the Special Rapporteur would like to reiterate that the following questions should be answered in the affirmative: Was the interference, which must be capable of protecting the legitimate interest that has been put at risk, appropriate? Is the chosen measure the least restrictive of the right or freedom concerned? Was the measure proportionate, i.e. balancing of the

competing interests? Would the chosen measure be likely to promote religious tolerance? Does the outcome of the measure avoid stigmatizing any particular religious community?¹⁶

C. Application of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group

34. The Special Rapporteur was encouraged by the reforms made in the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group. It is a significant improvement on the 1997 Law on Religious Communities and Religious Groups, even in comparison to the legal situation after the Constitutional Court had removed in 1998 and 1999 the previous law's most restrictive provisions owing to their unconstitutionality. The 2007 law itself is fairly liberal, and experts from the Advisory Council on Freedom of Religion or Belief of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)¹⁷ and from the European Commission for Democracy through Law (Venice Commission)¹⁸ provided several useful comments during its elaboration.

35. The Special Rapporteur would like to emphasize that the 2007 law is in line with international human rights standards. However, its implementation has so far not been streamlined, for example with regard to registration issues and reportedly small religious communities face obstacles in practice when applying for building permits for their places of worship. During the universal periodic review of the former Yugoslav Republic of Macedonia by the Human Rights Council in May 2009, one of the recommendations made was for the Government to monitor the implementation of the legislation concerning freedom of religion with a view to ensuring full enjoyment of the freedom to practice one's religion by all religious communities and groups in the country (A/HRC/12/15, para. 77). This recommendation was also accepted by the Government of the former Yugoslav Republic of Macedonia in September 2009 (see A/HRC/12/15, para. 1).

36. With regard to the terminology of the 2007 law, the Special Rapporteur asked her interlocutors whether there would be a legal or de facto distinction between a church, a religious community and a religious group. During her meeting at the Ministry of Justice, the Special Rapporteur was informed that churches, religious communities and religious groups were all equal before the law and that the different terms used in the 2007 law gave the various entities a liberty to choose between these categories. Article 2 of the 2007 law gives a common definition for churches, religious communities and religious groups to be "voluntary communities of natural persons who on the basis of their religious conviction and sources of their teaching exercise the freedom of religion, united by the religion and identity manifested in the same conduct of religious service, prayer, rites and other forms of manifestation of one's religion".

37. However, according to article 35 of the 2007 law, all churches, religious communities and religious groups registered by the body competent for relations between the State and religious communities until 1998 shall maintain their existent legal personality and status. In this regard, members of civil society raised their concerns that the 1997 Law on Religious Communities and Religious Groups used to differentiate between registered religious communities and other religious groups, which in practice might still

¹⁶ See E/CN.4/2006/5, para. 58.

¹⁷ See OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, opinion No. FoRB – MK/033/2005 (Adv Council on FoRB/AC/MASz) of 7 July 2005; Opinion-Nr.: REL - MK/062/2006 (Adv Council on FoRB) of 3 May 2006.

¹⁸ See European Commission for Democracy through Law (Venice Commission), opinion No. 424/2007, CDL(2007)019 of 13 March 2007 and CDL(2007)005 of 22 March 2007.

lead to discriminatory differentiation between “established churches”, “religious communities” and minority “religious groups”. Consequently, only 18 of 24 communities were reregistered automatically. The Special Rapporteur is concerned that the 1998 cut-off date for maintaining existent legal personality pursuant to article 35 of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group seems to be arbitrary. In addition, while the Constitution also refers to “other religious communities and religious groups”, it explicitly names only five communities in its amendment VII, thus establishing an implicit hierarchy.

38. By letter of 18 December 2009, the Government informed the Special Rapporteur that 4 applications for registration of churches,¹⁹ 4 applications for registration of religious communities²⁰ and 16 applications for registration of religious groups²¹ have been filed since 1 May 2008, of which five applications have been granted so far. Several interlocutors informed the Special Rapporteur during her mission about implementation problems with regard to the new registration procedures under the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group. These problems refer to the lack of resources and attention being devoted to registration applications, despite the tight deadlines provided for in articles 12 to 14 of the law. In addition, the law has allegedly been interpreted widely to include a possibility for the judge to study outside materials to ensure that the sources of teaching and liturgy for any new applicant are different than for any existing registered church. However, its article 10 only requires that the name and official insignia of a church, religious community and a religious group shall be different from the names and official insignia of already registered churches, religious communities and religious groups.

39. Intra-religious frictions between different streams have led to practical problems, especially for smaller or schismatic religious communities when they seek a separate registration with the competent State authorities. In 2004, for example, the Commission for Relations with Religious Communities and Religious Groups denied as ill-founded the application for registration of the “Orthodox Archbishopric of Ohrid”. In reasoning its decision, the Commission stated that the request for registration of the religious group “Orthodox Archbishopric of Ohrid” was only formal cover for the organization and activity of a parallel religious community. The Commission argued that the name “Orthodox Archbishopric of Ohrid” contained the name of the existing religious community “Macedonian Orthodox Church” and was therefore contrary to the statutory provision applicable at that time which stipulated that the name of a new religious group should differ from the names of already registered religious communities.²² Following an appeal, the Second Instance Government Commission confirmed the decision of the first instance body. This registration practice has been criticized by civil society organizations as undue interference by the State, ultimately protecting church monism and thus providing exclusivity of Orthodoxy on the territory of the former Yugoslav Republic of Macedonia. The case is currently pending at the level of the European Court of Human Rights.

¹⁹ Two applications for registration of churches were rejected due to the lack of complete documentation, one application was granted and one application was withdrawn.

²⁰ One application for registration of religious communities was rejected and three applications were withdrawn.

²¹ Four applications for registration of religious groups were rejected as unfounded, seven applications rejected due to the lack of complete documentation, four applications were granted and one application was withdrawn.

²² Article 12, para. 1, of the 1997 Law on Religious Communities and Religious Groups; see also article 10, para. 1, of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group.

40. There are also reports about friction between different Muslim groups in the former Yugoslav Republic of Macedonia. On the one hand, the Special Rapporteur was informed that the Islamic religious community “regards the Bectash Dervish Order as its integral part and the registration of the Bectash religious community as invalid and legally unsubstantiated”.²³ On the other hand, the Bectash community indicated that it was a separate religious group which had been operating since the 15th century when the foundations of the Dervish Bectash monastery “Harabati Baba Teke” were laid. In 2000, it was allegedly registered by the Commission for Relations with Religious Communities and Religious Groups. However, since it had not already been registered in 1998, the Bectash community does not automatically maintain its legal personality and status pursuant to article 35 of the 2007 Law on the Legal Status of a Church, a Religious Community and a Religious Group. The recent requests for registration of the Bectash community were reportedly rejected in 2009.

41. In general terms, the Special Rapporteur would like to refer to the reasoning by the European Court of Human Rights in the case of *Metropolitan Church of Bessarabia and Others v. Moldova*.²⁴ The Court emphasized that the State had a duty to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and beliefs. Furthermore, State measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, would constitute an infringement of the freedom of religion. The Court also stressed that the right of believers to freedom of religion, which includes the right to manifest one’s religion in community with others, encompassed the expectation that believers would be allowed to associate freely, without arbitrary State intervention. In the recent case of *Mirolubovs and others v. Latvia*,²⁵ the European Court of Human Rights reaffirmed that the autonomy of religious communities was an essential component of pluralism in a democratic society, where several religions or denominations of the same religion coexisted. While some regulation by the authorities was necessary in order to protect individuals’ interests and beliefs, the State had a duty of neutrality and impartiality which barred it from pronouncing itself on the legitimacy of beliefs and their means of expression.

D. Places of worship

42. The Special Rapporteur is concerned about reports she received of sectarian violence and incidents of damage to some places of worship. Such acts are usually perpetuated by non-State actors and target the properties of religious minorities, both of registered and unregistered communities. The Special Rapporteur’s interlocutors also presented cases in which the local police had allegedly been reluctant to intervene and stop attacks against properties of religious minorities. Their believers also encountered problems in seeking compensation for the related loss and consequently had to meet for several years in a rented place which was not necessarily suitable for purposes of worship.

43. Representatives of religious minorities also shared their concerns about administrative problems and de facto obstruction they faced in seeking official permission for building new places of worship. When applying for such building permits, they

²³ Macedonian Centre for International Cooperation, *Address Book of the Religious Communities in Macedonia*, 2004, p. 32 (available online at <http://mcms.powweb.com/MSM/eng/pdf/adresar-naverski-zaednici-ENGL.pdf>).

²⁴ See European Court of Human Rights’ judgement of 13 December 2001, application no. 45701/99, paras. 116-118.

²⁵ European Court of Human Rights, judgement of 15 September 2009, application no. 798/05.

allegedly underwent numerous bureaucratic procedures, which resulted in long waiting periods for the necessary documentation, and intervention from the local community which is against such projects. The relevant authorities often reject applications for building permits by religious minorities arguing that the development plan does not foresee a religious building on this piece of land. However, the small religious communities claim that the development plans often do not provide any such designated areas at all, which obviously adversely affects their possibility to manifest their religion or belief in worship, observance, practice and teaching.

44. Some members of religious minorities reportedly also face discrimination when they wish to bury family members. This problem is aggravated if the deceased previously belonged to a different religious community, whose leadership then objects to a burial in a particular part of a municipal cemetery. Although the local authorities have to take care of the cemeteries in a non-discriminatory manner, the Special Rapporteur was informed that the two biggest religious communities in practice behave as if they were the sole owners of the cemeteries even if the members of the religious minority have their family graves in this area and have paid for burial places there.

45. On a more positive note, the Special Rapporteur welcomes the policy of denationalization of assets belonging to religious communities. A number of religious communities have already benefited from the 2000 Law on Denationalization. For instance, the religious properties that belonged to the Jewish community were restituted in 2002 and, through an agreement concluded in December 2007, the Government also restituted heirless Jewish property in the country. However, the claims of some other religious communities remain pending to this day. The Special Rapporteur would like to stress that religious sites and places of worship have an emotional and spiritual significance for the believers. It is therefore important to resolve these issues in a sensitive and transparent manner. In this regard, the controversy concerning the reconstruction of the Carshiya mosque in Prilep, which was built in the 15th century and destroyed in 2001 during the internal armed conflict, is one example that needs to be looked into. In addition, the above-mentioned intra-religious tensions often also relate to places of worship and related ownership issues, which requires a careful and neutral assessment by all relevant authorities and courts.

E. Incitement to religious hatred

46. The Special Rapporteur is concerned about the number of reports she has received regarding expressions of incitement to racial or religious hatred, which contribute to creating a climate of intolerance and threaten the security of individuals. According to the information received by the Special Rapporteur, reports that were filed by members of religious minorities concerning concrete cases of incitement to violence against them were not followed up by the local authorities. Impunity in cases of incitement to religious hatred unfortunately emboldens forces of bigotry. In an otherwise tolerant society, the Special Rapporteur was saddened to learn that there have been some cases of mob violence, threats and extreme forms of pressure against members of religious minorities.

47. The Special Rapporteur also received information that the vague formulation of article 319 of the Criminal Code to combat incitement of national, racial or religious hatred, discord and intolerance was allegedly misused against a particular religious leader, Bishop Jovan (Zoran Vraniskovski).²⁶ In 2004, the domestic courts of first and second instance held

²⁶ See the related allegation letters sent by the Special Rapporteur on 13 October 2003 and 15 March 2004 (E/CN.4/2004/63, para. 48 and E/CN.4/2005/61/Add.1, para. 241) as well as the Government's reply of 26 January 2004 (E/CN.4/2005/61/Add.1, paras. 242-257).

that, in leaving the Macedonian Orthodox Church and establishing the “Orthodox Archbishopric of Ohrid”, the accused had created a schism causing religious hatred, discord and intolerance. Consequently, they sentenced Bishop Jovan to 18 months of imprisonment for undermining the position of the Macedonian Orthodox Church, conducting a service of worship in a private flat and distributing a calendar that offended the religious sentiments of the citizens. An opinion by the OSCE/ODIHR Panel of Experts on Freedom of Religion or Belief expressed concerns about the judgement’s approach which seemed to suggest that any form of religious activity that has the effect of challenging the legitimacy and supremacy of the Macedonian Orthodox Church as the dominant religion was to be considered as causing religious hatred.²⁷ In addition, according to the ODIHR opinion, the fact that Bishop Jovan had conducted religious services that prompted a hostile response by opposing believers could not amount to the commission of the criminal offence of incitement to religious hatred. Subsequently, the Supreme Court partially accepted Bishop Jovan’s appeal with regard to his freedom to perform religious rites, and reduced his prison sentence to eight months.

48. The risk that legal provisions prohibiting hate speech are interpreted loosely and applied selectively by the authorities underlines the importance of having unambiguous language and of devising effective safeguards against abuses of the law. With regard to the formulation of article 319 of the Criminal Code, the Special Rapporteur is concerned that this offence can be committed, inter alia, “in any other manner that causes or incites to national, racial or religious hatred, discord and intolerance”. The loose wording of article 319 of the Criminal Code throws the net too wide; for example, “any other manner” could possibly include scholarly remarks, genuine dissent or grievance against specific religious tenets. The legal uncertainty triggered by the formulation of article 319 of the Criminal Code may have a chilling effect on the willingness of individuals to exercise their freedom of expression as well as their freedom of religion or belief, for example by changing their religion or manifesting religion or belief in worship, observance, practice and teaching. In addition, an overreaction against the utterances of a person by any individual or group cannot constitute justification for penalizing such an expression unless the threshold of article 20, paragraph 2, of the International Covenant on Civil and Political Rights is crossed. The Special Rapporteur would like to emphasize that the ultimate goal is to find the most effective ways for the State to protect individuals against advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

VI. Conclusions and recommendations

49. The former Yugoslav Republic of Macedonia is a multi-ethnic, multicultural and multi-religious society. During her country visit, the Special Rapporteur noted that there is by and large a high level of tolerance in its society and that the Government has shown respect for religious diversity and freedom of religion or belief.

50. The Special Rapporteur is mindful of the fact that this country is a young democracy which has gone through a number of challenges, including the internal armed conflict in 2001. While that conflict was mainly fought along ethnic lines, she was repeatedly told by her interlocutors that there was also a certain element of religious tension involved. Ethnicity and religion are separate identities, yet they do

²⁷ See para. 8 of the *Opinion on the Case of Bishop Jovan (Zoran Vraniskovski)*, Opinion-Nr.: FoRB - MK/035/2005 (Expert Panel on FoRB/IU), 27 July 2005, available at www.legislationline.org/documents/id/1958.

often overlap and the situation in the former Yugoslav Republic of Macedonia is another case in point.

51. The country's diversity is one of its strengths and the Special Rapporteur welcomes the fact that interfaith meetings are held regularly at the domestic level. Furthermore, the Government's initiative in organizing the October 2007 World Conference on Dialogue among Religions and Civilizations is another indication of its commitment to enhance freedom of religion or belief. At the conference, spiritual leaders and representatives of the religious communities and denominations from 50 different countries adopted a final declaration on the contribution of religion and culture to peace, mutual respect and cooperation.²⁸ The participants stated that the creation of broad inter-civilization cooperation, based on the principles of mutual respect and esteem, may contribute to the creation of preconditions for understanding other religions. They strongly condemned all forms of religious violence and its justification. Dialogue, mutual understanding and respect pointed to the need to mobilize political and spiritual leaders, intellectuals and all other social actors. Therefore, the commitment to dialogue among different civilizations and religions was at the same time a commitment against terrorism and instability. Finally, the participants stressed the high importance of the empowerment of women.

52. However, some issues of concern remain to be addressed in the former Yugoslav Republic of Macedonia (see paras. 23-48 above). Shortly before the Special Rapporteur's visit in April 2009, several contentious issues arose in the domestic public debate, for example concerning religious instruction in primary schools, the wearing of religious symbols and the construction of places of worship. There is a risk that these issues may be used to divide and polarize the different communities. The Special Rapporteur wishes to remind all actors that religion should not be used to separate the country's society.

53. In addition, the Special Rapporteur would like to emphasize that, according to the Constitution, religious communities are separate from the State and equal before the law. In view of these constitutional provisions and related obligations under international human rights law, the Government has a delicate role to play: it must ensure that the principles of equality and non-discrimination are upheld and, at the same time, it must allow autonomy to religious communities. It must also have an even-handed approach when granting official status to all communities and yet protect the rights of all individuals, whether they are theistic, atheistic or non-theistic believers. A number of the Special Rapporteur's interlocutors pointed to the perception that the Macedonian Orthodox Church and the Islamic community wield considerable political influence, and that these two largest registered religious communities in the country were able to make inroads to the constitutional concept of separation of State and religion. They also voiced their concern that the links between religion, politics and nationalism were increasingly being stressed in public debate.

54. Governments have a primary obligation to protect individuals from acts of religious intolerance and discrimination. An informed public opinion needs to be created through monitoring as well as advocacy of human rights. Civil society can also contribute to create awareness on human rights issues, including those concerning freedom of religion or belief. According to the Special Rapporteur's experience throughout her mandate, legislation alone cannot create an atmosphere of social harmony and mutual trust. On the contrary, hasty legislation on matters of freedom of religion or belief may even lead to polarizing society along religious lines.

²⁸ Available online at the address www.wcdarc-ohrid.org.

55. The Special Rapporteur is conscious of the fact that religious instruction at public schools may raise all forms of controversy in many societies. In this regard, she would like to make a distinction between religious instruction and the teaching of history of religions. From a human rights perspective, the latter is less problematic provided that classes on history of religions are given in a neutral and objective way. The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools²⁹ provide practical guidance for preparing curricula for teaching about religions and beliefs, as well as preferred procedures for assuring fairness in the development of such curricula. However, public education, which includes instruction in a particular religion or belief, is only consistent with article 18, paragraph 4, of the International Covenant on Civil and Political Rights if provision is made for non-discriminatory exemptions or alternatives accommodating the wishes of parents and legal guardians.

56. The Special Rapporteur would like to emphasize that it is vital that the independence of the judiciary be fully respected and that courts be able to adjudicate upon religious matters without fear or favour. In this regard, she wishes to remind those religious leaders and politicians who publicly voiced their outrage about the recent judgement of the Constitutional Court concerning religious instruction in public schools that an independent judiciary is crucial to safeguard freedom of religion or belief and ultimately as a foundation for democratic governance. The Special Rapporteur welcomes the Government's affirmation during the universal periodic review session held in September 2009 that the promotion of the judiciary's independence and efficiency remain its major priorities (A/HRC/12/15/Add.1, para. 36).

57. With regard to the issue of wearing religious symbols, especially in public schools, the Special Rapporteur would like to emphasize that each case has to be decided according to its own circumstances. In general, however, restrictions on the wearing of religious symbols should not be applied in a discriminatory manner. Limitations must be directly related and proportionate to the specific need on which they are predicated. The burden of justifying a limitation upon the freedom to manifest one's religion or belief lies with the State. The chosen measures should promote religious tolerance and avoid stigmatizing any particular religious community. Furthermore, the principles of appropriateness and proportionality need to be thoroughly respected both by the administration and during possible legal review.

58. With regard to intra-religious tensions both within the Orthodox Church and within the Islamic community, the Special Rapporteur would like to remind the Government of its obligations to remain neutral and non-discriminatory, especially concerning the registration procedure. As outlined in her report submitted to the Commission on Human Rights (E/CN.4/2005/61, para. 58), registration should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. In the latter case, registration procedures should be easy and quick, and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed. Registration should not depend on reviews of the substantive content of the belief, the structure or the clergy. In addition, no religious group should be empowered to decide about the registration of another religious group.

²⁹ Prepared by the OSCE/ODIHR Advisory Council of Experts on Freedom of Religion or Belief, available at the address www.osce.org/publications/odihr/2007/11/28314_993_en.pdf.

59. Concerning places of worship, the Special Rapporteur would like to refer to General Assembly resolution 55/254, in which the Assembly calls upon States to exert their utmost efforts to ensure that religious sites are fully respected and protected in conformity with international standards and in accordance with their national legislation, and to adopt adequate measures aimed at preventing such acts or threats of violence. Furthermore, States, relevant intergovernmental and non-governmental organizations and the media are encouraged to promote, inter alia, through education, a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind.

60. The Special Rapporteur is also concerned at reports received regarding sectarian violence and incitement to religious hatred. In this regard, she would like to distinguish between the expression of opinions even when they are deemed offensive by some believers, and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. While freedom of expression has to be respected, hate speech must be prohibited by law if it reaches the threshold of incitement to religious hatred described in article 20, paragraph 2, of the International Covenant on Civil and Political Rights. In order to protect the integrity of individuals, hate speech must not be tolerated. However, each case has to be examined on its own merits so that freedom of expression and freedom of religion or belief are not undermined. In this regard, the judiciary plays a vital role in striking a delicate balance on a case-by-case basis. In view of the vague formulation of article 319 of the Criminal Code, the Special Rapporteur would urge the Government to review this provision with a view to prevent any arbitrary interpretation and application by the authorities. Legislation or policies designed to combat religious discrimination should be all-inclusive, carefully crafted and implemented in a non-biased manner to achieve their objectives (A/HRC/10/31/Add.3, para. 24).

61. Despite the above-mentioned concerns, the Special Rapporteur remains optimistic that a continuing debate on freedom of religion or belief in the former Yugoslav Republic of Macedonia will contribute to a higher level of understanding and mutual respect between different religious communities and individuals, including non-theistic and atheistic believers.

62. The Special Rapporteur would like to emphasize the importance of confidence-building measures in order to address the concerns of the different communities. To foster a climate of religious tolerance, political and religious leaders should take a human rights-based approach and clearly affirm the importance of the right to freedom of religion or belief in all its dimensions. In addition to legislation, States have several tools at their disposal to counter religious intolerance, for example by giving space for dialogue, encouraging public figures to make statements denouncing acts of intolerance and providing quality education. These approaches need to be inclusive also in terms of the religions or beliefs covered. Above all, the rule of law and the functioning of democratic institutions are prerequisites for the effectiveness of these strategies, which seek to encourage real dialogue and understanding.
