

HUMAN RIGHTS IN BULGARIA AFTER THE OCTOBER 1991 ELECTIONS

Introduction

The parliamentary and municipal elections held on October 13, 1991, were won by the Union of Democratic Forces (UDF), which has 45.8 percent of the seats in the present Parliament. The former Communist, now Bulgarian Socialist Party (BSP), which controlled the first post-Communist constituent parliament with a close majority, gained 44.2 percent of the seats. The third political formation in Bulgarian politics, the Movement for Rights and Freedoms (MRF), the political organization of the overwhelming part of Bulgarian Turks, of part of the Muslim Bulgarians (Pomaks) and part of the Roma won 10% of the seats. The new, one-party UDF government relied on the MRF support in parliament, and had to face BSP opposition.

The government immediately declared its willingness to observe all international human rights standards. A number of human rights instruments were signed and ratified, further improving Bulgaria's record of a country which has joined almost all important international human rights conventions. On December 10, 1991, Parliament voted a law to ratify the *Optional Protocol to the International Covenant on Civil and Political Rights* authorising complaints by individuals. On May 5, 1992, the *Convention and Protocol* relating to the Status of Refugees was ratified. On July 31, 1992, a law ratifying the *European Convention for the Protection of Human Rights and Fundamental Freedoms* signed in May was passed, as well as its *Optional Protocol No.1*. The government made declarations on Article 25 and Article 46 of the *Convention*, recognizing the competence of the European Commission on Human Rights to consider individual complaints, and accepting compulsory jurisdiction of the European Court for Human Rights.

Progress was made on a number of practical problems, in particular related to the rights of Bulgarian Turks, and efforts to allocate responsibility, including criminal liability, for past human rights abuses. In spite of this progress, a number of serious human rights problems continue to exist in Bulgaria. On certain points the situation has even deteriorated as compared to the pre-election period. The negative tendencies were the result of both the passivity of the government in cases of human rights violations that continued to exist, and new policies that have contributed to additional situations of non-compliance with international norms.

1. Minority Rights

After the October 1991 elections, when the Movement for Rights and Freedoms with its 24 MPs became the third-strong political force in Bulgaria and the decisive factor in the parliamentary support of the new cabinet, the country's minority rights' record (especially with respect to Bulgarian Turks) improved. Optional Turkish-language education has been introduced in public schools. (The programme demands of the MRF did not ever go farther since the time of its formation). A significant number of MRF members were elected in the local administrative bodies: more than 1,000 municipal counsellors, 27 municipal mayors and 650 town and village mayors. Kurdjali, the main city in the region most densely populated by ethnic Turks elected a Turkish mayor. The circulation of religious and other minority literature (including newspapers) increased. Bulgarian radio and Bulgarian TV have started preparing for Turkish-language broadcasts. Action also has been taken on the critical question of the restoration of the property of the Bulgarian Turks. Two Council of Ministers' decrees issued before the October elections tried to solve the problem with the restoration of the homes of Bulgarian Turks who left the country or made efforts to leave for Turkey during the May-September 1989 expulsions. Property bought by the state, municipalities or public organizations was made available for restoration. The restoration policy was also incorporated

in a law passed July 31, 1992. Under this statute homes of families which later came back from Turkey or those who sold their homes but didn't manage to leave because of the closing of the border, were restored in all cases when the sale (or forced sale) took place before September 1989.

Progress also has been made with respect to some other minority groups though for the most part improvements along these lines began before the October elections. Cultural organizations of the Turks, Armenians, Roma, Jews, Karakachani were permitted to function freely. The Supreme Court overturned the decision of the Vidin district court which refused to register the cultural organization of the Wallachians. The organization of the Armenians, "Erevan," succeeded in restoring the Armenian School in Plovdiv. In Sofia more than 120 Jewish children started to attend a Sunday Jewish school, but the property on the schools, belonging to the former Jewish community, is still not restored. The Ministry of Education organized Hebrew classes in one of Sofia's primary schools which is located on former property of the Jewish community.

Despite these positive developments, some serious minority problems from the past, as well as new ethnic tensions must be noted. Many of these ethnic difficulties stem from economic problems caused by the process of transition, the burden of which falls in many cases on minority groups. Actions and omissions by the new government also contributed to continued minority rights violations.

The new Bulgarian *Constitution* limits the right of association and applies discriminatory standards banning parties formed on "ethnic, racial or religious basis" (Article 11, para.4).¹ It also bans the political activity of "citizens' associations", including trade unions (Article 12, para.2), but until recently there was no legislative act to specify this ban. On the basis of Article 11, para.4 of the *Constitution* the Democratic Roma Union (one of the Roma organisations), as well as UMO "Ilinden" (the organization of Macedonians) were denied a political party status before the October elections. Since October these organizations have not applied again for registration. Using the same constitutional basis, a group of deputies has attacked the constitutionality of the Movement for Rights and Freedoms, as well as the election of its deputies to the national assembly. On April 21, 1992 the Constitutional Court issued a six to five non-verdict (seven votes are needed for a decision under the *Constitution*). This non-verdict retained the status quo. It did not preclude the participation of MRF in the political process and the election of its deputies remained unhampered. However, the absence of a decision reaffirming the political rights of the MRF under the *Constitution* leaves the problem of minority rights unresolved. It also leaves open the possibility of further challenge to the association rights of the Bulgarian Turks and questions their ability to participate in the political process on a free and open basis. Both the majority and the dissenting opinions of the Constitutional Court introduced the idea that the "basis" of a party, falling under the restriction of Article 11, para.4, is determined not only by its membership, but also by its voters - a position which opens a possibility for arbitrary decisions of the courts and empowers official institutions to interfere in the right to choose beyond the framework of the constitutionally guaranteed secret ballot.

There have also been a number of administrative and practical actions that have produced discrimination against some minority groups, especially in the sphere of labor relations. There are no official statistics for cases brought under Article 8, para.3 of the *Labor Code* (for complaints of discrimination, including on an ethnic basis). But complaints, especially those from Roma, are widespread. According to some polling data, about 70-80% of Roma of

¹ This ban appeared for the first time in Bulgaria under dramatic circumstances in January 1990 in a declaration of the "Public Council on the National Issue". From this declaration it passed, almost unchanged, consequently in the Political Agreement between the then authorities and UDF at the Round Table talks, in the *Political Parties Act* and in the *Constitution*, adopted on July 12, 1991.

working age are presently unemployed. One of the reasons for this is that Roma tend to be discriminated. (The other reason is the lower qualification, itself a result of discrimination for years in the past). Complaints were also registered against the segregation in the school system. It is a wide-spread practice to establish "Gypsy schools" in the regions, populated by Roma, simultaneously giving a opportunity to Bulgarian children from the same regions to study in other schools and blocking access of the Roma children to schools outside the regions.

The problems with the Roma are presently the top minority problem in Bulgaria. The large unemployment, the progressive degradation of all spheres of their life pushes some of them towards criminal activities. They are often charged for committing thefts of personal and public property. Conflicts between Roma and the neighbouring population are becoming ever more frequent - all this on the background of the enmity of the central and local press. After the October 1991 elections, several dramatic clashes occurred between the police forces and local groups of Roma. The heaviest clashes took place in the cities Pazardjik, Haskovo, and in the residential district Stolipinovo in Plovdiv. In at least two cases, the clashes were followed by organized police raids in which innocent people were involved.

In the evening of June 28, 1992, there was a skirmish between a group of Roma and several local policemen in the Roma neighbourhood in the town of Pazardjik, after several Roma had entered the police orchard, located right next to the Roma neighbourhood, to pick cherries. The outcome of the skirmish was several policemen hurt by thrown stones and two Roma, wounded after the police had used firearms. The next morning, June 29, upon order of the Regional Director of Interior in Pazardjik, under the pretext of performing an identity check and search for weapons, a violent attack was staged against part of the Roma neighbourhood, with the obvious aim to punish a whole group of people for the misdeeds of only a few of them. Students from the local police school were mobilized, and there was additional support by policemen from the neighbouring town. Doors, windows and other furniture was broken. People were heavily beaten. Nasko Iliev Angelov was first beaten, after which his leg was broken with a hammer in the presence of his wife and children. Georgi Assenov Jurtoev was taken unconscious to the hospital, after he has been beaten "for edification". The inhabitants of one of the houses were pushed to stand alongside a wire fence, as if to be "shot down" with machine-guns pointed at them while the identity check was carried out. During the next several days, downtown Pazardjik was systematically "cleansed" from Roma. Physicians refused to issue medical certificates to people who asked for them. The doors of a hospital were blocked by policemen to cut off all entry of Roma.

On July 5, 1992, in the town of Haskovo after a complaint filed by local citizens, the police made an effort to prevent a Muslim religious ceremony "mevlid" in the Roma neighbourhood of the town. The ceremony involved preaching and music, for which the local mosque had rented amplifiers. A police patrol ordered the amplifiers to be taken away and threatened the organizers that they would be punished for disturbing the public order. The attempt of the police to detain one of the participants in the ceremony caused a clash between the police patrol and a group of Roma. Finally the Roma were dispersed by policemen and soldiers from the nearby tank unit who had been called for support. Bisser Veleev was arrested and later beaten in the police department. Meanwhile additional police forces were mobilized, as well as a special public disorder police unit. After the conflict was over a punitive raid was carried out in the neighbourhood, as well as against a group of Roma which had come to make a peaceful protest in front of the police department. Several people were beaten on the streets and in their homes, others were threatened and verbally insulted.

With respect to the organisations of Macedonians, some progress has been registered. On June 29, 1992 the Traditional Macedonian Organisation (TMO) "Ilinden," an organisation representing the moderate part of the Macedonian movement, was registered in Sofia. However, the other organisation of Macedonians in Bulgaria, United Macedonian

Organisation (UMO) "Ilinden," was refused registration even as a private association before the October elections. Both groups are believed to have some influence among 10-15 thousand Bulgarian citizens identifying themselves as Macedonians. Their official membership, however, is much less. The courts refused registration of UMO "Ilinden" because the organization's goals were considered to be "separatist" and in violation of the *Constitutional* prohibition against groups and actions promoting ethnic and religious conflicts. In some of the public statements of its leaders, as well as in official declarations, the "Bulgarian troops" in the Pirin region were labelled an "occupation army" and their withdrawal was demanded. Though UMO "Ilinden" abandoned at its conference on November 23, 1991 some radical separatist statements included in its platform, the Government continued the tough policy of its predecessors towards the organization. This policy can be seen not only in the public declarations of officials stating that this organization was "illegal", because it is not registered, but also in practical steps of the authorities against its activities. In April 1992, the Mayor of Sandanski issued an order prohibiting the celebration of the anniversary of the death of Yane Sandanski (one of the legendary Macedonian heroes) which UMO "Ilinden" wanted to organize. On April 19 the police dispersed by force the rallies of the organization in Rozhen and in Melnik. The Prosecutor General of the Republic, Mr. Ivan Tatarchev participated in person. A similar public rally of the organization was barred on August, 2 1992. To bar the celebration of the anniversary of the uprising for the liberation of Macedonia from the Turks in 1903, the police blocked the locality Samuilova Krepost near the town of Petrich and stopped the organization's activists from going there. The Prosecutor General Tatarchev and the Defence Minister Staliiski participated in person.

2. Discrimination Based on Political Opinion

Under the Communist regime differences of opinion were not tolerated. During the first years of its establishment in the country, political and ideological differences were the primary targets of attack. But after the early 1970s, and following the party directive for building a "socially homogenous society," ethnic difference became the main target. These attacks included the forceful renaming of the Pomaks during 1972-73 and culminated in the violent 1984-85 coercive name-changing campaign against the Bulgarian Turks.

Bulgaria was a party to almost all international human rights' conventions at that time. Their anti-discriminatory clauses presupposed legislative protections against discrimination in the relevant domestic law. The *Labor Code* of 1986 has a general anti-discriminatory clause which bans discrimination based on nationality, origin, religion, sex, race, social and material status in the process of exercising all labor rights (Article 8, para.3). However, the text contains no provision banning discrimination based on political opinion. With the amendments to the *Labor Code* which were included in the agenda of the new parliament as late as July 1992 such a clause was envisaged. The law introducing the respective provision was passed in September-October 1992. In the same way, the 1968 *Penal Code* contains some anti-discriminatory clauses stipulating punishment for preaching or inciting racial, ethnic or religious hatred, as well as for coercive actions instigated by prejudices of this kind. In practice, however, these provisions either were not applied, or were used instead to attack the representatives of minority communities when they attempted to demonstrate group solidarity. There is no practice in the Bulgarian courts on cases dealing with discrimination. The very language of human rights is foreign to Bulgarian jurisprudence.

After the October 13, 1991 elections, the new government undertook a purge of the former rulers at all levels of administrative and economic hierarchy. The reasons were at least twofold: the mistrust of their continuing influence and power, accompanied by the fear that they might act to sabotage the economic reform undertakings. There was also a need to make positions in the power structure open to those aligned with the new government.

The mechanisms of the purge were diverse. There were many direct dismissals justified on the basis of either "lack of qualification," "trade union demands due to a bureaucratic attitude to the needs of workers" or "partial liquidation of the enterprise." There were also instances of blackmail to force resignations, including those demanded by specially organized mass protests. In the beginning of February 1992 the contracts of several dozen clerks in the Bulgarian Ministry of Foreign Affairs were cancelled. Another 200 were threatened with dismissal because of their alleged connections with different structures of the former regime. On March 21 the Foreign Minister Stoyan Ganev declared that he would propose an amendment to the *Labor Code* to make the mass purges easier. On August 25, 1992 the Minister of the Defence Staliiski issued an order revoking recognition of the higher education of all army officers who had completed less than four years of Military School. Their appointments or promotions were banned. The obvious goal was to attack the older generation of officers considered to sympathise with the BSP. This practice is currently recognised publicly by all political forces. Seen from the point of view of the official authorities, it is represented as something that is desirable and necessary. On April 21, 1992, Stamen Krivoshiev, Confederative Secretary of the Podkrepa Trade Union which supported the then government, declared in a televised interview that discussion of personnel changes in the local UDF leadership and putting them into effect through the respective district administrators was a common practice. In turn, the party of the former communists responded with protests. The first official protest was voiced by the Supreme Council of the BSP on April 10, 1992 in a declaration broadcast on Bulgarian television.

Despite their protests, the use of job termination based on political views and past political affiliations continued. Former communists and sometimes also sympathisers of other, smaller but non-governmental parties, were removed from office, as well as people with no party affiliation whose political views were not approved. Such is the case, for example, with the dismissal from the Chairmanship of the Foreign Assistance Agency of Petko Simeonov, the former chief of the Central Election Club of UDF who later left the coalition.

The idea to carry out a more consistent policy of "decommunization" in Bulgaria through the adoption of special laws barring senior party and state functionaries from the former totalitarian regime from occupying high positions in government and administrative bodies took root in the circles of UDF in late 1991. The idea was largely provoked by the "*Lustration Act*" passed by the Czechoslovakian Parliament on October 4, 1991. But its justification also was linked to the adoption of special laws on "de-Nazification" after World War II, chiefly in Germany. The need for a "total break" with the remnants of the former rule was stressed. Besides this, the "decommunization laws" were regarded as a just retribution for the activities of the former rulers.

The first "decommunization" legal provision was adopted on March 18, 1992 with Section 9 of the *Transitional and Final Provisions of the Banks and Lending Act*. This provision states that persons who in the last fifteen years have been elected to the structures of the former Bulgarian Communist Party and some satellite organizations above municipal level, as well as employees of the State Security, salaried and unsalaried, shall be disqualified from election and appointment to the managing bodies of any bank. However, no procedure was established to verify disqualification. Nor was there any possibility of appealing against the disqualification ruling. This provision was immediately attacked before the Constitutional Court by a group of deputies from the opposition BSP. In the end of July 1992, the Constitutional Court ruled that this provision was unconstitutional, and violated non-discrimination standards including those contained in the *ILO Convention 111*, a treaty Bulgaria had ratified.

The second legal provision was Article 10a of the *Law for Amendment and Supplement of the Pension Act*, proposed by Alexander Yordanov, chief of the Parliamentary Faction of UDF, which was passed as a law on June 12, 1992. According to this provision, years of service in

high-ranking positions in the bodies and the party organisations of the Bulgarian Communist Party, the Fatherland Front, Dimitrov Communist Youth League and the Union of Active Fighters against Fascism and Capitalism would no longer be recognised for pension purposes. This means that all persons covered by the law would receive reduced pensions and those who had occupied such posts throughout their lives would receive the minimum pension as those who had never worked. The enforcement mechanism of this law is effective since it applies an automatic ban and works through the general enforcement mechanism of the Pension Act. Immediately after the amendments of the Pension act were passed, President Zhelev filed a challenge to the provision before the Constitutional Court. On July 29, 1992 the Constitutional Court ruled that this provision was unconstitutional.

On April 7, 1992 a group of UDF MPs with Georgi Panev as their main representative proposed a bill on *Additional Requirements of Scientific Organizations and the Higher Testimonial Commission*. The aim of the bill was to "cleanse" several categories of employees from the management and scientific boards of the higher schools, of the institutes within the system of the Bulgarian Academy of Sciences, of all scientific organizations which conduct competitions to select lecturers and research associates, as well as the Higher Testimonial Commission. Excluded categories include:

- members of the elected bodies of the former BCP above municipal level, including party secretaries in the scientific organizations,
- former *nomenclatura* of the Central Committee of the BCP;
- associates of the former State Security Service;
- lecturers on the so-called "ideological subjects" (such as history of the BCP, dialectical and historic materialism, political economy and scientific communism);
- former "political officers" in the army; and
- lecturers and students in the former institutes and academies of the BCP.

The proposed law would oblige all scientific organizations to hold elections for new governing bodies within four months. All candidates for office would have to file in advance a special declaration that they meet the requirements of the law. Refusal to file such a declaration disqualified the applicant. Filing a false declaration would be violation of criminal law. Two parliamentary groups, the committees on science and education and on legislative agenda issued supporting decisions on the bill in the beginning of July. On July 15, 1992 it was passed on the first reading as a result of the supporting votes of the UDF and MRF MPs.

Four other "decommunization" draft laws with a wider scope were introduced in the Parliament, and now are awaiting consideration. On behalf of UDF MPs Verzhiniya Velcheva, Vassil Gotsev and Alexander Pramatarski, a draft for *Overcoming the Consequences of Communist Rule* was put before the National Assembly on February 10, 1992. The proposed bill would impose a ban on several categories of persons occupying head positions in state and municipal enterprises and departments. Among those excluded were members and candidate members of the Politburo of the former Communist Party and chairpersons of government committees and agencies below ministerial status who occupied these positions between September 9, 1944 and January 1, 1990. Also excluded would be another large group of persons who occupied official posts during the same period, including members of the Supreme Court, prosecutors in the Chief Prosecutor's Office, presidents and vice presidents of the Bulgarian Academy of Sciences, chairpersons of the so-called "creating unions", the Hunting and Fishing Union, the Bulgarian Red Cross, etc. A special "parliamentary and public" commission of 25 persons would be established, its members to be elected by Parliament to monitor implementation of the law and to rule on the possibility of the excluded persons occupying designated posts. Four days later a second similar bill was submitted, signed by Sasho Stoyanov, Alexander Karadimov and another 20 UDF MPs which would extend the excluded officials to include those with lower ranks, such as secretaries of local Communist Party organizations, employees who were members of the *nomenclatura* of

the Central or District Committees of the BCP, lecturers at the Academy of the BCP, associates of the former State Security. The second draft law includes a provision that would allow judicial review of rulings of the commission established to implement the exclusion policy. The commission itself, however, would not be a judicial body and would not follow established due process requirements. This second draft was named *Law on Decommunization of the State Sphere*. Curiously enough, the Independent Society for Protection of Human Rights in Bulgaria, closely affiliated with the UDF, was advocate of this repressive bill, the harshest of them all.

On March 16, 1992, a group of UDF MPs, the majority of whom helped sponsor the draft law of February 14, submitted a draft *Public Servants Act*. Chapter three of this proposed bill places additional temporary restrictions on individuals occupying head positions. They include bans analogous to those of the preceding bill, as well as the establishment of a similar commission (although not as large and appointed entirely by representatives of executive branch) to monitor implementation. Judicial review is authorized under this proposal.

On September 9, 1992, Tosho Pejkov, a UDF MP, introduced a draft *Law on Democratization*. This bill envisages a restriction on appointments to high "state, public or cultural position (appointed or elected)" or involvement in any type of private activity (including nonprofit organizations) for several categories of people:

- paid secretaries of the former BCP above the municipal level;
- delegates of all BCP congresses and conferences; and
- party secretaries of the basic Communist Party organizations in the army, police, State Security, the Judiciary, diplomatic corps, banks, scientific institutes and schools of high education. Many of the people coming under these headings would be included in a preliminary list and published in the official government journal, *State Gazette*. After the publication, Parliament elects a commission to examine complaints from any individual regarding names included or not included in the list. After the commission completes its work, a final version of the list of banned names would be published in the *State Gazette*. No further court or any other appeal procedure is envisaged.

As the Bulgarian Constitutional Court has noted, this type of legislation contravenes a number of international conventions to which Bulgaria is a party. This conflict was underlined several times by the international human rights' community in the case of the Czecho-Slovak *Lustration Act* and other East-European legislative initiatives of a similar kind. According to Article 7 of the *International Covenant on Economic, Social and Cultural Rights*, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence".

Article 25 of the *International Covenant on Civil and Political Rights* gives the right and the possibility to every citizen "without any of the distinctions mentioned in Article 2 and without unreasonable restrictions ... to have access, on general terms of equality, to public service in his country." Various other United Nations documents are also applicable. (ILO *Convention 111 on Discrimination (Employment and Occupation)*). The violation of *Convention 111* by the Czecho-Slovak *Lustration Act* has been stressed in the opinion of the special commission of the ILO issued on February 28, 1992. According to Article 5, para.4 of the new Bulgarian *Constitution*, all international treaty obligations ratified by Bulgaria are a part of the domestic law of the country and are given priority in case of conflict with the norms of domestic law. The fact, however, that the Bulgarian Constitutional Court ruled, in connection with the *Pension and Banking Acts*, this type of employment restriction to be unconstitutional and a violation of international law has not prevented the introduction and active consideration of similar provisions by Parliament.

In the arguments for one of the draft laws it is stated that its aim is to bar persons who "carry direct responsibility" for the economic crisis and for violation of human rights from occupying leadership positions for a certain period of time. This restriction applied on a collective basis, mirrors the criminal penalty established under Article 37, para.1, pt.6 of the *Penal Code*, "depriving a person of the right to occupy a specific state or public position". According to the same law, however, "punishment for a crime is imposed only by the established courts" (Article 35, para.4). This means that the discussed laws and bills are applying what amounts to criminal penalty on a collective basis, without the due process protection afforded to accused criminals. The principle of the individual character of criminal liability has been an accepted part of Bulgarian jurisprudence even under the communist regime. Article 35, para.1 of the *Penal Code* states that "criminal liability is individual". Establishment of collective guilt also permits a retroactive punishment to be imposed (a prohibited ex post facto criminal law), moreover, while ignoring the presumption of innocence. These principles, prohibition of ex post facto criminal law and adherence to the concept of presumption of innocence have dominated European law ever since the French Revolution.

3. Freedom of Thought, Conscience, Religion and Belief

Freedom of thought, conscience, religion and belief is guaranteed by the new Bulgarian *Constitution* under Article 13, para.1, and Article 37, para.1.² But the statute governing religious affairs has not been changed and remains the 1949 *Denominations Act*, which gives broad possibilities for governmental involvement in religious affairs. In particular, it provides for mandatory registration of the religions, with a special Directorate for Religious Affairs which is part of the executive branch. The Director of Religious Affairs, a Governmental official appointed by the Prime Minister, has wide authority which includes:

- discretionary power without any standards and with no judicial review to decide whether to register a religion group (without registration any activity would be almost impossible);
- dismissing religious officials of all religions with no limitations as to their seniority (the notorious Article 12)³;
- banning the distribution of religious literature; and
- prohibition of communication with congregations, institutions and private persons abroad.

The law sets a requirement for clergymen and officials in all religions on Bulgarian territory to be Bulgarian citizens. All kinds of charity work are prohibited by the law, as well as all educational activities among children and young people. Under the law, foreign religions or their orders, congregations and missions shall not establish branches in Bulgaria.

Even before the October 1991 elections, many religions started gradually to recover real property taken away from them by the previous regime. After the elections this process gained momentum.

But after the elections we have witnessed a new development which contradicts the *Constitution* and the international standards on freedom of religion. Using several regulations

² Article 13, para. 3 contains a provision, stating that Eastern Orthodox Christianity "is the traditional religion in Bulgaria" which in principle creates the possibility for a preferential treatment of this religion. After the October 1991 elections only Eastern Orthodox classes were introduced in some public schools on an optional basis. This practice has not been raised publicly as a matter of discrimination by representatives of other religions.

³ The wording of the respective part of this Article reads: "Priests as well as other church officials who violate the law, public order and good morals, or work against the democratic principles of the state, no matter what other responsibility they have, can be temporary deprived of office or dismissed pending a proposal of the Director of Religious Affairs."

based on the old *Denominations Act*, the new Government sought to remove from authority a number of clergy in different religions, including the heads of the Muslim and Orthodox Church. The reason for these actions were either the suspicion that these clergy did not follow the Government policy, or the fact that they occupied official positions that government supporters had aspirations to obtain. These removals were based on the justification that there were irregularities in the way these religious leaders had been chosen during the Communist regime. New leaders of the two basic religions, the Eastern Orthodox and the Muslim, were appointed by the Director of Religious Affairs. These were designated interim appointments until new elections could be held by the respective denominations.

The Director of Religious Affairs using Article 12 of the old *Denominations Act* removed from office, with two orders - issued on April 3, 1992 and April 13, 1992, the New York mitropolit Yosif for alleged misuse of church property and for "lack of activity" and the Plovdiv mitropolit Arsenii, for violation of financial book keeping of the eparchy, "neglected obligations" and "neglect of Christian traditions". With a letter to the Holy Synod of the Bulgarian Orthodox Church of March, 9 1992, the Director declared the election of the Bulgarian Patriarch Maxim invalid, because legitimate elections for churchwardens and eparchy electors had not been held. With a new letter of May 25, 1992 to the Holy Synod the Director declared the whole Synod illegitimate and based on the rules of "customary law" appointed a "new staff of the Holy Synod," keeping only three of the members of the old Synod and appointing a new Vicar-president to replace Patriarch Maxim, who declared illegitimate.

In a similar way, an attack was started against the leadership of the second main religion in the country - Islam. In this case, the leadership of the Movement for Rights and Freedoms stood behind the actions of the Directorate for Religious Affairs, because they believed the elections of the old leaders to be illegal. With a letter of February 10, 1992, the Director of Religious Affairs announced the election of the Chief Mufti Nedim Gendjev invalid, because of improprieties of the election assembly, and because he did not have the required term in office as a regional mufti, at the time of his election. With the same letter the Chief Mufti was removed from office. With a second letter of February 21, 1992, all other seven muftis were declared to be "illegitimate" because of violations of the provisions of the Statute and the *Denominations Act* in the process of their election and on the basis of the "customary law" a "transient council" with three members was appointed, to act until new elections of regional muftis and a new Chief Mufti could be held.

Some of those acts of the administration were challenged by representatives of the affected leaderships before the Supreme Court. Muslim leaders filed a case against the act of February 10 with which the Chief Mufti was fired. The Supreme Court disallowed the claim, stating that the Director of Religious Affairs acted "according to his competence under the law", i.e. according to Article 12.⁴ In the Bulgarian Orthodox Church case the Supreme Court with a decision of July 2, 1992, disallowed on procedural grounds the claim of Patriarch Maxim against the act declaring him illegitimate and acknowledged the right of the executive branch to register the religions. Certain political motives of the Supreme Court, whose members have been significantly changed after the October 1991 elections, were believed to have influenced these decisions. One reason for the failure of the courts to remedy administrative acts that

⁴ According to Section 3, pt.1 of the *Transitory Provisions* of the new Bulgarian *Constitution*, "the provisions of the existing laws shall be applicable insofar as they do not contravene the Constitution". In several decisions, as well as in the decision on the *Denominations Act*, the Constitutional Court guided the courts to apply the *Constitution* in specific litigation, refusing any decision on the constitutionality of the laws passed before the new *Constitution*. In this case, as in several other cases, the courts avoided direct application of the *Constitution* - which presents a continuation of a practice established prior to the enactment of the new *Constitution* and in principle foreign to the Bulgarian jurisprudence.

intruded on religious affairs is the fact that until July 12, 1992 (the normative term under the new *Constitution*) Parliament had not yet adopted a new law for operation of the courts.

Meanwhile the attack against the old leaderships of the Eastern Orthodox Church and the Muslim religion by private groups, supposedly inspired by the Government, continued. In March, a pro-government group occupied, with the active help of the police, the building of the Chief Mufti. The staff of the Chief Mufti Nedim Gendjev was expelled and the leadership appointed by the Director of Religious Affairs substituted in their place. On May 31, similar action was taken by a pro-government group, but without police support, to occupy the building of the Holy Synod of the Bulgarian Orthodox Church. On August 24, 1992, the local Mitropolias in Lovech, Russe and Plovdiv were occupied. On October 1, a pro-government group made an attempt to occupy the Sofia Mitropolia. These actions were inspired by a letter of the General Prosecutor Mr. Ivan Tatarchev, urging the police to assist what he later called "the decommunization of the Bulgarian Church." They were partially successful in Lovech and Russe, but unsuccessful in Plovdiv, because of active resistance from the local leadership of the Mitropolia, and in Sofia because the police interfered on the side of the older leadership.

On April 16, in the heat of the church debate, a group of MPs asked the Constitutional Court to declare some provisions of the 1949 *Denominations Act* unconstitutional. President Zhelev also petitioned the Constitutional Court, asking it to make a binding interpretation of the provisions on freedom of religion of the *Constitution* and to declare the *Denominations Act* unconstitutional. In a later interview, he declared the very existence of a Directorate for Religious Affairs unacceptable. By a decision of June 11, 1992, the Constitutional Court unanimously declared the State intervention in the "inner organizational life of the religious communities and institutions" unwarranted. A number of provisions of the *Denominations Act* were declared unconstitutional. However this decision did not limit the right of the executive power to require registration of religious groups. Nor did it speak to the question of the very existence of the Directorate for Religious Affairs, or attempt to deal with the main issue of the constitutionality of the dismissals of church leaders by this office. Apart from supporting the general principle of government non-interference in religious affairs, the Constitutional Court did not settle the practical problems raised by recent actions of the government in seeking to control religious leaderships in Bulgaria.

4. Problems of the Judiciary and the Criminal Justice System

One of the first things the new Parliament did after the October 1991 elections, was to amend the *Law on the Supreme Judicial Council*, the agency authorised under the new *Constitution* to appoint, promote, release from office and lift the immunity of judges, prosecutors and examining magistrates. The amendments provided for the abolition of the old Supreme Judicial Council, established by the previous Parliament, whose term had not yet elapsed, and for the creation of a new creation of a new Supreme Judicial Council. A large pro-government majority was appointed to the new Council, and it soon began to "cleanse" the Judiciary. Under the new *Constitution*, Section 5 of the *Transitional and Concluding Provisions*, judges, prosecutors and examining magistrates could not be removed. But the newly established Supreme Judicial Council was given the power to assess the professional qualities of the judges, prosecutors and examining magistrates and may remove them from office within three months. On the basis of this power, the newly elected Council started to purge a number of people, whose loyalty to the new Government was questioned. This included not only people connected with the former communist regime. In several cases, officials in the Judiciary, even though connected with the totalitarian regime, were promoted thanks to their quick swing in allegiance the new government.

In one notable case, the removal of Tatiana Doncheva, a prosecutor from the Sofia Prosecutor's Office, was requested by the Prosecutor General Tatarchev, because of "lack of professional qualities and morals as required by the occupied office". But the real motive was

the fact, that she took the “wrong” side as a prosecutor in litigation involving the legitimacy of some of the organizations that split from the victorious UDF. She was criticized for statements made in *Society and Law* magazine against the use of political standards in the removal of officials in the Judiciary. Similar actions were taken against several members of the Supreme Judicial Council.

Already in the beginning of 1990, several criminal cases were brought against former Communist Party and state functionaries. Some of them, including Todor Zhivkov, former Head of State, were sentenced to imprisonment. People believed to have taken part in human rights violations were accused. At present about 20 former CP state functionaries are under investigation. Seven of them are in jail.

The expressed wish to punish former government officials for their participation in human rights violations is a positive development. But there are serious reasons to believe that in some cases nothing more than political motives stay behind the charges. Such cases became matters of public concern especially after the appointment of Mr. Ivan Tatarchev for Prosecutor General of the Republic immediately after the October 1991 elections. In one of the cases, Andrei Lukanov, former Deputy Prime Minister in the last Communist government before November 1989 and later Prime Minister of the first BSP government after the elections of June 1990, was deprived of his immunity as a deputy, arrested and accused with charges which were widely believed to be politically motivated. These charges include “abuse” of public funds for Third World countries during the Communist rule. No evidence was shown that Mr. Lukanov had taken personal advantage or that he acted outside the mandate given to him within the framework of a national governmental institution. Deprivation of immunity followed a procedure, violating the generally accepted democratic parliamentary practice, since the accusations had not been considered seriously in Parliament or in some Parliamentary Committee. His arrest took place without showing any evidence that he was going to escape from justice or to commit a crime.

On May 27, 1992, two MPs from the UDF, Aleksander Djerov, chairman of the Parliamentary Legislative Committee, and Georgi Markov, Deputy Chairman of one of the most influential parties in the Union, proposed lifting of the moratorium on capital punishment. The decision for a moratorium on capital punishment was taken almost unanimously by the former Parliament on July 20, 1990, immediately after the first free elections following 45 years of communist rule. It was not intended to serve as a permanent abolition of the death penalty, but only as a temporary suspension of executions. The motive for the new proposal for abolition of the moratorium was "the growing crime rate in the country" which, according to the authors of the proposal, was encouraged by what they called "the communist Mafia."

Though the reintroduction of the capital punishment cannot be considered an absolute violation of international law, the moratorium on the death penalty was a demonstration of Bulgaria's willingness to join the trend of the European states on this issue. Protocol 6 of the *European Convention on the Protection of Human Rights and Fundamental Freedoms* requires abolition of the death penalty. At present, 22 out of the 26 member states of the Council of Europe (including Bulgaria) do not apply it. Although Bulgaria is not obliged to follow this policy as a matter of international law, abolition of the moratorium would be acting against the accepted policy of the great majority of the European community of nations which Bulgaria would like to join.

On November 19, 1991, a group of MPs from the UDF proposed a draft law providing for amnesty for those sentenced by the so called "People's Court" - a special tribunal set up in 1944 to judge war criminals and crimes against humanity. In the beginning of the 1940s the then Bulgarian Parliament had passed several anti-semitic laws, which enacted various discriminatory measures, one of them being expropriation of property, against more than 40

thousand Jews and an even larger number of Roma. Although Bulgaria as a German ally, was one of the few countries, whose Jewish citizens were saved from deportation and death in the concentration camps, about 11, 500 Jews from the regions in Greece and Macedonia occupied by the Bulgarian army were deported - an action undertaken by the Bulgarian Government after an agreement with the German Government. The establishment of the People's Court actually ran contrary to the then effective constitutional and legal order. It sentenced many people, some who were executed solely on the basis of political accounts. But it also brought to trial people who were involved in war crimes and crimes against humanity. The penal procedure in force at present gives space for individual rehabilitation to those sentenced unjustly. As a matter of fact, many rehabilitation decisions had been already announced, concerning people who were sentenced by the People's Courts.

The submitted draft has to a great extent a symbolic meaning. Under certain conditions it could be interpreted as a willingness to grant amnesty to war criminals as well as to people who committed crimes against humanity. In that case, Bulgaria would become the first state granting amnesty to such people. This would conflict with many of the country's obligations, accepted with the 1968 *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*. Article V of the 1948 *Convention on Prevention and Punishment of the Crime of Genocide* obliges the states parties (Bulgaria included) to guarantee through their internal legislation "effective punishment" for those guilty of genocide.

5. Freedom of Expression and Information

Freedom of the press and the other media is guaranteed by Article 39, para.1, and Articles 40 and 41 of the new Bulgarian *Constitution*. Immediately after the beginning of the democratization process in Bulgaria, many new magazines and newspapers appeared, expressing all kinds of views. There have been no cases of seizure or restrictions on any publications, notwithstanding the fact that some of them are very aggressive. Representatives of the new cabinet tried several times to attack papers and magazines which do not support the policy of the government, but this was done on an individual basis, without official government action. Only in one case was there an attempt, by way of an administrative order, to stop publication of a newspaper. At the beginning of March 1992, following an order of the local UDF leadership in Veliko Turnovo, the director of the government printing press refused to print the *Sinyo Vreme* newspaper, established before the October elections. This newspaper was registered as independent. As a protest against the ban, the whole staff of the newspaper went on hunger strike, but with no effect. Finally, the director and the editor-in-chief made the decision to print the newspaper in another city, which increased the production expenses. This type of refusal to print by government-controlled printing facilities can be a very restrictive burden for a newspaper even though no formal prohibition on its activities exist.