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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**INTERIM JOINT OPINION**

**ON THE LAW ON MAKING AMENDMENTS AND SUPPLEMENTS  
TO THE LAW ON FREEDOM OF CONSCIENCE  
AND RELIGIOUS ORGANIZATIONS  
AND  
ON THE LAWS ON AMENDING THE CRIMINAL CODE,  
THE ADMINISTRATIVE OFFENCES CODE AND  
THE LAW ON CHARITY**

**OF THE REPUBLIC OF ARMENIA**

by  
**THE VENICE COMMISSION**  
and  
**OSCE/ODIHR**

**Adopted by the Venice Commission  
at its 85<sup>th</sup> Plenary Session  
(Venice, 17-18 December 2010)**

**on the basis of comments by**

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## I. Introduction

1. By letter dated 26.10.2010, the Minister of Justice of Armenia has requested the assessment by the Commission for Democracy Through Law ("Venice Commission") of the Council of Europe, of the Draft Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organisations, as well as draft amendments to the Administrative Offences Code, to the Criminal Code and to the Law on Charity. Subsequently, on prior approval of the Minister of Justice of Armenia, the Venice Commission turned to the OSCE/ODIHR with an invitation to issue a joint opinion, in particular, in view of the previous joint opinions issued on this matter (described below).

2. The Venice Commission together with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted a Joint Opinion (hereinafter the "2009 Joint Opinion") on the Law on Making Amendments and Addenda to the Law on Freedom of Conscience and on Religious Organisations and on the Law Amending the Criminal Code of the Republic of Armenia (hereinafter the "2009 Draft Law") at its 79<sup>th</sup> Plenary Session in June 2009.<sup>1</sup>

3. The 2009 Joint Opinion addressed both the law then in force (hereinafter, the "Current Law") enacted in 1991 as well as the 2009 Draft Law which proposed certain amendments to it. In fact, the 2009 Draft Law examined in the 2009 Joint Opinion was never enacted and the law in force at that time remains in force to-day un-amended. The Armenian authorities have prepared a further Draft Law of the Republic of Armenia (RA) on Making Amendments and Supplements to the Law of the Republic of Armenia on Freedom of Conscience and Religious Organisations (CDL(2010) 130 hereinafter the "Draft Law") which is the subject of this Opinion. The Draft Law amends and supplements the Current Law (CDL (2009)065).

4. Ms Finola Flanagan and Ms Herdis Thorgeirsdottir acted as rapporteurs on behalf of the Venice Commission. They worked in consultation with Silvio Ferrari and W. Cole Durham, Jr., who acted for the OSCE/ODHIR Advisory Council on Freedom of Religion or Belief.

5. This Opinion examines both the Draft Law and the Current Law to the extent necessary since much of the Current Law will remain in force if the amendments in the Draft Law are enacted. This approach was also taken in the 2009 Joint Opinion.

6. In addition to the Draft Law which is intended to amend the Current Law, the Venice Commission and the OSCE/ODIHR have been invited to examine draft amendments (CDL(2010)133) to three other laws which are relevant to the issue:

Draft Law of RA on making supplements to the Administrative Offences Code of RA;  
Draft Law of RA on making a supplement to the Law of RA on Charity which amends Art. 2 of the Charity Law furnished; and  
Draft Law of RA on making a supplement to the Criminal Code of RA.

7. This opinion, which was prepared on the basis of the comments submitted by the experts above, was adopted by the Venice Commission at its 85<sup>th</sup> Plenary Session (Venice, 17-18 December 2010.)

## II. Executive Summary

8. To ensure the compliance with international law of the reviewed legislation, it is recommended as follows:

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<sup>1</sup> Venice Commission registration number: CDL-AD(2009)036. OSCE ODIHR registration number: Opinion no. 530/2009.

### **A. Key recommendations**

- A. To amend Articles 1, 2 and 3 of the Current Law so as to guarantee freedom of conscience, religion or belief to everyone regardless of citizenship;
- B. To amend Article 1 of the Current Law so as to recognize the freedom to change religion or belief;
- C. To expressly guarantee the freedom to manifest religion or belief in public or private, and to act according to one's religion or belief in daily life;
- D. To clarify that any religious organisation is entitled to legal personality and has access to it if it wishes to avail of such status;
- E. To make more precise and clear the scope of application of the law;
- F. To provide in Article 24 a range of sanctions of varying severity, with liquidation being a measure of last resort applicable only in cases of repeated and/or grave breaches of the law committed by religious community as a whole or by a substantial number of its adherents;
- G. To reconsider the blanket prohibition on religious advocacy and preaching in all "learning" and "social institutions";
- H. To ensure that the Law (and the Criminal Code) allow for some forms of proselytism and only prohibit "improper" proselytism, in line with international law.

### **B. Additional recommendations**

- I. To ensure that the expressly recognized privileged position of the Holy Apostolic Armenian Church is consistent with the principles regarding equality of treatment between religions;
- J. To clarify which provisions of the Current and Draft Laws apply to all religious organisations and which apply only to those which are registered;
- K. To reconsider the definition of "religious organisation" and ensure its compliance with international law;
- L. To specify with greater precision which particular laws should a religious organization's statute comply with in order to satisfy registration requirements;
- M. To ensure that the administrative requirements set by the Law are appropriate and consistent with international standards;
- N. To clarify that the prescribed list of rights of religious organisations is not an exclusive list whereby any activities not specified therein are automatically prohibited;
- O. To consider allowing for charitable financial support for religious advocacy.

### **III. Preliminary remarks**

9. In addition to the comments below, the 2009 Joint Opinion should be taken into account by the Armenian authorities. Whilst the Draft Law differs from the 2009 Draft Law, nonetheless all of the principles described in the 2009 Joint Opinion are applicable to the Draft Law and the Current Law. A good deal of the specific comment also remains relevant since the drafters in many instances do not appear to have taken into account the recommendations in the 2009 Joint Opinion. In general it can be said that the scheme and wording of the Current Law as it is proposed to be amended by the Draft law is often difficult to understand and vague so that the public will not be in a position to be certain of their rights and obligations.

10. In assessing the proposed amendments regard must be had to the fact that the Holy Apostolic Armenian Church (hereinafter Armenian Church) has de facto and de jure a dominant position in Armenia. The "*exclusive historical mission of the Armenian Apostolic Holy Church as national church*" in the Constitution derives from the fact that Christianity became the state religion of Armenia c. AD 300. The Armenian Church has through the ages been seen as the custodian of Armenian national identity and Armenians regard themselves as the "first Christian nation".<sup>2</sup> Approximately 98 percent of the population is ethnic Armenian and the link between

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<sup>2</sup> Cf., The New Encyclopædia Britannica, Vol. 1 (1988), pp. 566-567.

ethnicity and the Armenian Church is strong. An estimated 90% of the citizens nominally belong to the Armenian Church<sup>3</sup>. The 2007 Law on the Relations of the Republic of Armenia and the Armenian Church regulates the special relationship between the state and the Armenian Church and grants certain privileges to the Armenian Church that are not available to other religious groups<sup>4</sup>.

11. Furthermore regard may be had to the fact that the introduction of the draft laws assessed in 2009 by the previously mentioned Joint Opinion and which were subsequently not enacted sparked a reaction of representatives of religious groups, viewing the drafts as being aimed against religious minorities and religious diversity in the country.

#### **IV. The legal context**

12. The above draft amendments raise various issues touching upon the linked rights of freedom of thought, conscience and religion as well as the right to freedom of expression and opinion and freedom of association and the right to non-discrimination which are protected in the Armenian Constitution as well as in the international treaties by which the Republic of Armenia is bound.

13. The Republic of Armenia is both party to the European Convention on Human Rights (hereinafter the ECHR) and the International Covenant on Civil and Political Rights (hereinafter the ICCPR). The Current Law on Freedom of Conscience and on Religious Organizations states in its preamble that it is "*guided by human rights and basic principles of freedom defined through international norms and being faithful to article 18 of the international treaty regarding civil and political rights*".

##### **A. At the national level**

14. The Constitution of the Republic of Armenia as amended in 2005<sup>5</sup> provides for freedom of religion and the rights to practice, choose, or change religious belief. It recognizes "*the exclusive mission of the Armenian Church as a national church in the spiritual life, development of the national culture, and preservation of the national identity of the people of Armenia.*" The Constitution and the Law on Freedom of Conscience and Religious Organizations establish separation of church and state, but grant the Armenian Church official status as the national church.

15. According to Article 6 of the Constitution, international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

16. Article 8.1 of the Constitution states:

The church shall be separate from the state in the Republic of Armenia.

The Republic of Armenia recognizes the exclusive mission of the Armenian Apostolic Holy Church as a national church, in the spiritual life, development of the national culture and preservation of the national identity of the people of Armenia.

Freedom of activities for all religious organizations in accordance with the law shall be guaranteed in the Republic of Armenia. The relations of the Republic of Armenia and the Armenian Apostolic Holy Church may be regulated by the law.

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<sup>3</sup> <http://www.unhcr.org/refworld/docid/4ae8615f5d.html>

<sup>4</sup> <http://armenia.usembassy.gov/news111810.html>.

See also: [http://www.armenianow.com/social/human\\_rights/24303/freedom\\_conscience\\_religion\\_armenia](http://www.armenianow.com/social/human_rights/24303/freedom_conscience_religion_armenia)

<sup>5</sup> <http://www.president.am/library/constitution/eng/?chapter=2&pn=2>

17. Article 26 of the Constitution furthermore provides:

*“Everyone shall have the right to freedom of thought, conscience and religion. This right includes freedom to change the religion or belief and freedom to either alone, or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites. The exercise of this right may be restricted only by law in the interests of the public security, health, morality or the protection of rights and freedoms of others.”*

18. Article 3 of the Constitution expressly declares that:

*“The human being, his/her dignity and the fundamental human rights and freedoms are an ultimate value. The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law. The state shall be limited by fundamental human and civil rights as a directly applicable right.”*

19. The principle of equality is protected in Article 14.1 stating:

*“Everyone shall be equal before the law. Any discrimination based on the ground such as sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.”*

20. The law which is currently in force, the “Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations” (CDL (2009)065) was adopted on 17 June 1991 and has been in force since then, with some amendments being made in 1997.

21. The “Law of the Republic of Armenia Regarding the Relationship between the Republic of Armenia and the Holy Apostolic Armenian Church”, adopted 5 May 2007 regulates the special relationship between the State and the Church.

## **B. At the International level**

22. Article 9 of the ECHR states:

*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion and belief, in worship, teaching, practice and observance.*

*Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection on public order, health or morals, or for the protection of the rights and freedoms of others.”*

23. Article 18 of the ICCPR, it should be noted, is almost identical in wording to Article 9 of the European Convention, stating:

*“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

*No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or freedom of his choice.*

*Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others."*

24. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**C. Law of the Republic of Armenia regarding the relationship between the Republic of Armenia and the Holy Apostolic Armenian Church (the Armenian Church)**

25. The 2009 Joint Opinion addressed the acknowledgement of the special historical role of the Armenian Church in the Republic of Armenia commenting that this was not per se impermissible but should not be allowed to lead to or serve as the basis for discrimination against other religious communities that may not have the same kind of specific role (paragraph 19). The 2009 Joint Opinion then commented as follows:

*"20. In a country where there is a marked link between ethnicity and a particular church such as exists in Armenia (98% are ethnic Armenian; 90% of citizens nominally belong to the Armenian Church, there is a strong risk of discrimination against other religions. To guard against this possibility there is a particular need to protect pluralism in religion which is an important element of democracy."*

*21. The "special relationship" between the State and the [Armenian Church] is regulated by the "Law of the Republic of Armenia Regarding the Relationship Between The Republic of Armenia and the Holy Apostolic Armenian Church" (see para. 9 above). The privileges expressly accorded to the Armenian Church in this legislation make it particularly necessary to ensure that there are guarantees elsewhere that the state will accord all necessary rights to other religions. The Armenian Church is acknowledged as part of the Armenian identity, but it must not be allowed to suppress other religions in maintaining this identity."*

26. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 [of the ICCPR].<sup>6</sup> Thus, such status must not be allowed to repress, discriminate against, or foster hostility toward other religions in maintaining this identity."

27. It is not clear from the Current or Draft Laws how the Armenian Church fits into the general scheme of the laws for religious organisations, though it is mentioned in Article 6 and in Article 17 c) of the Current Law and appears to be given a privileged position. No information was provided on the "Relationship Law" referred to in the previous paragraph and it is therefore not possible to comment specifically though the principles regarding equality of treatment between religions in the paragraphs above remain relevant.

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<sup>6</sup> UN Human Rights Committee, General Comment No. 22 (48), paragraph 9 Adopted by the U.N. Human Rights Committee on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/ Rev.1 at 35 (1994).

## **V. Analysis of Current and Draft Laws**

### **A. Articles 1, 2 and 3 of Current Law – Freedom guaranteed to "citizens" only**

28. Article 1 of the Current Law guarantees Freedom of Conscience and Profession of Faith to "citizens". Article 2 of the Current Law guarantees equality to "citizens... in all realms of life...irrespective of their religious beliefs or religious affiliation." Article 3 forbids coercion of "a citizen to make a decision to participate or not to participate in services, religious rights and ceremonies, and religious education." The limitation on restrictions in relation to religion is also limited to citizens.

29. The 2009 Draft Law would have extended the explicit guarantee of Freedom of Conscience and Religion to "everyone". The 2009 Joint Opinion commented that this amendment would have implemented the requirements of Article 26 of the Armenian Constitution of 2005 which guarantee freedom of thought, conscience and religion to "everyone". However the amendments proposed in the 2009 Draft Law were never introduced into the Current Law, nor are they now contained in the Draft Law.

30. This means that the guarantee in the Current Law applies only to "citizens" and this will remain the case whether or not the Draft law is enacted. This conflicts with Article 26 of Armenian Constitution and the requirements of Article 9 ECHR and Article 18 ICCPR which guarantees freedom of religion or belief and freedom of conscience for everyone regardless of citizenship. As stated in the 2009 Joint Opinion (paragraph 14) *"[the] extension of the explicit guarantee of freedom of conscience and religion to everyone including non citizens should cover all the relevant Articles in the current law."*

31. It can therefore be said that the Draft Law is in this regard a step backwards from the amendments proposed in the 2009 Draft Law insofar as it appears to be the intention to maintain the position in the Current Law, which has been criticised, without amendment. The guarantees of freedom of thought, conscience and religion to "everyone" which are contained in Article 26 of the Armenian Constitution are, in fact, only provided to "citizens". The Current Law should be amended to take account of this deficiency.

### **B. Freedom to change religion or belief**

32. The Current Law in Article 1 only explicitly guarantees the right to profess or not to profess a religion. The 2009 Draft Law (Article 2) appeared to extend (though the translation was unclear) freedom of conscience and religion to freedom of changing one's religion thus bringing the Current Law into compliance with both Article 26 of the Armenian Constitution and with international standards, in particular Article 9 ECHR which specifically states that the right to freedom of thought, conscience and religion "includes freedom to change [...] religion or belief".

33. The wording in Article 18 of the ICCPR is "to adopt" which is a more vague term than change and was a compromise during the drafting stages of the ICCPR, as some states feared that expressly recognizing the right "to change a religion" might encourage missionary and atheistic activities.<sup>7</sup>

34. Although the right to change one's religion or belief may be seen as an integral part of freedom of religion, it is recommended that the Current Law adapt the wording in its Article 1 to the wording of the Constitution and the ECHR. In the same vein, in order to assure full protection of internal forum rights, no one should be required against his or her will to disclose his religious or other conscientious beliefs.

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<sup>7</sup> Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, N.P. Engel Publisher (1993), p. 312.

### **C. Freedom to manifest religion or belief "in public or private" and to act according to one's religion or belief in daily life**

35. Article 26 of the Armenian Constitution guarantees the right to freedom of thought, conscience and religion in terms which replicate to a large extent the provisions of Article 9 ECHR and Article 18 ICCPR. However, Article 9 ECHR and Article 18 ICCPR both guarantee the freedom to manifest religion or belief "in public or private". Even more significantly, it fails to indicate that limitations of the types it specifies are permissible only if they are "necessary in a democratic society," as required by Article 9 ECHR. It is not enough to justify a limitation on a manifestation of religion by stating that the limitation is "in the interests of the public security, health, morality or the protection of rights and freedoms of others," as Article 26 specifies. The limitation must in addition be necessary, in the sense that the particular interest in question is pressing, is proportional in its magnitude to the religious freedom value being limited, and cannot be accomplished in some less burdensome manner. The necessity constraint is very often the most significant factor in assessing whether particular limitations are permissible. In this sense, international standards impose more rigorous "limitations on the limitations" of manifestations of religion, and thus provide protection for a broader range of religious activities. The Draft Law should address this shortfall in constitutional protection.

36. The draft amendment fails to make it clear whether the right to express one's religion entails the right to act according to one's religion or belief in daily life i.e, when it is a matter of practice or observance, as opposed to being a matter of worship.

37. These points were also made in the 2009 Joint Opinion (paragraph 17). The 2009 Joint Opinion recommended (paragraph 18) that the Draft Law be amended to provide for the freedom to manifest religion publicly and also to act according to ones religion or belief in daily life. These recommendations are repeated here.

### **D. Definition of Religious Organisation**

38. It appears that the definition of "religious organisation" set out in Article 4 is used for the purposes of determining whether an organisation is a religious one that can be permitted to register pursuant to the Current Law, as amended by the Draft Law, and determining what are its rights and obligations.

39. Matters concerning registration and rights and obligations are connected with the freedom to manifest religion as guaranteed by Article 9(1) ECHR and can only be limited strictly according to the terms of Article 9(2) ECHR.

40. Article 1 of the Draft law amends Article 4 of Current Law as follows:

*"In the Republic of Armenia a religious organisation shall be considered a voluntary association of persons legally residing in the territory of the Republic of Armenia established for the purpose of professing and disseminating their faith, which shall have the following features:*

*(a) belief;*

*(b) performance of acts of worship, religious rituals and ceremonies;*

*(c) teaching their religion and giving religious education to their followers".*

41. The above is a narrow definition confined to a strict, traditional approach of belief, acts of worship, rituals and religious education.

42. A religious organisation falls within the scope of *forum externum* of freedom of religion; it is the freedom to manifest one's religion or belief in community with others in worship, teaching, practice and observance (ECHR Art. 9 (1)). As suggested by this provision, the scope of protected manifestations is broad. Therefore, as the OSCE ODIHR/Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief (hereinafter the

"Guidelines") have submitted, legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate.<sup>8</sup>

43. That the scope for belief and practicing religion should be "broadly construed"<sup>9</sup> is further confirmed in the UN Human Rights Committee's General Comment No. 22, stating that Article 18 of the ICCPR is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>10</sup> Both the ECHR and the ICCPR protect theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. Article 9 of the ECHR protects pacifism<sup>11</sup> and any belief akin to "religious or philosophical convictions", "views that attain a certain level of cogency, seriousness, cohesion and importance".<sup>12</sup>

44. The European Court of Human Rights has even concluded that participation in the life of the community is a manifestation of one's religion and that the believer's right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention.<sup>13</sup>

45. In what has become standard approach in ECHR jurisprudence was expressed in the case of *Kokkinakis v. Greece*:

*As enshrined in Article 9 ECHR, freedom of thought, conscience and religion is one of the foundations of a "democratic society within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which had been dearly won over the centuries, depends upon it."*<sup>14</sup>

46. There is no comprehensive definition of "religion" available in the jurisprudence of the European Court of Human rights and it is inherently ambiguous as a concept. However it necessarily involves some form of religious belief though it does not necessarily require a belief in God.<sup>15</sup> The Guidelines observe that international standards for protection of thought, conscience and religion speak of religion in the sense of religion or belief commenting that "[the]"belief" aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world" and therefore atheism and agnosticism are entitled to protection the same way as religious beliefs. Furthermore the rights of non-believers are also protected<sup>16</sup>. There is no definition in the Current Law of "belief" and it is necessary that this term be defined to include all the facets set out above.

47. Any prior restraints inherent in a pre-authorization of what counts as religion call for the most careful scrutiny. Attempts to define religion must avoid being arbitrary, subjective or creedbound.

48. International standards generally, and the European Convention organs in particular, recognize that a certain measure of discretion, a margin of appreciation, must normally be left to States to enact laws and implement policies that may differ from each other with regard to different histories and cultures.

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<sup>8</sup> CDL-AD(200)028, p. 6 (para. 2)

<sup>9</sup> General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 30.07.1993, CCPR/C/21/Rev.1/Add.4, General Comment No. 22.

<sup>10</sup> General Comment No. 22, *supra*.

<sup>11</sup> Report of 12 October 1978 Arrowsmith, D&R 19 (1980), p. 5 (19); Appls 11567/85 and 11568/85, *Le Court Grandmaison and Fritz v. France*, D&R 53 (1987), p. 150 (160).

<sup>12</sup> *Campbell and Cosans v. the United Kingdom*, A.48, p. 16. Judgement of 25 February 1982.

<sup>13</sup> *Hasan and Chaush v. Bulgaria*, application no. 30985/96. Judgment 26 October 2000.

<sup>14</sup> *Kokkinakis v. Greece*, application no. 14307, Judgment 25 May 1993. A.260-A.EctHR 1993.

<sup>15</sup> See the OSCE ODIHR / Venice Commission *Guidelines for Review of Legislation Pertaining to Religion or belief*, Part II A Paragraph 2.

<sup>16</sup> See *Guidelines*, Part II A paragraph 3.

49. The margin of appreciation is particularly relevant with respect to freedom of religion and the so-called political rights protected in articles 8-11 of the ECHR.<sup>17</sup> The margin of appreciation is usually applied when there is a need to balance conflicting rights against each other or against competing public interests. The doctrine may however not be resorted to when there is the slightest possibility of a measure involving discrimination between groups or the undermining of the substance of human rights values. The margin of appreciation is not to be understood as a reserved domain for the Member States of the Council of Europe to implement legislation circumventing important underlying rights.

50. Authorities must proceed from the need to protect fundamental rights including the right to equality and non-discrimination on all grounds. Any kind of limitation of the right to manifest one's belief in community with others may only be applied for the purposes prescribed in the law (Art. 9 (2) ECHR and 18 (3) ICCPR) and must be directly related and proportionate to the specific need on which it is predicated. Limitations may not be imposed for discriminatory purposes or applied in a discriminatory manner.

51. Requirement (b) of the definition that the organisation have as a feature the "performance of acts of worship, religious rituals and ceremonies" should not be an essential requirement even though many, if not most, religions or beliefs do have these features.

52. Nor should the requirement at (c) of the definition for "teaching their religion and giving religious education to their followers" be an essential requirement even though it is likely to be a feature of most religions and beliefs. What is more, point (c) fails to acknowledge the fact that, as recognized by international law, religious organisations and their members are perfectly entitled to teach and speak about their religion not only to "their followers", but also to persons outside their organisation or belief group. The European Court of Human Rights has noted in the case of *Kokkinakis v. Greece* that under Article 9 ECHR, "*the freedom to manifest one's religion [...] includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief [...] would be likely to remain a dead letter"*".<sup>18</sup>

53. The Current Law is cognizant of the Armenian Apostolic Church as the national Church of the Armenian people and as an important bulwark for the edification of its spiritual life and national preservation (cf., its preamble). A system of national church with "an exclusive mission" under the Constitution does not conflict with the freedom of religion as long as the State permits other religious organizations alongside the official/national one and does not either directly or indirectly impair the enjoyment of any of the rights of other believers or religious associations protected under the constitution or under international human rights law.

54. In exercising their regulatory power authorities in relations with various religions, denominations and beliefs, have a duty to remain neutral and impartial.<sup>19</sup> The neutrality requirement co-exists with the principle of equality and non-discrimination making it mandatory for authorities not to make the exercise of freedom of religion under domestic law subject to strict criteria which is tantamount to prior authorization. In legislation dealing with the structuring of religious communities, the neutrality requirement "*excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.*"<sup>20</sup>

55. As no historical manifestation of religion is known that has not exhibited an unvarying process of change, evolution and development, any criteria of defining religion must be flexible. It is recommended that Article 1 amending Article 4 be drafted in a broader manner allowing scope for flexibility taking into account the growing secularization of the religious field, while not losing sight of the relation to the transcendent, to God or the gods, and whatever else is regarded as sacred, holy or of universal value.

<sup>17</sup> P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights* (Kluwer Law) 1998, pp. 82-95.

<sup>18</sup> See *Kokkinakis v. Greece*, ECtHR judgment of 25 May 1993 (application no. 14307/88), paragraph 31.

<sup>19</sup> *Metropolitan Church of Bessarabia v. Moldova*, application 45701/99. Judgment 13.12. 2001, § 116.

<sup>20</sup> *Metropolitan Church of Bessarabia v. Moldova*, *ibid.*, § 116. CDL-AD(2004)028, p. 6 (para. 4).

56. In line with Convention jurisprudence, any restrictive definition must be objectively necessary rather than being based on the perceived interest of protecting some form of belief or religion.

### **E. Prohibition of proselytism**

57. The draft proposes a supplement after the first paragraph of the current Article 8 which prohibits proselytism within the Republic of Armenia and adds a definition of the term:

*“Any direct or indirect attempt of persuasion aimed at distortion of religious convictions (views) of persons through reward or promise thereof or moral assistance or material aid or deceit, as well as through exploitation of their lack of experience, trust, need, low mental abilities, shall be deemed proselytism.”*

58. As emphasized in the Guidelines the issue of proselytism and missionary work is a sensitive one in many countries. Jehovah’s Witnesses have been denied registration in Armenia.<sup>21</sup> They have many characteristics from their refusal of military service to their refusal of blood transfusions which make them candidates for persecution and discrimination in many countries.

59. The right to discuss one’s belief is protected not only under Article 9 (1) of the ECHR and Article 18 (1) of the ICCPR but also under the freedom of expression provisions of both instruments. The manifestation of belief through teaching is expressly protected; otherwise the right to change one’s religion would run the danger of remaining a dead letter. Article 1 of the Current Law does not expressly affirm the right to change one’s religion or belief as an inherent aspect of this right in the Armenian Constitution and Article 9 (1) of the ECHR.

60. In addition to witnessing and affirming beliefs, missionary work has the additional dimension of inviting others to consider those views and seeking to persuade others of their validity, thereby converting them to their religion or cause. In European Convention jurisprudence traditional non-coercive efforts to persuade others concerning religious beliefs, whether through door-to-door proselytizing or other expressive media is protected religious and expressive activity. However, in engaging in such legitimate conduct, there are limits on what constitutes legitimate expression. But these limits, as in other areas of freedom of expression, must be carefully circumscribed. Thus, missionaries must not encroach upon the rights of others.<sup>22</sup> While the line in this area is not always easy to draw, certain basic principles have emerged. Coercive forms of proselytism do not enjoy protection under Article 9.<sup>23</sup> The concept of “improper proselytism” was first developed in *Kokkinakis v. Greece* describing it in terms of “offering material or social advantages” as an inducement for conversion; “improper pressure on people in distress or in need,” and “violence or brainwashing,” all of which the Court stated are “incompatible with respect for the freedom of thought, conscience and religion of others”.<sup>24</sup> Significantly, the kind of non-coercive door-to-door proselytism engaged in by Mr. Kokkinakis was held not to encroach on the rights of others.

61. It is recommended that the draft provision be revised on the whole to leave no scope for restrictions on legitimate, non-coercive missionary and humanitarian work. The offence ought to be defined in religion-neutral terms to focus on inappropriate coercion, pressure tactics, abuse of position, deception, and so forth. There is a hazard in focusing on proselytism, even if it is restricted to a vague notion such as “improper proselytism,” because of the tendency of any such norm to be applied in discriminatory ways against smaller and less popular religions. The terms defining proselytism are too broad and vague, for example the words “moral assistance”, “through a reward or promise thereof” and “material aid”. Note that there is a fine line between

<sup>21</sup> <http://www.unhcr.org/refworld/country,,,COUNTRYNEWS,ARM,,4a82b7262d,0.html>

<sup>22</sup> *Kokkinakis v. Greece*, A.260-A.ECtHR 1993. Judgment of 25 May 1993

<sup>23</sup> *Kokkinakis v. Greece*, *ibid.*

<sup>24</sup> *Kokkinakis v. Greece*, *ibid.*

legitimate charitable activity, which often confers material benefits on those in great economic need, and inappropriate inducements. It is important not to pass laws that chill well-intended programs of humanitarian aid because they may be misconstrued by other religious groups as inappropriately motivated. The difficulty in this area is that such legislation tends to draw the state, which should remain neutral, into the difficult domain of assessing the bona fides of religious motivation.

62. The wording “distortion of religious convictions” appears to be aimed more at protecting “the exclusive mission” of the Armenian Church than at protecting the *forum internum* and other rights of those harassed by improper proselytism. The ECtHR has extended the right flowing from Article 9 to protect against attacks on a religion or belief to a general right even of dominant majorities in certain limited circumstances not to be insulted in their religious views.<sup>25</sup> However, a general notion of respect for religious feelings is not itself a right found within the freedom of thought, conscience and religion. On the contrary, it is inconsistent with the “*pluralism indissociable from a democratic society*” entrenched in Article 9.<sup>26</sup>

63. Because of the difficulty of drawing the line between legitimate religious persuasion and improper proselytism, and the risk that protected expression will be deterred by such legislation, consideration should be given to find a more neutral way of approaching the issue. Legislation focusing on coercion, undue influence, exploitation of vulnerable individuals, and the like is less likely to result in discriminatory prosecutions against smaller groups. The necessity of prohibiting proselytism must be based on the purpose of protecting victims against coercive tactics of improper proselytism but not to prevent missionary and humanitarian work *per se*.

## F. Registration

Article 5 of the draft Law sets forth the conditions for registration.

64. As emphasized in the Guidelines religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations.<sup>27</sup> The “Law of the Republic of Armenia on public organizations”, adopted on 4 December 2001 does not mandate registration of non-public organizations, but that law does not extend to religious organizations. Mandatory registrations of religious organizations would conflict with the Armenian Constitution and its international obligations. It is however appropriate to require registration for the purposes of obtaining legal personality and similar benefits, provided that the process is not unduly restrictive or discriminatory. While informal or unregistered associations are not unknown to the law, working through such organizations is unduly cumbersome and subjects the group to the vicissitudes of individual liabilities. As a result, denial of legal entity status may result in substantial interference with religious freedom. Legal status is for example necessary for receiving and administering voluntary contributions from members, cf., Article 12 of the Current Law, renting or acquiring places of worship, hiring employees, opening bank accounts, etc.

65. According to Article 16(2) of the Current Law, registration may be rejected “if the application is contrary to the laws in effect”. In such cases the law provides for the applicant organization to seek judicial remedy.

66. Hurdles to registration threaten the existence and rights of religious organizations. Precisely because legal entities have become so vital and pervasive as vehicles for carrying out group activities in modern societies, the denial of entity status has come to be seen as clear interference with freedom of religion and association.<sup>28</sup> Accordingly, the right to acquisition of

<sup>25</sup> *Otto-Preminger Institut v. Austria*, (13470/87) [1994] ECtHR judgment of 20 September 1994.

<sup>26</sup> See discussion P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights* (Kluwer Law) 1998, p. 551; Paul M. Taylor, *The Questionable Grounds to Objections to Proselytism and Certain Other Forms of Religious Expression*, (Brigham Young University Law Review 2006), <http://www.allbusiness.com/legal/international-law/4094075-1.html>

<sup>27</sup> CDL-AD(2004)028

<sup>28</sup> See, e.g. *Kimlyya v. Russia*, ECtHR, App. Nos. 76836/01 and 32782/03 (1 October 2009), § 84

legal personality is firmly entrenched in OSCE commitments,<sup>29</sup> and has been the subject of a burgeoning body of judgments of the European Court of Human Rights.<sup>30</sup>

67. In accordance with ECHR practices, an association that seeks to obtain legal personality may not be hindered in so doing, unless such restriction is prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In certain limited circumstances, where there are indications that a religious group is likely to be pervaded by abuse and exploitation, denial of legal status may be in congruity with the requirements in the limitation clause of Article 9 (2) of the ECHR. But these circumstances should be carefully drawn, since by hypothesis the group has not yet come into formal legal existence at the time it is seeking registration.

68. Burdensome constraints or provisions that grant excessive governmental discretion in giving approvals prior to obtaining legal status should be carefully limited.<sup>31</sup> Certain questions arise in connection with the draft provision of Article 5 which stipulates that the registration of religious organization shall “be carried out on the basis of an expert opinion on its religiousness”. This provision may constitute a chilling effect on the manifestation of religion/belief. As emphasized in the Guidelines, “*laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief*”.<sup>32</sup> Article 9 (1) of the ECHR does not demand that authorities grant legal status to anyone who wishes to obtain such status. The said provision is essentially destined to protect religions, or theories on philosophical or ideological universal values.<sup>33</sup>

69. Draft Article 5 permits a special body to assess the religiousness of an association, with apparently unlimited and unguided powers of discretion before granting it legal personality. This gives this special body impression of a power of imposing prior restraint and arbitrary and potentially discriminatory authority on the exercise of a fundamental freedom without being proportionate to the purpose of restriction.

70. Although States enjoy the margin of appreciation in assessing what is necessary to protect believers and the public in general from the potential abuse of religious organizations, the drafters should take care not to deter believers from engaging in religious conduct that should be protected exercise of freedom of religion. It should be recommended that authorities adopt a less restrictive approach for the purposes of assessing the “religiousness” of an association to obtain legal personality.

71. The second paragraph of draft article 5 (e) also evokes concern of constituting a form of prior restraint. It calls for much more detailed answers to be submitted to authorities on the characteristics of the given belief than the Current Law does. There is a thin line between prior censorship of the freedom of religion read in conjunction with the freedom of expression and association and state surveillance to protect the public interest, health, morals and the rights of others. The Guidelines have warned against intervention in internal religious affairs imposing bureaucratic review or restraints.<sup>34</sup> It is recommended that this clause be reconsidered.

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<sup>29</sup> See Vienna Concluding Document, Principle 16.3.

<sup>30</sup> See, e.g., *Canea Catholic Church v. Greece*, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997); *Hasan and Chaush v. Bulgaria* (ECtHR, App. No. 30985/96, 26 October 2000); *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, App. No. 45701/99, 13 December 2001); *Moscow Branch of the Salvation Army v. Russia* (ECtHR, App. No. 72881/01, Oct. 5, 2006); *Church of Scientology Moscow v. Russia* (ECtHR, App. No. 18147/02, 5 April 2007); *Svyato-Mykhaylivska Parafiya v. Ukraine* (ECtHR, App. No. 77703/01, 14 September 2007); *Kimlya v. Russia*, ECtHR, App. Nos. 76836/01, 32782/03 (1 October 2009).

<sup>31</sup> CDL-AD(2004)028

<sup>32</sup> CDL-AD(2004)028

<sup>33</sup> App. 19459/92, *F.P. v. Federal Republic of Germany* (unpublished). P. van Dijk and G.J.H. van Hoof, *Theory and Practice on the European Convention on Human Rights*, p. 548.

<sup>34</sup> CDL-AD(2004)028

72. Indeed, the European Convention on Human Rights does not merely impose a negative duty on its Member States to abstain from meddling with the rights of their subjects but furthermore a positive duty to guarantee to each and everyone within their jurisdiction the right to enjoy his/her beliefs and manifest them publicly in community with others.

73. Consequently, the drafters should recall that the need for a religious organisation or belief to register in order to be able to operate represents an interference with freedom of religion or belief as guaranteed by Article 9(1) ECHR.<sup>35</sup> Any interference with the freedom of religion or belief must satisfy the requirements of Article 9(2) ECHR i.e. it must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. It is not made clear in the Current Law or the Draft Law that a religious organisation should be able to exist legally and operate in the absence of registration.

74. There is no statement in either the Current Law or the Draft Law that it cannot but it is essential that this crucial matter be clarified. Furthermore, the Current Law expressly states in Article 14 that "a religious Community or Organisation is recognised as a judicial person after being registered..." This Article is to be replaced in the Draft Law but the legal status of registered religious organisations is not provided for. The Draft Law should clearly state that religious organisations acquire legal personality when they are registered.

75. Moreover, the new reading of Article 14 (as proposed by Article 6 of the Draft Law) provides, in paragraph 3, that state registration shall be rejected if, inter alia, "the submitted statute contradicts the Constitution and laws of the Republic of Armenia and other legal acts". Such vague reference to virtually the entire body of legislation leaves broad discretion to the implementing authorities and arguably renders the provision insufficiently foreseeable.<sup>36</sup> It is recommended to specify with greater precision which particular laws should a religious organization's statute comply with in order to satisfy registration requirements.

76. Whether refusal to register under Article 14 of the Draft Law will give rise to an issue falling within the scope of Article 9(2) ECHR will depend on whether the refusal involves an interference with individual or collective manifestation of belief. The law on refusal to register was considered in the 2009 Joint Opinion (paragraphs 30 and 31) and is applicable here too. It can be said in relation to the requirements of the Draft Law and the Current Law that many of the administrative requirements are inappropriate for the reasons set out above and their breach would consequently not be a valid reason for non-registration.

77. The Guidelines observe that religious association laws that govern acquisition of legal personality through registration are particularly significant for religious organisations. The Guidelines make the following statements set out in italics below:<sup>37</sup>

78. *"Registration of religious organisations should not be mandatory per se, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."*

79. As already observed in paragraphs 63 and 73 above, it is not clear whether registration is mandatory and what is the status and effect of non-registration on religious organisations. This issue should be clarified in the law in a way that accords with this statement in the Guidelines.

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<sup>35</sup> See *Metropolitan Church of Bessarabia v. Moldova*, ECtHR judgment 13 December 2001 (application No. 45701/99), paragraphs 129-130.

<sup>36</sup> The ECtHR has held that a similar provision from Ukraine's *Association of Citizens Act*, providing that "[t]he registration of an association may be refused if its articles of association or other documents submitted for the registration contravene the legislation of Ukraine" allowed for a "particularly broad interpretation" and was "too vague to be sufficiently 'foreseeable' for the persons concerned. See *Koretsky v. Ukraine*, ECtHR Judgment of 3 April 2008 (application no. 40269/02), paragraph 48.

<sup>37</sup> See *Guidelines*, Part II F paragraph 1.

80. *“Individuals and groups should be free to practise their religion without registration if they so desire.”*

81. It is not clear whether individual groups are free to practise their religion without registration and this should be expressly permitted.

82. *“High minimum membership requirements should not be allowed with respect to obtaining legal personality.”*

83. The requirement that "a list signed by at least 200 persons – having attained the age of eighteen – establishing the religious organisation..." is a significant increase on the 50 required by the Current Law. This matter is addressed in the 2009 Joint Opinion at Paragraph 36(e) which comments that a threshold of 200 probably suffers from being an excessively high minimum membership requirement. The difficulty arises primarily for religious groups that organize as a matter of theology not as an extended church, but in individual congregations. Some of these congregations may be relatively small, so that having 50 individuals who could register the congregation is impossible. For these groups, the high membership threshold deprives them of the right to entity status.

84. *“It is not appropriate to require lengthy existence in the State before registration is permitted.”*

85. Whilst no particular length of time is specified in the Current Law or the Draft Law, the expert opinion on religiousness might require such a lengthy existence and this would be impermissible.

86. *“Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.”*

87. Many of the requirements in Article 4 of the Draft Law would be significant burdens on a religious organisation and are otherwise potentially impermissible; e.g. the requirement to allow representatives of the State administration body to attend its meetings; the requirement to submit information on its activities and projects in cooperation with other religious organisations etc.

88. *“Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited.”*

89. Article 2 of the Draft Law which replaces Article 5 of the Current Law makes registration dependant upon "an expert opinion on its religiousness". Article 6 of the Draft Law which replaces Article 14 of the Current Law provides that "[the] form of the expert opinion and the list of documents necessary for carrying out theological expert examination shall be defined by the State administration body authorised by the Government of the Republic of Armenia."

90. Registration will be refused if the "state administration body...has rendered a negative opinion". This expert opinion clearly involves the State in forming a value- judgement about the merits of the religion or belief and assessing their legitimacy. This is impermissible. The requirement for the State to remain neutral means that registration requirements that call for substantive as opposed to formal review of the religion or belief and its practices and doctrines are an infringement of freedom which does not come within the scope of legitimate restrictions contained in Article 9(2) ECHR, which are limited to those that *"are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"*.<sup>38</sup>

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<sup>38</sup> While a State is 'entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population' (see *Manoussakis and Others v. Greece*, judgment of 26 September 1996 (application no. 18748/91), paragraph 40), it may not go further and appear to be assessing the

91. The religious organisation appears to be obliged to furnish for the purposes of the expert opinion "documents on the grounds for faith and religious practice" as well as "information on the basics of the doctrine and the practice based thereon, including the characteristics of the given belief and history of origin of the given organisation, characteristics of the forms and methods of its activities, characteristics of attitude towards the family, marriage and education, characteristics of the attitude towards health of the followers of the given religion, on limitations of the civil rights and obligations envisaged for the members of the organisation".

92. The submission of all of this information is required for the review and assessment of the doctrine or faith of the organisation. It is difficult to see how any of these requirements can be justified under Article 9(2) ECHR and an assessment of this kind by State authorities is impermissible.

93. Finally, the Guidelines reiterate that "*Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed.*"

### **G. Liquidation**

94. Article 8 of the Draft Law brings a new provision – Article 24 – concerning liquidation of a religious organisation. The first three grounds are within the limits of Article 9 (2) provided there is a pressing social need and that the restriction is not imposed in a discriminatory manner.

95. The grounds prescribed in no. 5 and 6 may target Jehovah's Witnesses, their refusal of military service and their refusal of blood transfusions. These grounds raise very serious and controversial issues. On 24 November 2010 the Grand Chamber of the European Court of Human Rights held a hearing in the case of *Bayatan v. Armenia* referred to it by an Armenian citizen who is challenging a court verdict which sentenced him to prison for refusing to bear arms. The application was lodged with the European Court of Human Rights on 22 July 2003. On 27 October 2009 the Court held by six votes to one that there had been no violation of Article 9 which did not guarantee the right to conscientious objection. This was the first time in which the direct applicability of Article 9 to conscientious objection has been considered by the Court. The applicant holds that Article 9 of the ECHR should be interpreted in the light of present-day conditions, namely the fact that the majority of Council of Europe Member States have recognized the right of conscientious objection, and that Armenia in 2000, before becoming a member, had committed to "pardon all conscientious objectors sentenced to prison terms". The law on alternative service has been adopted in Armenia after the sentencing of Mr. Bayatan.<sup>39</sup>

96. To refuse medical aid based on religious motives may raise conflicts with the right to life. The right to life under Article 2 (1) of the ECHR read in conjunction with the State's general duty in Article 1 ECHR is to secure to everyone within its jurisdiction the right against intentional endangering of life. Because children lack the capacity to waive this right, the state may insist on medical interventions, such as court ordered blood transfusions in the cases of children, and these are in congruity with requirement that States take positive measures to protect the right to life against private interference.

97. Providing for the liquidation of a religious organization if it teaches its members to refuse medical aid to its members in life threatening circumstances must be carefully construed. Mature individuals have a right to refuse medical treatment. On the other hand, it is objectionable for the State to turn a blind eye to such practices in the case of children, notwithstanding that the ban is based on genuine religious motives.

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comparative legitimacy of different beliefs (see *Hasan and Chaush v. Bulgaria*, ECtHR [GC] judgment of 26 October 2000 (application no. 30985/96), paragraph 78).

<sup>39</sup> *Bayatan v. Armenia*. Application no. 30814/06. [http://www.echr.coe.int/echr/Homepage\\_EN](http://www.echr.coe.int/echr/Homepage_EN)

98. It is appropriate that a religious organisation may only be liquidated or abolished by a court decision and only for “multiple or gross violations” of laws. This must be interpreted and applied in a proportionate manner and it should be recalled that the European Court of Human rights has preferred Article 9 rights over other freedoms.<sup>40</sup>

99. It should be borne in mind that the liquidation or termination of a religious organization may have grave consequences for the religious life of all members of a religious community, and for that reason, care should be taken not to terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organisations should be addressed *in personam*, through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organisation accountable. Among other things, consideration should be given to prescribing a range of sanctions of varying severity (such as official warnings, fines, temporary suspension) that would enable organizations to take corrective action (or pursue appropriate appeals), before taking the harsh step of liquidating a religious organization, which should be a measure of last resort. It is recommended to include such a procedure in the new Article 24.

100. Paragraph 3 of the supplement Article 24 appears to make religious advocacy in kindergartens, schools and other educational, learning, social institutions, a ground for liquidation.

101. Article 18.4 of the ICCPR provides for the respect of the liberty of parents and legal guardians to ensure the religious and moral education of their children, in conformity with their own convictions. The UN Human Rights Committee interpretation of this provision is that “public education that includes instruction in a particular religion or belief is inconsistent with Article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians”.<sup>41</sup>

102. Article 17 of the Current Law explicitly provides for the sole privilege of the Armenian Church, to “preach and disseminate her faith freely throughout the Republic of Armenia”, and to “carry out the same in the state educational institutions”. As it is generally recognized that parents have the right to determine the religious education of their children, the latter cannot be required to take instruction in religious education against their parents’ wishes. As stated in the Guidelines, “States should be sensitive to the religious and ideological concerns of parents on behalf of their children and should seriously consider opt out possibilities when the education may interfere with deeply held religious and ideological beliefs.”<sup>42</sup> It presumably follows from this that parents should be able to educate their children in private religious schools although the State may regulate teacher certification, provided that objective criteria are used.

103. The Guidelines mention that some States may permit religious schools to be operated only by “registered religions”. If such a rule exists, standards for access to and retention of legal personality should be broadly similar. Care should be taken to avoid vague provisions that allow discriminatory treatment of “unpopular groups”.<sup>43</sup>

104. Firstly, it is not clear what institutions are covered by this prohibition and this should be clarified. Secondly, it is not clear what is meant by “religious advocacy” or “preaching” and whether it includes ordinary religious instruction. This should be clarified. Thirdly, whilst it may be permissible to prohibit religious persuasion or preaching in state schools, nonetheless, if a school is privately run by a religious organisation, this would seem to be an excessive

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<sup>40</sup> See *Otto-Preminger-Institute v. Austria* (1994) 19 EHRR 34 and *Murphy v. Ireland* (2004) 38 EHRR 13.

<sup>41</sup> General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 30.07.1993

<sup>42</sup> CDL-AD(2004)028.

<sup>43</sup> CDL-AD(2004)028.

interference with the freedoms of expression and association and the rights of parents to have their children educated in accordance with their ideological values and beliefs.

#### **H. Rights and obligations of religious organisations**

105. The title of Chapter 3 of the Current Law on the Rights of Religious Organisations is replaced by Article 3 of the Draft Law with "Rights and Obligations of Religious Organisations". Article 7 of the Current Law provides that spiritual and religious activities shall be carried out within a set of prescribed rights such as to rally the faithful around them; to satisfy the religious-spiritual needs of their faithful; to perform religious services, rites and ceremonies in sanctuaries and buildings belonging to them; to engage in theological, religious and historical and cultural studies; to make use of the news media in accordance with the law; to get involved in charity and so forth.

106. Article 4 of the Draft Law supplements Article 7 of the Current Law and in it the "Rights and obligations of religious organisations" are set out as "clearly prescribed rights". What is termed as prescribed rights in fact constitutes a description of many of the ordinary activities of religious organisations including rallying their faithful, satisfying the religious/spiritual needs of the faithful, performing religious services etc in buildings belonging to them and a list of other places, establishing groups for religious instruction. However it is not clear that the list of the prerogatives of the registered religious organisations is a definitive list and whether it precludes the organisation from undertaking other activities. The 2009 Joint Opinion mentioned in this regard that a list of rights or prerogatives prescribed by the law should not be interpreted as a definitive list whereby any activities not specified therein are automatically prohibited (paragraph 40).

107. The new set of obligations added in the supplement Article 7.1 entail mostly negative duties of religious organizations such as to meet the requirements of the Law on State Registration of Legal Entities; not to engage in activities conflicting with the objectives envisaged by its statute or prohibited by law, not to damage the uninhibited mental and physical development of an individual, including children and teenagers, the property of a person, and not to intervene in family affairs arbitrarily. There are furthermore duties to submit reports on activities and use of property. Firstly, it is recommended that the criteria be clarified in scope. For instance, by whom and how may it be judged whether a person's "mental and physical development" has been inhibited. Secondly, care needs to be taken to assure that these criteria are not applied in an arbitrary or discriminatory manner.

108. The supplemented obligations seem to fall within the ambit of paragraph 2 of Article 9 of the ECHR as being necessary for the purported interests listed there apart from one requirement. Article 7.1 (h) expressly states that representatives of the state administration body authorized by the Republic of Armenia shall be allowed to attend the meetings of a religious organization. The attendance of authorities is not subject to any restriction as the text says "meetings". The chilling effect of this clause for the operation of an organization is evident even for normal meetings. Furthermore, the term "meetings" could cover gatherings other than normal worship services, for instance confidential meetings dealing with personnel matters or even confessions. It should be recommended that this requirement is revoked, or at a minimum that the right of visitation be limited to typical inspection of facilities for safety and the like, or to meetings called with due notice and some specificity about what the meeting would concern. The necessity of interference by authorities must be proportional in intensity to the purpose being sought and may not become the rule but an exemption.

109. The information which a religious organization must furthermore submit to authorities each year on its activities stipulated in Article 7.1 paragraph 2 might amount to a chilling effect on their activities. On the other hand, given for example the potential of financially exploiting believers who may be vulnerable to pressures to donate etc., a prescribed form of surveillance may be justified on the basis of necessity. Care must, however, be taken that the transparency requirement inherent in the supplemented obligations is drafted in such a way that it will not be tantamount to controlling and monitoring religious activities.

110. The comments in the 2009 Joint Opinion (paragraph 38) on Article 7 of the Current Law continue to be valid both in relation to the Current Law and the Draft Law's new provisions. In particular, any religious organisation must be entitled to legal personality if it wishes to avail of it. It is not clear that this is so and it should be made expressly clear.

### **I. Scope of the Law on Freedom of Conscience and Religious Organizations**

111. Article 4 of the Current Law, amended by Article 1 of the Draft Law, provides a definition of "religious organisation". Article 5 of the Current Law, amended by Article 2 of the Draft Law, provides for registration of religious organisations which meet certain criteria. Article 7 of the Current Law, which is supplemented by Article 4 of the Draft Law, sets out the rights and obligations of religious organisations. Articles 9 – 13 of the Current Law deal with the property of religious organisations and Article 17 of the Current Law, supplemented by Article 7 of the Draft Law provides for relations between religious Organisations and the State. The Draft Law (Article 8) introduces a new Article 24 to the Current Law, which provides for the liquidation of religious organisations.

112. It is not made clear in the law whether these important provisions apply to all religious organisations or only to those registered pursuant to the requirements of the Current and Draft Laws. This is a serious deficiency and makes it difficult to analyse the compatibility of the Current and Draft Laws with international human rights standards. It is essential that the precise scope of any legislation affecting the freedom of religion, conscience and belief be made clear.

### **VI. Analysis of the Draft Law on making supplements to the Administrative Offences Code**

113. This draft law provides for a variety of fines for administrative offences involving: religious advocacy in schools; performance of functions of religious organisations and registration; providing false information including in relation to "charity works". The fines are set at "500-fold of the minimum salary" and "1000-fold where the offence "has been committed repeatedly after the imposition of the administrative penalty".

114. It is first of all necessary to examine the administrative offences that are behind the fines to see if they are permissible having regard to the international standards. So, for example, paragraph 29 would suggest that there is considerable doubt about the scope of the offence in relation to religiously affiliated private schools. Secondly, more information about the level of the fines would be required to comment on their appropriateness. Attention is drawn to the Guidelines' comments that it is not appropriate to punish a simple administrative mistake as if it were a violation of the criminal law or be subject to punitive administrative penalties: "*Serious penalties for small registration mistakes, for example, would raise serious questions about whether the rights of religion and belief are being infringed by a pretextual reliance on the criminal law*".<sup>44</sup>

### **VII. Analysis of the Draft Law on making a supplement to the Law "on Charity"**

115. This draft law provides: "Charity by legal and natural persons for the purpose of religious advocacy shall be prohibited". It would seem that this provision is excessively broad. Under international law, it is only improper proselytism involving some degree of coercion that should be prohibited. This issue has been addressed in the 2009 Joint Opinion (paragraphs 43-50). Charity for other types of spiritual aid is not prohibited by the Law on Charity. In the circumstances, it is difficult to understand why religious advocacy, which is undoubtedly permitted, should not be the subject of charitable financial support.

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<sup>44</sup> See *Guidelines*, Part III A.

### **VIII. Analysis of the Draft law on making a supplement to the Criminal Code**

116. The Draft Law on making a supplement to the Criminal Code of Armenia of 18 April 2003 by supplementing article 162.1 prohibiting and making a criminal offence of proselytism makes it punishable “by a fine in the amount of 500-fold to 1000-fold of the minimum salary or by detention for maximum of three months or by deprivation of the right to hold certain positions or carry out certain activities for a maximum term of three years.”

117. This provision prohibiting and making a criminal offence of proselytism, appears to apply only to circumstances where the persuasion is coercive or where the subject is in a position of vulnerability. It would be to this extent permissible.

118. However, in light of the elusive definition of what might constitute proselytism the severe sanctions will likely have a negative effect on missionary activities in general. The punishment should be in proportion to the severity of the crime itself. The supplement clause does not provide scope for minor infringements. This provision should be revised in accordance with what was recommended in the relation to the supplement to Article 8 of the Current Law on the Freedom of Conscience and Religious Organisations. The text must be sufficiently clear as to give notice what is and what is not prohibited.

119. The level of fines and imprisonment seems severe and not necessarily admitting of adequate variation to take account of minor infringements. Further information is required to advise on this aspect.

120. Legal punishment is meant to serve as a deterrent, but caution should be taken so that it will not turn into a tool of repression on religious freedom, even inciting religious tension and intolerance.