



OSF-ARMENIA JUSTICE GROUP OBSERVATIONS AND RECOMMENDATIONS

On the Draft Amendments to the RA Law on Freedom of Conscience and Religious Organizations and related legal acts

The government has introduced Draft Amendments to the Law on Freedom of Conscience and Religious Organizations (Draft). This is the third attempt to revise the existing law on the religious organizations. The previous drafts were largely criticized by local human rights defenders and international bodies, such as OSCE/ODIHR and Venice Commission. Similar to previous cases, the Draft was officially submitted to the OSCE/ODIHR for its opinion.

The Draft entails unlawful restrictions on the rights to freedom of religion, expression and association. Unlike the previous ones, the wording of the Draft is such that the Armenian Apostolic Church (AAC) is not regulated by its provisions the same way, as other religious organizations. Instead, activities of the AAC and its relations with the state will be regulated by the draft Law on Relationship between the Republic of Armenia and the AAC. The legislation foresees different scope of rights and obligations for the AAC and other denominations in the areas of tax exemption, funding, education, public service, etc. Such a discriminatory legislation contradicts the Constitution of Armenia, the European Convention on Human Rights (ECHR) and other international documents that prohibit discrimination on the ground of religion. In its opinion concerning the Draft Constitutional Amendments of Armenia (CDL-AD(2015)037), Venice Commission has stressed that though entrusting the AAC with an exclusive mission is in conformity with the ECHR, it cannot be in conflict with the principles of equality and freedom of religion.¹

Accordingly, the AAC should be regulated by the same law, as other organizations to secure the principles of equality and freedom of religion for everyone. The government should also preclude the limitations imposed on religious organizations in the Draft as discussed below.

The Draft restricts freedom of religion of a group or persons, if their activities threaten state security (Article 5 of the Draft). This limitation clause contradicts the ECHR standards on the right to freedom of religion. In one of ECHR judgments concerning restriction on national security ground, the Court ruled "the State cannot use the need to protect national security as the sole basis for restricting the exercise of the right of a person or a group of persons to manifest their religion".² The problem of restriction on state security grounds derives from the Constitutional Amendments of 2015. Notwithstanding the criticism of this restriction by civil society, it was included in the Chapter on Human Rights and Freedoms of the Constitution.

The "state security" ground for limiting freedom of religion should be removed from the Draft.

Adoption of two separate laws, i.e. draft laws on Freedom of Conscience and Religious Organizations and Law on Relationship between the Republic of Armenia and the AAC, might also lead to discrimination in public service and education. The Draft does not explicitly suggest that the AAC is a religious organization. In this case, the AAC followers will not fall under the blanket restrictions on recruitment for service in several state bodies. Specifically, a number of laws that regulate public service in the Police, Penitentiary system, Compulsory Enforcement Service, and National Security Service outlaw recruiting members of religious organizations for the service in those bodies.

The laws on service in the state institutions should be revised to eliminate all direct and indirect discriminatory clauses that restrict the rights of religious organizations in this area.

Limitations on Freedom of Religion

Discrimination in Public Service and Education

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¹ European Commission for Democracy Through Law. 2015. "First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia." Retrieved from: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)037-e).

² Nolan and K. v. Russia, Application no. 2512/04, §73; (2009)

Applicable Legislation

The Draft stipulates that the Law on Non-Governmental Organizations (NGO) applies to the activities of religious organizations, creating additional problems with implementation of the respective legislation.

Firstly, the Law on NGOs regulates the establishment, dissolution and other activities of NGOs, as social units of citizens or legal entities that have a non-commercial status. Meanwhile, the religious organizations, by their definition, unite the followers of a specific religion or belief to exercise collectively their right to freedom of religion. Thus, the legislative analogy between the regulations on NGOs and religious organizations is unsubstantiated.

Secondly, the Draft designates the State Revenue Committee of Armenia ("the SRC") as the Authorized Body for religious organizations. This approach lacks proper reasoning, since a religious organization must not be viewed by the state as a taxpayer only. Similarly, according to the Draft, the Authorized Body can bring a motion to the court for dissolving religious organizations if there are sufficient grounds for that. Clearly, the SRC is neither competent, nor authorized by its bylaws to evaluate legality of activities of religious organizations. The Constitution of Armenia allows state government and local self-government bodies and their officials to perform only such acts, for which they are authorized by the Constitution or laws.

The law on Non-governmental organizations should not apply to the activities of religious organizations.

Religious Preaching in Educational Institutions

The Draft bans religious organizations from preaching in public schools. In case the AAC is not considered a religious organization by the law, this restriction will not apply to it. The Draft suggests that the activities of religious organizations will be limited, if without obtaining parents' consent, they carry out preaching in educational institutions, where children under the age of 14 study. Simultaneously, the Law on Primary Education bans religious activities and preaching in the educational institutions, except for the cases prescribed by law. The Law on the Relationship between the Republic of Armenia and the AAC provides the AAC the right to participate in formulation of the curricula and textbook for the subject "History of the Armenian Church", to organize voluntary (extra-curricular) courses in the education institutions, using the resources and buildings of these institutions. In practice, wording of these laws and differentiation in the status might lead to preaching by AAC in public schools, while other organizations will be deprived of that right.

The ban on religious preaching in the educational institutions in the Draft must equally apply to all religious organizations, including the AAC.

Freedom of Association

Distinction in rights and obligations for the registered and not-registered religious unions, as provided in the Draft, amounts to an interference into the right to freedom of association. According to the Draft, if a group wants to be registered as a religious organization, it should have at least 150 members. Moreover, the Draft provides that a religious association does not have the same rights, as the registered organization. This differentiation contradicts the standards of freedom of association under the ECHR. The freedom of religion implies that believers may freely unite without state interference. The autonomy of religious associations is an integral part of plurality in a democratic society, which is secured under Article 9 of the ECHR.³

The law should prescribe the same rights and responsibilities for the registered and non-registered religious groups.

Limitations on the Freedom of Expression

The Draft Amendments to the Law on the Relationship between the Republic of Armenia and the AAC create unlawful limitations on the right to freedom of speech. This Draft states that official news and media coverage of the theology of the AAC can be carried out only by the AAC or with its approval. It empowers the AAC with censorship authority over other media outlets and journalists. First, the meaning of the term "official news and media coverage" used in this regulation is not defined. Second, any unjustified limitation on the right to freedom of expression in the media is unlawful under the international human rights law.

The limitation on covering the theology of the AAC must be removed from the Draft.

Funding of Religious Organizations

The Draft outlaws funding of the religious associations from their "spiritual" centers located outside the territory of Armenia, which is unjustified interference into their activities. Initially, the Draft does not provide the definition of a "spiritual center" of a church. Moreover, it is unclear whether this regulation will apply to the communities of ethnic minorities in Armenia, whose "spiritual" centers are located in their countries of origin. From that perspective, the Draft might contradict Armenia's international commitments concerning protection of the identity and religion of ethnic minorities on its territory. In one of its opinions, the Venice Commission has stated: "The principal international guidelines would suggest that although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies. The laws should be established in a non-discriminatory manner".⁴

Religious organizations should be allowed to do fundraising in accordance with the law without any discrimination on the ground of religious or ethnic origin.

¹ ECHR judgement on the case of Hassan and Chaush vs. Bulgaria, Application no. 30985/96 (2000).

² European Commission for Democracy through Law. 2014. "Guidelines for Legislative Reviews of Laws Affecting Religion or Belief." Retrieved from: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2004\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2004)061-e)