Strasbourg, 21 April 2009

CDL(2009)066*
Engl. Only

Opinion no. 530/2009

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT JOINT OPINION

ON THE LAW ON MAKING AMENDMENTS AND ADDENDA TO THE LAW ON THE FREEDOM OF CONSCIENCE AND ON RELIGIOUS ORGANIZATIONS
AND
ON THE LAW ON AMENDING THE CRIMINAL CODE

OF THE REPUBLIC OF ARMENIA

BY

THE VENICE COMMISSION

THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS OF THE COUNCIL OF EUROPE

THE OSCE/ODIHR ADVISORY COUNCIL ON FREEDOM OF RELIGION OR BELIEF

On the basis of comments by

Ms Finola FLANAGAN (Member, Ireland)
Mr Jim MURDOCH (Expert, DGHL)
The OSCE/ODIHR Advisory Council on freedom of religion or belief

---

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res (2001)6 on access to Council of Europe documents.*

TABLE OF CONTENT

I. Introduction

1. By a letter of 2 March 2009, Mr Hovik Abrahamyan, Speaker of the National Assembly of Armenia, asked the Council of Europe to provide an expert assessment of the draft amendments to the law on freedom of Conscience and on Religious Organisations (CDL(2009)064). By a letter of 22 March 2009, Mr Armen Ashotyan, Member of the National Assembly of Armenia, referred to such request and asked the Venice Commission to provide an assessment jointly with the OSCE/ODIHR Advisory Council of freedom of religion or belief.

2. Ms Finola Flanagan acted as rapporteur on behalf of the Venice Commission; she had a meeting with Mr Ashotyan in Yerevan on 20 March 2009, and participated in a conference of the civil society on this, and other matters relating to fundamental freedoms on 20-21 March.

3. Mr Jim Murdoch, Professor at the University of Glasgow, analysed the draft amendments on behalf of the DGHL (Annex I).

4. The OSCE/ODIHR Advisory Council of freedom of religion or belief submitted its comments on 10 April 2009 (Annex II).

5. While the request for assessment concerns the draft amendments to the law on freedom of conscience and on religious organizations, the law currently in force (CDL (2009)065, hereinafter "the current law", has necessarily been examined to the extent necessary to understand the said amendments and their practical impact on the legal situation of religious organisations in Armenia. In addition, the comments by the ODIHR Advisory Council also contain pertinent remarks concerning other provisions.

6. This opinion, which was prepared on the basis of the comments submitted by the experts above, was sent to the National Assembly of Armenia on 21 April 2009 and was subsequently endorsed by the Venice Commission at its … Plenary Session (Venice, …).

II. The legal context

7. Two provisions in the Armenian Constitution of 2005 protect freedom of religion and religious activities: Article 8.1, providing that:

> *The church shall be separate from the state in the Republic of Armenia.*
> *The Republic of Armenia recognizes the exclusive historical 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;*

and Article 26 which 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.*

8. 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 (among others, the number of adult members required to qualify for registration was raised from 50 to 200).

9. The "Law of the Republic of Armenia Regarding the Relationship Between The Republic of Armenia and the Holy Apostolic Armenian Church (hereinafter: HAAC)"[1] regulates the "special relationship" between the State and the HAAC. This law provides in particular for: the right for the HAAC to construct monasteries, churches and other buildings of worship and to rehabilitate monasteries and churches that have the status of historical monuments (Article 6); state funding of cultural institutions, collections, museums, libraries and archives which are the property of the HAAC and constitute a part of the national cultural inheritance (Article 7); the right for the HAAC to establish or sponsor pre-school institutions, elementary, secondary and high schools, specialty colleges and institutions of higher learning, to participate in the preparation of the scholastic curriculum and textbooks for "Armenian Church History" courses within state educational institutions, to organize voluntary scholastic courses within state educational institutions, utilizing their buildings and resources (article 8); recognition of marriages and dissolutions of marriages by the HAAC (article 9); exemption of the income of the HAAC from taxation (Article 11).

10. The "Law of the Republic of Armenia on public organisations", adopted on 4 December 2001[2], regulates the founding and registration of non-profit legal entities. It provides in particular that "a public association, if its objectives correspond to the objectives set forth in Article 1 of this law, may be registered as a public organization acquiring the status of a legal entity from the moment of its state registration. The state registration, promoting the implementation of the chartered goals of a public association by setting it up as a legal entity, does not impede the person's right to form associations in what regards creating such associations, being a member of or acting through the associations without state registration".

III. Analysis of the draft amendments to the law on Freedom of Conscience and on Religious Organisations

Article 2 (amending Article 1 of current law)

11. The draft amendments extend the explicit guarantee of freedom of conscience and religion to *everybody*, while the current law only mentions freedom of conscience and religion of *citizens*. The draft amendments in this respect implement both the relevant provisions of the Constitution (see para. 7 above), which was amended in 2005 after the adoption of the law currently in force, and international commitments, notably Article 9 ECHR and Article 18 ICCPR that guarantee freedom of religion or belief and freedom of conscience for everyone regardless of citizenship.

12. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms reads:

> *1. 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 or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
>
> *2. 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 of public order, health or morals, or for the protection of the rights and freedoms of others.*

[1] Available at http://www.accc.org.uk/%20%20The%20Church/Church%20Notices/Law%20of%20the%20Republic%20re%20Church/law%20of%20the%20republic%20re%20church.htm

[2] Available at www.parliament.am

13. Article 18 of the ICCPR reads:

> *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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 belief 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 the fundamental rights and freedoms of others.*
>
> *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.*

14. However, many of the provisions of the current law (other than those contained in article 2) that restrict the freedom to manifest one's conscience, religion or belief to citizens are not affected, but instead should be affected, by the draft amendment. 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 (Articles 2 and 4, for example).

15. The draft amendment appears to extend (the translation is unclear) freedom of religion or belief to changing one's religion, while the current law only explicitly guarantees the right to adopt or not to adopt a religion; the draft amendment thus would comply with both Article 26 of the Constitution and with international standards, in particular Article 9 ECHR.

16. However, there are certain shortcomings which should be remedied in Article 2.

17. It is important that everyone have the right to manifest his or her religion or belief, and to do so *publicly*. Freedom of religion or belief would be an almost empty word if it were confined to the merely private sphere. Freedom to manifest one's religion also entails the right to do so *through teaching*, and also through *observance* and *practice*, failing which very important manifestations of religion or belief such as ceremonies outside of a church or of another building of worship might be prohibited. Further, 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.

18. Article 2 of the draft law under consideration should be redrafted accordingly. In order to achieve full and correct effect of the guarantees in the treaties (ICCPR & ECHR), the wording of those treaties might be adopted.

19. The draft amendment takes up the reference to the role of the HAAC in the previously repealed preamble of the current law. In doing so the draft amendment specifies the role of the HAAC. This change in general attributes greater legally binding force to the provision. It is not clear what consequences result from such a change. The acknowledgement of the special historical role of a specific religion in a country is not *per se* impermissible, but must not be allowed to lead to, or serve as the basis for discriminations against other religious communities that may not have the same kind of specific role.

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 HAAC), there must be a distinct opportunity for 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 HAAC 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 HAAC 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. HAAC is acknowledged as part of the Armenian identity, but it must not be allowed to suppress other religions in maintaining this identity.

Article 3 (amending Article 1.1)

22. This draft amendment restores references to international treaties, previously contained in the now deleted preamble of the existing law. These international commitments are thus more clearly reaffirmed. However, this provision refers to "laws regulating the sphere and other normative acts", which is extremely vague and does not meet the general purpose of this provision to refer to at least all the main legal instruments regulating this field.

Article 4 (amending Article 2 of current law)

23. This provision affirms the equality of *citizens* before the law. It is inconsistent with Article 14.1 of the Armenian constitution, which provides that "Everyone shall be equal before the law."

24. The term "hindering others' rights" is unduly vague; very often, religious or belief rights will come into conflict with other rights and freedoms of other persons, but in those cases the colliding rights would have to be balanced and be brought into a harmony as far as possible. It would clearly be inappropriate if any other right, however minor, would suffice to override a religious freedom right.

25. It is not clear what religious 'animosity' would mean, but this term is problematic, to the extent that it fails to draw a precise line between legitimate and illegitimate expression of feelings. Freedom of expression as guaranteed by Article 10 ECHR is an essential foundation of a democratic society. It is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend shock or disturb[3]. This is of particular relevance in the context of religious expression. It would only be legitimate for the law to prohibit "incitement of religious hatred," and this should be understood to cover only extreme cases such as physical risks to persons and property and not theological disagreements or disputes. Practically all Council of Europe member States provide for an offence of "incitement to hatred" and religious hatred is treated within this offence as a subset of incitement to hatred generally.[4] Indeed, Article 226 of the Armenian criminal code prohibits incitement of national racial or religious hatred.[5]

26. The Law should also specifically provide that public officials or public authorities may not take action that may directly or indirectly restrict individual or collective manifestation of worship other than in circumstances provided for by law and where such action is necessary in a

[3] ECtHR, *Giniewski v.France* judgment of 31 January 2006, para. 43

[4] Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred – adopted by the Venice Commission at its 76th Plenary Session, Venice, 17-18 October 2008

[5] Article 226 of the Criminal Code: 1) Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labour for up to 2 years, or with imprisonment for a term of 2-4 years. 2) The actions envisaged in part 1 of this Article committed: publicly or by mass media, with violence or threat of violence; by abuse of official position; by an organized group, are punished with imprisonment for the term of 3 to 6 years.

democratic society. Such a restriction on the powers of public officials would help prevent inappropriate interference with collective manifestation of religious belief (for example, when considering whether to intervene in private law relationships relating to the hire, etc of premises for worship).

Article 5 (amending Article 3 of current law)

27. The legitimate aims for restricting the right to freedom of religion appear to correspond to those listed in Article 9 ECHR and in Article 18 ICCPR, despite what appear to be inaccuracies in the translation. Reference should be added to the need for proportionality of such restrictions in a democratic society.

Article 7 (amending Article 5 of current law)

28. This article amends Article 5 of the current Law and needs to be read alongside Chapter 5 of the current Law (on the procedure for registration), and Article 7, which specifies a list of "rights" to be enjoyed following successful registration.

29. In connection with the matter of registration of a religious group, it must be recalled and underlined at the outset that "the expectation that believers will be allowed to associate freely, without arbitrary State intervention [for] the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords."[6] This follows from a reading of Article 9 of the European Convention on Human Rights in conjunction with Article 11. The imposition of a requirement of state registration is not in itself incompatible with freedom of thought, conscience and religion, but where (as here) domestic law requires official recognition in order to allow a religious group to obtain the legal personality necessary to allow it to function effectively, the State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition.

30. Whether refusal to register will give rise to an issue falling within the scope of Article 9 (and Article 14 taken with Article 9) will be dependent on the impact of Article 7: that is, whether the refusal to register involves an interference with individual or collective manifestation of belief.

31. The European Court of Human Rights has had occasion to consider the effects of non-recognition in a number of cases. Arrangements which favour particular religious communities do not, in principle, contravene the requirements of the Convention 'providing there is an objective and reasonable justification for the difference in treatment and that similar [arrangements] may be entered into by other Churches wishing to do so'.[7] This principle applies also to the conferring of a range of privileges (rather than rights) which may follow from formal recognition.[8] In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, grant of legal personality as a private-law entity (a registered religious community) but not of the status of a public-law entity (a religious society) was found to have violated Article 14 taken with Article 9: the number and nature of privileges and advantages accorded recognised public-law entities was substantial enough to give rise to Article 9 considerations, and since one of the criteria for assessing whether the community constituted 'a religious society' had been applied in an arbitrary manner, the conclusion was that the difference in treatment had not been based upon an 'objective and reasonable justification.[9]

---

[6] *Metropolitan Church of Bessarabia and Others v. Moldova,* ECHR 2001-XII, at para. 118.

[7] Appl. No. 53072/99, *Alujer Fernandez And Caballero Garcia v. Spain,* decision of 14 June 2001.

[8] Such as recognition of exemption from military service: see e.g. *Lang v Austria,* no 23459/03, 19 March 2009 [judgment not yet final].

[9] No 40825/98, 31 July 2008, paras 92-98.

32. According to the current Law and the proposed amendments, there are five existing qualifications with an additional sixth ground to be inserted.[10]

33. In general it can be said that Article 5 presents a set of requirements that appear to be met by the HAAC. The comment at paragraph 20 above concerning the link between ethnicity and a particular church on the one hand and the opportunity where such a link exists for discrimination on the other hand, is particularly pertinent in the context of Article 5.1 as amended. This Article does not therefore promote pluralism of religion.

34. 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',[11] it may not go further and appear to be assessing the comparative legitimacy of different beliefs[12]; further, 'the State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom'[13]. Any interference must thus correspond to a 'pressing social need'. It is not clear how most of the prescribed qualifications could be said to be 'necessary'.

35. Sub-paragraph 5 (a) (*a religious organisation can be denied registration by an Executive body if it appears necessary to do so to protect the health, morality, or rights of others*, etc) seems on its face to be compatible with the Convention.[14] States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety.[15]

36. The following sub-paragraphs instead call for individual comment:

(b) The religious organisation is based upon historically recognised Holy Scriptures: This is potentially incompatible with the requirements of Article 9 of the European Convention on Human Rights. The Commission and Court have not found it necessary to date to give a definite interpretation to what is meant by 'religion', but the key point is that 'historically recognised scriptures' do not form part of this test. In the case-law, what may be considered 'mainstream' religions are certainly readily accepted as belief systems falling within the scope of the protection.[16] However, older faiths such as Druidism which have no 'holy scriptures' also qualify[17] as do religious movements of more recent origin such as Scientology,[18] the Moon Sect[19], the Divine Light Zentrum[20]

---

[10] It is not clear why the exceptions in Article 5 Section 2 of the existing law are only applicable to ethnic minorities which have a national doctrine. Others must also be able to function. There is no obvious valid reason why only a national doctrine should qualify for this exception. Limitations which are discriminatory on their face cannot be said to be necessary.

[11] *Manoussakis and Others v. Greece,* judgment of 26 September 1996, Reports 1996-IV, at para. 40.

[12] *Hasan and Chaush v. Bulgaria* [GC], no 30985/96, ECHR 2000-XI, para. 78.

[13] *Moscow Branch of the Salvation Army v. Russia,* no. 72881/01, 5th October 2006, at para 62.

[14] See for discussion of whether there indeed exists a positive obligation upon States to so determine, *Leela Förderkreis E.V. and Others v. Germany* no 58911/00, 6 November 2008, para 99 [judgment not yet final].

[15] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 75, Metropolitan Church of Bessarabia and Others, cited above, § 113.

[16] See, e.g., Appl. No. 20490/92, *ISKON and 8 Others v. United Kingdom,* decision of 8 March 1994, DR 76-A, p.90.

[17] Appl. No. 12587/86, *Chappell v. United Kingdom,* (1987) DR 53, p. 241.

[18] Appl. No. 7805/77, *X. and Church of Scientology v. Sweden,* decision of 5 May 1979, DR 16, p.68.

[19] Appl. No. 8652/79, *X. v. Austria,* decision of 15 October 1981, DR 26, p. 89.

[20] Appl. No. 8118/77, *Omkarananda and the Divine Light Zentrum v. United Kingdom,* decision of 19 March 1981,DR 25, p. 105.

and the teachings of Osho.[21] (However, whether the Wicca movement did so appears to have been left open in one case, and thus where there is a doubt as regards this matter, an applicant may be expected to establish that a particular 'religion' indeed does exist).[22] It is thus not clear why qualification of a 'religious organisation' must be based upon historically recognised Holy Scriptures.

(c) *Its doctrines form part of the internationally contemporary religious-ecclesiastical communities:* Similar concerns as noted above are also of relevance here. Religious communities must have the right to register as religious organizations also when their doctrines do not form part of "the international contemporary religious-ecclesiastical communities". Freedom of religion or belief does not depend on the condition that one's religion or belief is internationally or contemporaneously acknowledged. Even when the status of a religious organization should entail a specific, elevated position in the legal order there is no obviously valid reason why such a condition should be necessary in a democratic society to achieve one of the legitimate aims required for a limitation of these freedoms. Furthermore, the phrase itself seems open to differing interpretations and may thus lead to arbitrary decision-making

(d) *It is free from materialism and is intended for purely spiritual goals:* 'free from materialism' and 'purely spiritual goals' both involve important qualifiers ('free' and 'purely') and thus also could lead to potentially arbitrary interpretation. A religious body may have a legitimate need to engage in certain commercial activities as a means of furthering its 'spiritual goals' (particularly if external financial assistance is precluded by section 13 when an organisation's 'spiritual centre' is outside Armenia) and thus arguably may not be 'free' from material considerations. While it may be permissible to require that religious associations not be "profit-making organizations that distribute profits to employees or officials", they should not be prevented from acquiring funds to pursue their non-profit activities.

(e) *It has at least 500 members:* The 1991 Law required an organisation to have at least 50 members, a figure which has already been extended to a requirement of 200[23] members. Now a figure of 500 members is proposed. There is no existing guidance on the compatibility of requirements for significantly greater numbers of adherents where this has an effect upon collective manifestation of faith, but the higher the number of adherents required for registration (both in real terms, or as a percentage of the community), the more difficult a State may find it to provide an adequate justification for this increase. The *OSCE* Guidelines for Review of Legislation Pertaining to Religion or Belief[24] specifically state: "High minimum membership requirements should not be allowed with respect to obtaining legal personality." Furthermore, it is not clear what the reason is for raising the threshold from 200 to 500 at this point. (It is understood that the original amendment was to raise the threshold to 1,000) In the absence of a reason linked to one of the permissible limitations set out in Article 9(2) ECHR, the new limitation is discriminatory and disproportionate. Indeed, the threshold of 200 probably suffers from the same difficulty.

---

[21] *Leela Förderkreis E.V. and Others v. Germany,* 58911/00, 6 November 2008, para 81 [judgment not yet final].

[22] E.g., Appl. no. 7291/75, *X v United Kingdom, (*1977) DR 11, 55 [concerning the 'Wicca' faith].

[23] The "undated" version of the amendments (in what is referred to as "Article 5") refers to "200 believers"; the "revised" version refers to replacement of "200" by "500". The implication is that the Law has already been changed, but initially at least, there was no proposal to increase the number of adherents.

[24] The Guidelines were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief and adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004).

(f) In the event of Christian belief, they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity: The provision is an undue intrusion into the freedom of doctrine and teaching, and into religious autonomy. It clearly will prohibit the registration of certain Christian churches such as Unitarians who do not accept the Holy Trinity. It will also discriminate against certain 'new' faiths, many of American origin. It is difficult to see how such a provision, if enacted, would allow the State to claim it was maintaining a position of 'strict neutrality' in matters of faith let alone demonstrate how it has proper grounds for refusing recognition on this basis. This is entirely objectionable.

37. These provisions are likely to make it difficult for other, non-traditional, religious organisations to penetrate Armenian society. As the Court has stressed, 'the exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom', with States enjoying only a limited margin of appreciation.[25] In any event, 'the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate'.[26]

38. It must be stressed at this point that any religious group must have access to legal personality status *if it wishes to avail of it*. The rights mentioned in Article 7 of the existing law must be also guaranteed and accessible for smaller religious groups, and most of them must also be accessible even for individuals, because they are normal manifestations of freedom of religion or belief also of individuals. The freedom to manifest one's religion or belief is guaranteed by Article 9 ECHR and Article 18 ICCPR "alone" as well as "in community with others" and "in private" as well as "in public". In this sense, it is important to remember that individuals should be free to carry out these activities without any entity status at all, if they so choose. In fact, for a variety of reasons, most groups will prefer to avail themselves of legal entity status, but such status should not be mandatory. As stated by the OSCE Legislative Guidelines, "Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."[27]

39. It must be noted in this connection that the relationship between the status as a religious organization and the general association law of the Republic of Armenia is not sufficiently clear. It is not clear whether a religious community that does not have the status as a religious organization can function as an association with legal entity status pursuant to general provisions[28], and that, if organized as such an entity, it would be able "to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities". In the discussions on this point that were held on the occasion of the visit in the Republic of Armenia, various views on this issue were held by Armenian officials.

40. It must be stressed, in connection with the list of the prerogatives of the registered religious organisations in Article 7 of the current law, that it is not clear whether it purports to be a definitive list of the rights and privileges of recognised religious organisations – that is, whether this section thereby excludes religious organisations from other activities. It should be made clear that this list is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith. In particular, the right of proselytism (discussed below) must extend to individual members and to religious groups.

---

[25] *Moscow Branch of the Salvation Army v. Russia,* above, at para 76.

[26] *Moscow Branch of the Salvation Army v. Russia,* above, at para 92.

[27] OSCE Legislative Guidelines, Section II (F).

[28] The law of the Republic of Armenia "on public organizations" (adopted on 4 December 2001) provides that the minimum number of physical persons required to found an organisation to be registered is two.

41. Further, as concerns membership of the religious organisations, it must be noted that the 'undated' version proposes that only adults can become members of a religious organisation; while the 'revised' version of the proposed amendments makes no reference to age. In light of the impact of non-registration upon collective manifestation of belief, no minimum age for membership should be required. It is not appropriate for the state to determine the conditions of membership in a religious organization. The state may provide that minors cannot be members of a legal entity, but if this is the intent, the provision should not be worded so as to suggest that there is something inappropriate about theological membership doctrines that contemplate membership at younger ages. It must be noted however that underage persons may be members of registered associations, subject to certain conditions.[29]

42. Finally, it is not clear why the exceptions in Article 5 Section 2 of the current law are only applicable to ethnic minorities which have a national doctrine. Others must also be able to function. There is no valid reason why only a national doctrine should qualify for this exception. Limitations which are discriminatory on their face cannot be said to be necessary.[30]

Article 9 (amending Article 8 of current law)

43. This provision makes it a criminal offence to proselytise. This prohibition is contained in the Part of the Act entitled 'Rights of Religious Organisations' although its import is to *deny* rather than to affirm collective rights.

44. Both the current Law and the Criminal Code prohibit proselytism. "Proselytism" is nowhere defined at present, although section 8 of the 1991 Law specifically provides that it does *not* include any of the "clearly prescribed rights" listed in section 7. The rights prescribed by section 7 do not include the right to proselytise: their focus is upon the provision of teaching, etc to *existing* members or believers ("their faithful"). The generally accepted definition of proselytism involves the attempt to convert an individual from one faith (or none) to another. In short, the existing Law is intended to restrict 'teaching' (a form of "manifestation" of belief specifically referred to in Article 9 of the European Convention on Human Rights) to existing adherents of a faith. This is certainly a major defect in Armenian law as it stands at present. The right to try to persuade others of the validity of one's beliefs is implicitly supported by the reference in the text of Article 9 of the European Convention on Human Rights to the right 'to change [one's] religion or belief'. As the European Court of Human Rights noted in *Kokkinakis v Greece*, the right to try to convince others to convert to another faith was included within the scope of the guarantee, "failing which ... "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter". In other words, the right to proselytise clearly falls within the scope of Article 9 and is thus protected. But it is not an absolute right and a State can limit the right on considerations of public order or the protection of vulnerable individuals against undue exploitation.[31]

[29] See Article 6 of the law on public organisations: "(…) An underage person, up to14 years old, may become a member of an organization on his/her will based on the written statement of his/her legal representative. If an underage person, from 14 years old to 18 years old, in the order prescribed by law is not recognized as a person with an ability to act, he/she may become a member of an organization based on his/her application with the written consent of his/her legal representative. The organization's charter may envisage specific stipulations regarding the rights and obligations of its underage members."

[30] See U.N. Human Rights Committee, General Comment 48(22), para. 8.

[31] The jurisprudence of the European Court of Human Rights distinguishes between 'proper' and 'improper' proselytism, a distinction reflected in other measures adopted by Council of Europe institutions such as Parliamentary Assembly Recommendation 1412 (1999) on the illegal activities of sects which calls for domestic action against 'illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature', the provision and exchange between states of information on such sects, and the importance of the history and philosophy of religion in school curricula with a view to protecting young persons.

45. The "revised" version proposes that this existing incompatibility is to be remedied. This is clearly to be welcomed, but with qualifications. As noted, Section 1 (according to the 'revised' version of amendments) of the Law is now to specify that freedom of conscience will also include the right to change belief. To this end, the 'revised' version (but not the 'undated' version) proposes significant redefinition of proselytism insofar as in future it will only constitute an offence when one (or more) of five factors can be established (that is, "preaching influence" involving one or more of "material encouragement", "physical or psychological pressure or compulsion", incitement to religious hatred, "expression of offences… towards other persons or religion", or two or more attempts at proselytism.)

46. While some of these five factors relate to what may fairly be deemed 'improper proselytism', not all do so. In consequence, the attempts to restrict the scope of the offence of 'proselytism' do not go far enough. First, the offence should be clearly defined as one of "improper proselytism", to clarify that proselytism *per se* does not constitute an offence. In *Kokkinakis v Greece*, while the Strasbourg Court accepted that a prohibition on proselytism was prescribed by law and could be said to have had the legitimate aim of protecting the rights of others, it could not accept that the interference could be justified as necessary in a democratic society. A distinction had to be drawn between "bearing Christian witness" or evangelicalism and "improper proselytism" involving undue influence or even force, especially upon weak and vulnerable members of society. The former was accepted by Christians as part of the Christian church's mission; the latter was incompatible with respect for belief and opinion. The failure of the domestic courts to specify the reasons for the conviction meant that the state could not show that there had been a pressing social need for the conviction, and thus the sentence had not been proportionate to the aim of the protection of others.[32]

47. Second, the definition of "improper proselytism" should be drawn with greater care. In *Kokkinakis,* the Greek courts in their reasoning had established 'the applicant's liability by merely reproducing the wording of [the legislation] and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means.' The State thus could not show that 'the applicant's conviction was justified in the circumstances of the case by a pressing social need', and thus 'the contested measure … does not appear to have been proportionate to the legitimate aim pursued or, consequently, "necessary in a democratic society ... for the protection of the rights and freedoms of others".[33] While in this case the European Court of Human Rights declined to provide a comprehensive definition of 'improper proselytism', it did refer to a 1956 World Council of Churches report in justification of the distinction between 'proper' and 'improper' proselytism:

> '[Bearing Christian witness or evangelicalism]' corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. ['Improper proselytism'] represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.[34]

48. "Improper proselytism" should thus be defined more carefully: while it might possibly include the use of "material encouragement" and "physical or psychological pressure or

[32] *Kokkinakis v. Greece,* judgment of 25 May 1993, Series A no. 260-A, paras. 48-49.

[33] *Kokkinakis v. Greece,* above, at paras. 48-49.

[34] *Kokkinakis v. Greece,* above. Subsequently, in *Larissis v. Greece*, judgment of 24 February 1998, Reports 1998-I, 362, paras. 40–61, the Strasbourg Court accepted that a conviction of senior officers who were members of the Pentecostal faith for the proselytism of three airmen under their command was not to be a breach of Article 9 in light of the crucial nature of military hierarchical structures which could potentially involve a risk of harassment of a subordinate through abuse of influence by senior officers: the need to protect the prestige and effective operation of the armed forces and to protect individual soldiers from ideological coercion provided adequate justification for the convictions.

compulsion" as proposed in the "revised" draft (i.e., subsections a and b), it is difficult to see how teaching with a view to convert an individual in which 'hatred is formed' (section c), 'the expression of offences is applied towards other persons or religions' (section d), or where a person is subjected on two or more occasions to unwanted attempts at proselytism (section e) can be said to constitute 'improper proselytism' within the (albeit limited) discussion of the concept by the Strasbourg Court. The formulation of 'hatred', etc (sections c and d) is better addressed by other means and should be restricted to cases in which a deliberate attempt to incite religious hatred can be proved, or at most, to cases in which the speaker has shown a wilful disregard for the likely consequences of the communication of expression. The current drafting suggests that intention is not required, and that the offence is committed whenever such 'hatred' is occasioned. This is too broad. Further, the avoidance of nuisance (section e) will only in rare situations be likely to warrant the imposition of criminal responsibility (it is exceptionally difficult to see how the making of two unwanted calls to or on an individual should constitute a criminal offence: but a persistent pattern of harassment most certainly should do so).

49. In any event, several terms – such as "material encouragement", "psychological pressure", "expression of offences" – are vague and unduly broad.

50. Third, the penalties for improper proselytism appear to be unduly harsh. At the same time as this liberalising measure permitting proselytism is introduced, it appears that the penalties for proselytism are to be increased significantly: the Draft Criminal Code, Art 162, now proposes that proselytism is to be punishable by a fine of 500 times the minimum salary or by one year's imprisonment[35].

Article 11 (amending article 11 of current law)

51. This provision requires the consent of religious organisations in order to make use for commercial purposes of pictures of saints and of religious mysteries and buildings.

52. It is not clear which religious organization's consent is needed when several organisations have the same symbol or, saint. As for the cross, which would qualify as a religious symbol, this provision is likely to have a significant impact on the jewellery industry, and we suspect that this is unlikely to be intended. The draft provision – at least in its English translation - also makes the use of such symbols, etc. depend on the consent of the registered religious organizations even when the registered religious organization does not have anything to do with that religious symbol, the saint or the religious building or 'religious construction'. Further, the draft amendment does not make any statement about the situation when a new saint or a new religious symbol is created. It is not clear what then happens with the prior use of such names.

Article 15 (amending Article 19 of current law)

53. It is not clear what is intended by the proposed addition to article 19. This provision is problematic, to the extent that it could be interpreted as banning all religious manifestations performed "in community with others." Further, it could easily be read as prohibiting religious monasteries or religious orders in which such control is a most common feature. Internal organization within any church or other religious community would become impossible if the hierarchy should not be able anymore to exercise control of the personal life of the clergy or staff. A common binding teaching would become impossible.

[35] It is not entirely clear what the existing penalties are: Art 162 seems to suggest (if proselytism constitutes an 'encroachment on the rights of others') that the offence is punishable by a fine of between 200 and 400 minimal salaries or by imprisonment for up to 3 months: but this provision refers to the 'establishment or management of associations'.

54. Indeed, every religion tries to take some control over the consciousness, thinking, personal life, awareness, and behaviour of their members. Religions traditionally and virtually always teach how best to think and lead one's personal life. By their very nature, religions seek to have influence on the conscience of people. They often ask for property as gifts donations, etc. They often want to influence health by giving advice on how best to live a healthy and sound life.

Article 18

55. This provision is unclear. What may be required is re-registration of religious organizations that have been registered before coming into force of the draft amending law, while this is not said in the present text. It is not clear whether religious organizations that are registered and are in compliance with the provisions of the law will need to re-register anyway or whether they will remain registered without doing anything. While it is likely that they will not need to re-register, it must be noted that no procedure is provided in the law as to how to establish whether a previously registered religious organization does in fact comply with the requirements of the law as amended. This would mean that all religious organizations will be under the continuous threat of being de-registered.

56. Assuming that a religious organization does need to re-register in order to bring its charter into compliance with the current law, three months is an impossibly short time - both for the churches that need to redraft charter documents, and for the personnel in state offices who would have to process the documents thus generated. Greater clarity should be provided about exactly who will need to re-register, and a considerably longer time period should be allowed for the process.

57. The draft provision appears to provide that "the activity" of the religious organization "shall stop" pending registration. This requirement contributes to an understanding of the whole draft amendment law as prohibiting the activity of all religious communities that do not have the status as a religious organization. What might legitimately be caused to "stop", if anything, is only the status as a religious organization with the activity of the religious community then continuing in some other form of association. Furthermore, inadequate care is taken to protect the vested rights of organizations currently existing Pending their re-registration. If the legal entity of a particular organization is dissolved, what happens to property the organization has acquired?

IV. Analysis of the draft amendment to Article 162 of the Criminal Code

58. The first paragraph of the proposed new Article 162 is unduly vague to the extent that it renders punishable "encroachments on other rights of individuals". These "other rights" are not defined. They thus can be any other rights of individuals including contractual rights. These provisions should therefore be redrafted to specify these rights.

59. As concerns the criminalisation of incitement to refuse "civil duties", the said "civil duties", according to an explanation provided by the Armenian authorities, should be those which are referred to in Articles 45, 46 and 47 of the Constitution (obligation to pay taxes, duties and other compulsory fees; to take part in the defence of the Republic of Armenia in conformity with the procedure prescribed by the law; to honour the Constitutions and laws, to respect the rights, freedoms and dignity of others).

60. As concerns the obligation to take part in the defence of the State, an obvious question arises whether a religious association that believes that the legal obligation to undertake military service is contrary to an adherent's duties as a matter of religious faith could be so penalised in cases where the association actively promotes this belief and thus 'incites citizens to refuse to perform their civil duties'. The extent to which Article 9 imposes a duty upon state authorities to recognise exemptions from general civic or legal obligations is still open to some doubt in light

of Article 4(3)(b) of the European Convention on Human Rights which makes specific provision for 'service of a military character'. However, virtually all European states which have military service obligations now recognise alternative civilian service in line with a clear European consensus that this is appropriate.[36] The issue is of some concern to Armenia in light of a pending case (that is, of *Bayatyan v. Armenia*)[37]. This matter is distinguishable from a situation in which an individual who is a Jehovah's Witness is penalised for refusal to carry out military service.

61. Further, the repeated imposition of penalties upon those who refuse to carry out such service may also give rise to other considerations: in *Ülke v Turkey,* the Court determined that the repeated punishment for refusal to serve in the military had amounted to treatment in violation of Article 3 since domestic law failed to make provision for conscientious objectors was 'evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs').[38] However, while distinguishable, the case may also be somewhat analogous insofar as the repeated imposition of sanctions on a religious organisation for promoting a central precept of their beliefs may well be considered an unjustifiable interference with the European Convention on Human Rights.

62. According to the explanation provided by the Armenian authorities, the duty to take part in the defence of the State would comprise both the military and the alternative service, which would exclude the aforementioned problems.

63. It is likely that the term "proselytism" in the draft provision would refer to the term proselytism as described in the draft amendment to the current Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations. As has been shown (see paras. 47-49 above), the definition provided in the draft amendment is extremely problematic. This also affects the draft amendment of Article 162 Criminal Code of the Republic of Armenia.

V. Conclusions

64. The draft laws under consideration take some important steps to improve the precision and the range of human rights guarantees as required by international commitments.

65. However, they raise several concerns and would require redrafting. The law which is currently in force would also require more extensive amendments than those proposed by the draft law under consideration.

66. The main problems raised by the provisions under consideration are the following:

- the law (both the current one and the draft amendments to it) should specifically refer to "everyone", and not merely to "citizens". This usage should also be consistent: rights should be enjoyed (individually and collectively) by all, irrespective of nationality or citizenship;

---

[36] And see Committee of Ministers Recommendation No. R(87) 8 and Parliamentary Assembly Recommendation 1518 (2001); further, Parliamentary Assembly Opinion No. 221 (2000) concerning Armenia's application for membership of the Council of Europe notes that the State undertook to introduce a law on alternative service in compliance with European standards.

[37] No 23459/03, declared partly admissible on 12 December 2006.

[38] No 39437/98, 24 January 2006, at paras 61 and 62. (Cf para 73 where the Court refused the applicant's request to request the State to enact legislation recognising conscientious objectors, noting this was a matter for the State under the supervision of the Committee of Ministers to determine the means for meeting its obligations under the Convention.) See also *Lang v. Austria*, no 28648/03, (19 March 2009) [not yet final], at para 25:

As the privilege at issue is intended to ensure the proper functioning of religious groups in their collective dimension, and thus promotes a goal protected by Article 9 of the Convention, the exemption from military service granted to specific representatives of religious societies comes within the scope of that provision.

- the scope of freedom of conscience, religion or belief (e. g. Article 1) should be adjusted;

- the law should make clear that those religious communities which are not registered as a religious organization can have access to legal entity status under general provisions (e.g., under association law). If legal entity status cannot be provided for them under general provisions, they should be given access to legal entity status under the registration process of the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations (e. g. Article 5);

- the requirements for registration as a "religious organisation" require extensive redrafting. The definition of Christianity should be deleted. The minimum number of members necessary for an organisation to be registered must not be increased;

- in section 7, it should be made clear that the list of rights is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith;

- the offence of proselytism should be reworded to ensure the offence is clearly defined as one of "improper proselytism"; the definition of 'improper proselytism' should be drawn with greater care; and the penalties for improper proselytism should be reconsidered as they could appear to be unduly harsh;

- it should be acknowledged that Art 162 of the Criminal Code (as amended) should not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for encouraging refusal to undertake military or appropriate alternative civilian service if this teaching involves the promotion of a central precept of the beliefs of this organisation;

- the provision on usage of religious symbols, names, etc. (Article 11 Section 2) should be redrafted;

- possible discriminations between religious communities should be avoided;

- the prohibition of control (Article 19) should be redrafted or deleted.

67. The Venice Commission, the Directorate General of Human Rights and Legal Affairs and the ODIHR Advisory Council on Freedom of Religion and Belief stand ready to continue to assist the Armenian authorities.

ANNEX I

Strasbourg, 8 April 2009 **DG-HL (2009) 4**

Directorate General of Human Rights and Legal Affairs
Legal and Human Rights Capacity Building Division

LEGAL OPINION

ON THE PROPOSALS TO AMEND THE LAW OF THE REPUBLIC OF ARMENIA ON THE FREEDOM OF CONSCIENCE AND ON RELIGIOUS ORGANISATIONS

Prepared

by

Prof Jim Murdoch
School of Law
University of Glasgow Glasgow
(United Kingdom)

TABLE OF CONTENTS

1. Executive summary

The Law on the Freedom of Conscience and on Religious Organisations and Article 162 of the Criminal Code both regulate certain manifestations of individual and collective belief. The current law contains certain anomalies and incompatibilities with European human rights standards, and while proposed amendments seek to address certain of these issues, other proposed amendments may have a detrimental impact upon freedom of thought, conscience and belief in the religious sphere. It is thus to be welcomed that the law in future will specifically refer to 'everyone' and not merely to 'citizens', and that the law will also provide that freedom of religious belief includes the right to change belief. On the other hand, the requirements for registration as a 'religious organisation' require extensive redrafting as certain criteria seem on their face to be incompatible with the State's duty to remain neutral, while the significant increase in the minimum number of members before an organisation can be registered seems illiberal. Moreover, care must be taken to ensure that the Criminal Code (as amended) does not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for encouraging refusal to undertake military or appropriate alternative civilian service.

Other issues outlined in the report largely concern drafting. The law should prohibit as a criminal offence the incitement of religious animosity or hatred, and the law should also specifically provide that public officials or public authorities may not take action that may restrict manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society. It should also be made clear that the list of rights enjoyed by recognised 'religious organisations' is illustrative only of the legal rights of recognised religious groups. Finally, the offence of proselytism should be reworded to ensure the offence is clearly defined as one of 'improper proselytism', and the definition of such should be drawn with greater care.

2. Introduction

1. This opinion addresses whether proposed amendments to the Republic of Armenia's Law on Freedom of Conscience and on Religious Organisations, and to Art 162 of the Criminal Code, raise any issues of incompatibility with the European Convention on Human Rights as interpreted by the (former) European Commission on Human Rights and by the European Court of Human Rights. To this end, I have been provided with copies of the following documents:

- Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations (dated 17 June 1991) [noted to be a 'non-official translation']
- Amendments and additions to the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations (undated)
- Revised version (dated 29 January 2009) of the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations
- Criminal Code of the Republic of Armenia, Art 162 ; and
- (Draft) amendment to Art 162

2. The translation of the 1991 Law refers to the various provisions as 'sections', and I retain this terminology, even although the translations of the proposed amendments employ the term 'article'.

3. The English translations of these instruments are in places not entirely clear, and my opinion is thus subject to the proviso that I may have misunderstood certain of the proposals. Further, there appears to be two separate versions of amendments to the 1991 Law (one undated, the other dated 29 January 2009). While these differ in certain respects, their broad thrust appears similar. However, where comment is called for, I have attempted to distinguish between these versions, referring to them respectively as 'undated' and 'revised'.

3. The Law on the Freedom of Conscience and on Religious Organisations

3.1 Part 1: General principles

Section 1 : statutory wording - 'everyone'

4. Section 1 aims to establish the right to individual conscience and belief. The 'revised' version of the proposed amendments refers to 'everyone' [or 'everybody']; the 1991 Law and the 'undated' version to 'citizens'. The former term is broader in scope than the latter, and more importantly reflects the key responsibility that States have to 'secure to everybody within the jurisdiction' the rights secured by the European Convention on Human Rights. The 'revised' version is clearly preferable, and is welcome. The Law should specifically refer to 'everyone', and not merely to 'citizens'.[39] Further, this usage should also be consistent (for example, Art 4 of the 'revised version' reverts to 'citizen' in respect of section 2 of the Law ('citizens… are equal before the law…)).

Section 1 : freedom to change belief

5. The 'revised' version also makes specific reference to changing religious belief (unlike the 1991 Law and the 'undated' version). This, too, is to be welcomed. The law should specifically

[39] See also fn 15 below.

provide that freedom of religious belief includes the right to change belief.[40] This is consistent with the European Convention on Human Rights (see discussion at paragraph 21 below in respect of proselytism).

Section 1 : establishment of the Armenian Apostolic Holy Church

6. There is an astonishingly wide diversity of constitutional and legal arrangements at domestic level throughout Europe. In consequence, the European Convention on Human Rights recognises the right of States to 'establish' a particular church (or churches), and the European Court of Human Rights has made no attempt to develop any doctrine of 'wall of separation' between a State and various religious groups. Secularism is a constitutional principle in certain States; in others, one particular religion may enjoy recognised status as an Established Church but the implications of such recognition can vary; elsewhere, certain religious communities may enjoy particular financial benefits through conferment of taxation benefits or recognition of charitable status. This relationship between religion and State in each instance will generally reflect local tradition and practical expediency. It is thus appropriate that the relevant domestic law makes reference to the legal consequences of any such recognition.

7. In the 'revised' version of the proposed amendments,[41] section 1 is now to contain two new clauses: first, a reference to the Armenian Apostolic Holy Church as the established church (in terms of its 'exclusive mission… in the spiritual life, development of national culture, and preservation of the national identity'); and second, a paragraph permitting relations between the Church and the State to be regulated by specific statutory provision. As a matter of drafting practice, it must be desirable that such references to the national church be removed from Section 1 since this purports to be a provision referring to *free exercise* of belief, not to establishment. These 2 new clauses are furthermore inserted awkwardly between an assertion of the principle of respect for individual belief, and the principle of collective manifestation of belief. If it is considered necessary to have specific statutory references acknowledging the establishment of the Apostolic Church, these should be placed in a separate section. This would also permit all references to the Church in the Law to be brought together to indicate, for example, the automatic recognition of the Church as a 'religious organisation' (in terms of section 6) and the relationship between the Church and the State (section 17).

Section 2 : Prohibition of discrimination on religious grounds; and interferences with religious faith, etc

8. The 'revised' amendment proposes the use of 'citizens'. As discussed, the Law should refer to 'everyone' as being equal before the law, rather than merely to 'citizens'. This would help highlight the key international legal principle that 'discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations'.[42]

9. The second paragraph of section 2 seeks to prohibit interference with personal faith, but it is not entirely clear to me if this constitutes a criminal offence or if the provision is rather directed towards public officials. There may be some merit in helping clarify what behaviour is targeted, both to meet concerns as to legal certainty and also to help emphasise that Armenian

[40] Cf Universal Declaration on Human Rights of 1948, Art 18 provides that '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 or private, to manifest his religion or belief in teaching, practice, worship and observance.

[41] Both the 1991 Act and the 'undated' revision merely refer to the Church in the preamble (ie, 'being cognisant' of the Church's place as the national Church).

[42] United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, Art 3.

law reflects European expectations that individual faith is adequately protected by ensuring that religious liberty may flourish within a spirit of pluralism and mutual tolerance.[43] The Law should specifically prohibit as a criminal offence any expression or action by individuals or groups deliberately designed to, or which has the likely consequences of, inciting religious animosity or hatred (through, for example, action or expression taken with a view to 'formenting religious strife' or in reckless disregard of the likely consequences of such action, or the use of physical violence or intimidation when such has been occasioned by religious faith, by treating religiously-motivated assaults, etc as aggravated offences).

10. The Law should also specifically provide that public officials or public authorities may not take action that may directly or indirectly restrict individual or collective manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society. Such a restriction on the powers of public officials would help prevent inappropriate interference with collective manifestation of religious belief (for example, when considering whether to intervene in private law relationships relating to the hire, etc of premises for worship).

Section 3 : Prohibition of coercion; and permissible interferences with freedom of conscience and religion

11. Section 3, para 2 as currently worded (and also as proposed by the 'revised' amendments) refers to the need to establish the 'necessity' of any restriction. It is but a minor point, but if the intention is to reflect or replicate the wording of Article 18 of the International Covenant on Civil and Political Rights of 1966, it may be desirable to refer to 'the *fundamental* rights and freedoms of others' rather than merely to the 'rights' of others; and a possible desirable addition (from a European perspective) would be the insertion of a reference to 'democratic society' (ie, that the restriction can be shown to be 'necessary in a democratic society').

3.2 Part 2 : Definition of religious organisations

Section 4 : definition of 'religious organisations'

12. This Part of the Law is of some potential complexity. The clear aim is to subject to State scrutiny the validity of claims for recognition as a 'religious organisation'; successful groups then would possess certain rights (as provided for in Section 7). There appears to be no change proposed to the definition of a 'religious organisation' in Section 4, para 1 ('an association of citizens'). This definition should make clear that non-citizens can also be members of a religious organisation.

Section 5 : qualifications for recognition of 'religious organisations'

13. This section needs to be read alongside Part 5 of the Law on the procedure for registration and section 7 which specifies a list of 'rights' to be enjoyed following upon successful registration. The current Law has 5 requirements for recognition of a 'religious organisation'; the 'revised' version of the proposed amendments will add a sixth and also significantly increase the minimum number of adherents required for successful registration. The starting-point for discussion of this section is the 'expectation that believers will be allowed to associate freely, without arbitrary State intervention [for] the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.'[44] This follows from a reading of

[43] *Otto-Preminger-Institut v Austria,* judgment of 20 September 1994, Series A no. 295-A, at paras.56 and 57.

[44] *Metropolitan Church of Bessarabia and Others v. Moldova,* ECHR 2001-XII, at para. 118.

Article 9 of the European Convention on Human Rights in conjunction with Article 11. The imposition of a requirement of state registration is not in itself incompatible with freedom of thought, conscience and religion, but where (as here) domestic law requires official recognition in order to allow a religious group to obtain the legal personality necessary to allow it to function effectively, the State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition.

14. Whether non-refusal will give rise to an issue falling within the scope of Article 9 (and Article 14 taken with Article 9) will be dependent on the impact of section 7: that is, whether the refusal to register involves an interference with individual or collective manifestation of belief. The European Court of Human Rights has had occasion to consider the effects of non-recogition in a number of cases. Arrangements which favour particular religious communities do not, in principle, contravene the requirements of the Convention 'providing there is an objective and reasonable justification for the difference in treatment and that similar [arrangements] may be entered into by other Churches wishing to do so'.[45] This principle applies also to the conferment of a range of privileges (rather than rights) which may follow from formal recognition.[46] In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, grant of legal personality as a private-law entity (a registered religious community) but not of the status of a public-law entity (a religious society) was found to have violated Article 14 taken with Article 9: the number and nature of privileges and advantages accorded recognised public-law entities was substantial enough to give rise to Article 9 considerations, and since one of the criteria for assessing whether the community constituted 'a religious society' had been applied in an arbitrary manner, the conclusion was that the difference in treatment had not been based upon an 'objective and reasonable justification.[47]

15. According to the existing Law and the proposed amendments, there are five existing qualifications with an additional sixth ground to be inserted. The Law (in its original form, and certainly in light of proposed amendments) does seem, however, to be somewhat open to arbitrary application. It also appears to contain a number of potentially objectionable provisions. Certainly, 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',[48] it may not go further and appear to be assessing the comparative legitimacy of different beliefs.[49]; further, 'the State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom'[50]. Any interference must thus correspond to a 'pressing social need'. It is not clear how most of the prescribed qualifications could be said to be 'necessary'.

16. Only section 5 (a) (a religious organisation can be denied registration by an Executive body if it appears necessary to do so to protect the health, morality, or rights of others, etc) seems on its face to be entirely compatible with the Convention.[51] (Curiously, the Law has an inbuilt discriminatory provision in *favour* of members of minorities: for only this condition is applicable in respect of 'religious organisations of ethnic minorities with their national doctrine'.

---

[45] Appl. No. 53072/99, *Alujer Fernandez And Caballero Garcia v. Spain,* decision of 14 June 2001.

[46] Such as recognition of exemption from military service: see eg *Lang v Austria,* no 23459/03, 19 March 2009 [judgment not yet final].

[47] No 40825/98, 31 July 2008, paras 92-98.

[48] *Manoussakis and Others v. Greece,* judgment of 26 September 1996, Reports 1996-IV, at para. 40.

[49] *Hasan and Chaush v. Bulgaria* [GC], no 30985/96, ECHR 2000-XI, para. 78.

[50] *Moscow Branch of the Salvation Army v. Russia,* no. 72881/01, 5th October 2006, at para 62.

[51] See for discussion of whether there indeed exists a positive obligation upon States to so determine, *Leela Förderkreis E.V. and Others v. Germany* no 58911/00*,* 6 November 2008, para 99 [judgment not yet final].

This approach does, though, reflect European standards[52], but seems to have the potential to give rise to problems if these differences in treatment in respect of non-members of ethnic minorities cannot be justified.[53])

17. Each of the remaining five grounds for refusal of registration is open to criticism. There is a strong sense from reading these provisions that the Law is designed to try to protect the hegemony of the established church by making it difficult for other, non-traditional, religious organisations to penetrate Armenian society. As the Court has stressed, 'the exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom', with States enjoying only a limited margin of appreciation.[54] In any event, 'the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate'.[55]

The following subsections call for individual comment:

(g) The religious organisation is based upon historically recognised holy scriptures : This is potentially incompatible with the requirements of Article 9 of the European Convention on Human Rights. The Commission and Court have not found it necessary to date to give a definite interpretation to what is meant by 'religion', but the key point is that 'historically recognised scriptures' do not form part of this test. In the case-law, what may be considered 'mainstream' religions are certainly readily accepted as belief systems falling within the scope of the protection.[56] However, older faiths such as Druidism which have no 'holy scriptures' also qualify[57] as do religious movements of more recent origin such as Scientology,[58] the Moon Sect[59], the Divine Light Zentrum[60] and the teachings of Osho.[61] (However, whether the Wicca movement did so appears to have been left open in one case, and thus where there is a doubt as regards this matter, an applicant may be expected to establish that a particular 'religion' indeed does exist).[62] It is thus not clear why qualification of a 'religious organisation' must be based upon historically recognised holy scriptures.

(h) Its doctrines form part of the internationally contemporary religious-ecclesiastical communities: Similar concerns as noted above are also of relevance here. Furthermore, the phrase itself seems open to differing interpretations and thus leading to arbitrary decision-making.

---

[52] Cf Framework Convention for the Protection of National Minorities, Art. 8: recognition that 'every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations'.

[53] Cf *Moscow Branch of the Salvation Army v. Russia,* no. 72881/01, 5th October 2006, at para 82:

The Court observes, firstly, that the Religions Act indeed prohibited foreign nationals from being founders of Russian religious organisations. It finds, however, no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organised religious communities.

[54] *Moscow Branch of the Salvation Army v. Russia,* above, at para 76.

[55] *Moscow Branch of the Salvation Army v. Russia,* above, at para 92.

[56] See, eg, Appl. No. 20490/92, *ISKON and 8 Others v. United Kingdom,* decision of 8 March 1994, DR 76-A, p.90.

[57] Appl. No. 12587/86, *Chappell v. United Kingdom,* (1987) DR 53, p. 241.

[58] Appl. No. 7805/77, *X. and Church of Scientology v. Sweden,* decision of 5 May 1979, DR 16, p.68.

[59] Appl. No. 8652/79, *X. v. Austria,* decisionof 15 October 1981, DR 26, p. 89.

[60] Appl. No. 8118/77, *Omkarananda and the Divine Light Zentrum v. United Kingdom,* decision of 19 March 1981,DR 25, p. 105.

[61] *Leela Förderkreis E.V. and Others v. Germany,* 58911/00, 6 November 2008, para 81 [judgment not yet final].

[62] Eg, Appl. no. 7291/75, *X v United Kingdom,* (1977) DR 11, 55 [concerning the 'Wicca' faith].

(i) It is free from materialism and is intended for purely spiritual goals: 'free from materialism' and 'purely spiritual goals' both involve important qualifiers ('free' and 'purely') and thus also could lead to potentially arbitrary interpretation. A religious body may have a legitimate need to engage in certain commercial activities as a means of furthering its 'spiritual goals' (particularly if external financial assistance is precluded by section 13 when an organisation's 'spiritual centre' is outside Armenia) and thus arguably may not be 'free' from material considerations. The requirement for 'purely spiritual goals' may potentially justify registration of an organisation such as the Salvation Army whose goals specifically include 'fighting for social justice'. This provision does seem a deliberate attempt to allow the State to ascertain whether religious beliefs or the means used to express such beliefs are legitimate, rather than whether such activities are *harmful*.

(j) It has at least 500 members: The 1991 Law required an organisation to have at least 50 members, a figure which has already been extended to a requirement of 200[63] members. Now a figure of 500 members is proposed. There is no existing guidance on the compatibility of requirements for significantly greater numbers of adherents where this has an effect upon collective manifestation of faith, but the higher the number of adherents required for registration (both in real terms, or as a percentage of the community), the more difficult a State may find it to provide an adequate justification for this increase. (The 'undated' version proposes that only adults can become members of a religious organisation, but many adolescents are admitted by profession of faith to membership of a church. The 'revised' version of the proposed amendments makes no reference to age. In light of the impact of non-registration upon collective manifestation of belief, no minimum age for membership should be required.)

(k) In the event of Christian belief, they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity : this clearly will prohibit the registration of certain Christian churches such as Unitarians who do not accept the Holy Trinity. It will also discriminate against certain 'new' faiths, many of American origin. It is difficult to see how such a provision, if enacted, would allow the State to claim it was maintaining a position of 'strict neutrality' in matters of faith let alone demonstrate how it has proper grounds for refusing recognition on this basis. This is entirely objectionable.

In short, the sole justification for refusal of registration should be subsections (a) and (e) (but in the latter case, with the qualification that the minimum number of adherents may call for some reconsideration). The other grounds for refusal of registration are difficult to justify.

Section 6 : operation of 'religious organisations'

18. I regret I have some difficulty understanding the purport of this section. While it seems to recognise the Armenian Apostolic Church as a religious organisation (that is, as the established Church, there is no need for formal recognition), what is the impact of the second provision ('other religious organisations …private ownership and bylaws')? Is this merely declaratory that a non-recognised religious organisation has no rights (in terms of section 7)? [Again, however, as a matter of drafting, it may be appropriate to recognise the automatic recognition of the Armenian Apostolic Church as a consequence of formal establishment in a separate section dealing with the Church's status (see paragraph 7 above).]

3.3 Part 3 : Rights of religious organisations

Section 7 : Spiritual and religious activities of 'religious organisations'

[63] The 'undated' version of the amendments (in what is referred to as 'Article 5') refers to '200 believers'; the 'revised' version refers to replacement of '200' by '500'. The implication is that the Law has already been changed, but initially at least, there was no proposal to increase the number of adherents.

19. It is not clear whether this purports to be a definitive list of the rights and privileges of recognised religious organisations – that is, whether this section thereby excludes religious organisations from other activities. It should be made clear that this list is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith. In particular, the right of proselytism (discussed below at paragraph 21) must extend to individual members and to religious groups.

20. Equally importantly, it should be made clear that the absence of registration (and thus the absence of status of 'religious organisation') cannot in itself prevent the exercise of certain of the listed rights by members or by non-registered bodies. Many of the 'rights' listed in section 7 are rights falling within the scope of the European Convention on Human Rights, most obviously as 'manifestations' of belief (and thus a non-registered religious body may still enjoy the right to organise worship in premises, even absent planning permission).[64] However, other provisions may also be applicable (eg, 'making use of news media' clearly falls within the scope of Art 10).[65]

Section 8: Prohibition of proselytism

21. This provision makes it a criminal offence to proselytise. This prohibition, however, is contained in the Part of the Act entitled 'Rights of Religious Organisations' although its import is to *deny* rather than to affirm collective rights. This matter calls for more detailed consideration. Both the 1991 Law and the Criminal Code prohibit proselytism. 'Proselytism' is nowhere defined at present, although section 8 of the 1991 Law specifically provides it does *not* include any of the 'clearly prescribed rights' listed in section 7. The rights prescribed by section 7 do not include the right to proselytise: their focus is upon the provision of teaching, etc to *existing* members or believers ('their faithful'). The generally accepted definition of proselytism involves the attempt to convert an individual from one faith (or none) to another. In short, the existing Law is intended to restrict 'teaching' (a form of 'manifestation' of belief specifically refered to in Article 9 of the European Convention on Human Rights) to existing adherents of a faith. This is certainly a major defect in Armenian law as it stands at present. The right to try to persuade others of the validity of one's beliefs is implicitly supported by the reference in the text of Article 9 of the European Convention on Human Rights to the right 'to change [one's] religion or belief'. As the European Court of Human Rights noted in *Kokkinakis v Greece*, the right to try to convince others to convert to another faith was included within the scope of the guarantee, 'failing which ... 'freedom to change [one's] religion or belief', enshrined in Article 9, would be likely to remain a dead letter'. In other words, the right to proselytise clearly falls within the scope of Article 9 and is thus protected. But it is not an absolute right and a State can limit the right on considerations of public order or the protection of vulnerable individuals against undue exploitation.[66]

22. The 'revised' version proposes that this existing incompatibility is to be remedied. This is clearly to be welcomed, but with qualifications. As noted, Section 1 (according to the 'revised' version of amendments) of the Law is now to specify that freedom of conscience will also include the right to change belief. To this end, the 'revised' version (but not the 'undated' version) proposes significant redefinition of proselytism insofar as it in future will only constitute

[64] *Manoussakis and Ors v Greece*, judgment of 26 September 1996, Reports 1996-IV, paras. 44–53 at para. 48. In contrast, see *Vergos . Greece,* no. 65501/01, 24 June 2004.

[65] Cf *Murphy v Ireland,* no 44179/98, ECHR 2003-IX.

[66] The jurisprudence of the European Court of Human Rights distinguishes between 'proper' and 'improper' proselytism, a distinction reflected in other measures adopted by Council of Europe institutions such as Parliamentary Assembly Recommendation 1412 (1999) on the illegal activities of sects which calls for domestic action against 'illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature', the provision and exchange between states of information on such sects, and the importance of the history and philosophy of religion in school curricula with a view to protecting young persons.

an offence when one (or more) of five factors can be established (that is, 'preaching influence' involving one or more of 'material encouragement', 'physical or psychological pressure or compulsion', incitement to religious hatred, 'expression of offences… towards other persons or religion, or two or more attempts at proselytism.)

23. While some of these five factors relate to what may fairly be deemed 'improper proselytism', not all do so. In consequence, the attempts to restrict the scope of the offence of 'proselytism' do not go far enough. First, the offence should be clearly defined as one of 'improper proselytism' to clarify that proselytism *per se* does not constitute an offence. In *Kokkinakis v Greece*, while the Strasbourg Court accepted that a prohibition on proselytism was prescribed by law and could be said to have had the legitimate aim of protecting the rights of others, it could not accept that the interference could be justified as necessary in a democratic society. A distinction had to be drawn between 'bearing Christian witness' or evangelicalism and 'improper proselytism' involving undue influence or even force, especially upon weak and vulnerable members of society. The former was accepted by Christians as part of the Christian church's mission; the latter was incompatible with respect for belief and opinion. The failure of the domestic courts to specify the reasons for the conviction meant that the state could not show that there had been a pressing social need for the conviction, and thus the sentence had not been proportionate to the aim of the protection of others.[67]

24. Second, the definition of 'improper proselytism' should be drawn with greater care. In *Kokkinakis,* the Greek courts in their reasoning had established 'the applicant's liability by merely reproducing the wording of [the legislation] and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means.' The State thus could not show that 'the applicant's conviction was justified in the circumstances of the case by a pressing social need', and thus 'the contested measure … does not appear to have been proportionate to the legitimate aim pursued or, consequently, 'necessary in a democratic society ... for the protection of the rights and freedoms of others'.[68] While in this case the European Court of Human Rights declined to provide a comprehensive definition of 'improper proselytism', it did refer to a 1956 World Council of Churches report in justification of the distinction between 'proper' and 'improper' proselytism:

25. '[Bearing Christian witness or evangelicalism]' corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. ['Improper proselytism'] represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.[69]

26. 'Improper proselytism' should thus be defined more carefully: while it should certainly include the use of 'material encouragement' and 'physical or psychological pressure or compulsion' as proposed in the 'revised' draft (ie, subsections a and b), it is difficult to see how teaching with a view to convert an individual in which 'hatred is formed' (section c), 'the

[67] *Kokkinakis v. Greece,* judgment of 25 May 1993, Series A no. 260-A, paras. 48-49.

[68] *Kokkinakis v. Greece,* above, at paras. 48-49.

[69] *Kokkinakis v. Greece,* above. Subsequently, in *Larissis v. Greece*, judgment of 24 February 1998, Reports 1998-I, 362, paras. 40–61, the Strasbourg Court accepted that a conviction of senior officers who were members of the Pentecostal faith for the proselytism of three airmen under their command was not to be a breach of Article 9 in light of the crucial nature of military hierarchical structures which could potentially involve a risk of harassment of a subordinate through abuse of influence by senior officers: the need to protect the prestige and effective operation of the armed forces and to protect individual soldiers from ideological coercion provided adequate justification for the convictions.

expression of offences is applied towards other persons or religions' (section d), or where a person is subjected on two or more occasions to unwanted attempts at proselytism (section e) can be said to constitute 'improper proselytism' within the (albeit limited) discussion of the concept by the Strasbourg Court. The formulation of 'hatred', etc (sections c and d) is better addressed by other means (see paragraph 9 above), and should be restricted to cases in which a deliberate attempt to incite religious hatred can be proved, or at most, to cases in which the speaker has shown a wilful disregard for the likely consequences of the communication of expression. The current drafting suggests that intention is not required, and that the offence is comitted whenever such 'hatred' is occasioned. This is too broad. Further, the avoidance of nuisance (section e) will only in rare situations be likely to warrant the imposition of criminal responsibility (it is exceptionally difficult to see how the making of two unwanted calls to or on an individual should constitute a criminal offence: but a persistent pattern of harassment most certainly should do so).

27. Third, the penalties for improper proselytism appear to be unduly harsh. At the same time as this liberalising measure permitting proselytism is introduced, it appears that the penalties for proselytism are to be increased significantly: the Draft Criminal Code, Art 162, now proposes that proselytism is to be punishable by a fine of 500 times the minimum salary or by one year's imprisonment[70].

3.4 Part 4 : Property of religious organisations

Sections 9 – 12 : property rights, etc

28. These appear to be uncontroversial, although there seems to be some possible inconsistency between the provisions of sections 11 and 21.

Again, however, the law should recognise that non-registered (ie, non-recognised) religious bodies may still enjoy certain rights of property and to this end, may enjoy fair administration of justice rights: in *Canea Catholic Church v. Greece,* a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality to bring legal actions was successfully challenged since the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts.[71]

Section 13 : prohibition on receiving finance, etc

29. Churches may also hold property, and any interference with these rights is in principle liable to give rise to questions falling within the scope of Article 1 of Protocol No. 1.[72] There is a prohibition on receiving finance where a 'spiritual centre' of a religion is outside Armenia. When taken with section 12 (organisations can seek financial assistance from 'their faithful'), the clear aim of the law is to prevent religious organisations other than the Armenian Church from benefiting from external financial assistance. The justification for this provision is not clear, but it may nevertheless not constitute any particular incompatibility with the European Convention on Human Rights: the matter may fall within the scope of Article 1 of Protocol No 1, but in this instance, a fairly wide margin of appreciation is accorded the State. At the least, religious bodies must have access to a court to allow them to seek to uphold their rights under Article 1

[70] It is not entirely clear what the existing penalties are: Art 162 seems to suggest (if proselytism constitutes an 'encroachment on the rights of others') that the offence is punishable by a fine of between 200 and 400 minimal salaries or by imprisonment for up to 3 months: but this provision refers to the 'establishment or management of associations'.

[71] *Canae Catholic Church v. Greece,* Reports 1997-VIII, paras. 40-42.

[72] See, for example, *Holy Monasteries v. Greece,*judgment of 9 December 1994, Series A no. 301-A, paras. 54-66.

of Protocol No. 1, even if not (within the terms of Armenian law) recognised as a 'judicial person' in terms of section 14.[73]

3.5 Part 5 : Registration of religious organisations

Sections 14- 16 : procedure for seeking registration, etc

30. These sections provide for consideration of applications for recognition ('registration') by an executive agency (the Committee of Religious Affairs of the Council of Ministers) and a right of appeal to the courts. [74] The Law provides only the most basic of information on the procedures to be adopted and the rights of religious bodies. It is worth again stressing, however, that as far as the European Convention on Human Rights is concerned, the expectation is that the process for registration guards against unfettered discretion and thus avoids arbitrary decision-making.

3.6 Part 6 : Relation between religious organisations and the State

31. These appear largely to be uncontroversial, although it is not clear in section 22 (in respect of the principle of separation of Church and State as proclaimed by section 17) why the Catholicos of All Armenians should be required to assume Armenian nationality. Again, however, this issue is perhaps better discussed within the context of a separate section dealing exclusively with the establishment of the Armenian Apostolic Church.

4. Criminal Code, Art 162.

Some reference to the proposed insertion of a new offence of proselytism has been made above (at paragraph 21). One additional matter is of some concern.

32. The current version of Art 162 is headed 'establishment or management of associations encroaching upon citizens' rights or against the individual'. Art 162 currently makes it an offence punishable by fine (of between 200 and 400 minimal salaries) or imprisonment (of up to 3 years) to establish or manage 'a religious or non-governmental association, whose activities inflict damage to the health of individuals, or with encroachments on other rights of individuals, [or] incite citizens to refuse to perform their civil duties'. The proposed amendment will significantly increase the penalties upon conviction: the existing offence of establishment or management, etc is now to be punishable by two years' imprisonment. Imposition of a lengthy sentence of imprisonment will be of relevance in any assessment of the proportionality of an interference with Article 9 rights, a matter which domestic courts may wish to bear in mind in any case.

33. An obvious question arises whether a religious association that believes that the legal obligation to undertake military service is contrary to an adherent's duties as a matter of religious faith could be so penalised in cases where the association actively promotes this belief and thus 'incites citizens to refuse to perform their civil duties'. The extent to which Article 9 imposes a duty upon state authorities to recognise exemptions from general civic or legal obligations is still open to some doubt in light of Article 4(3)(b) of the European Convention on

[73] *Canae Catholic Church v. Greece,* Reports 1997-VIII, paras. 40-42.

[74] Since the refusal to register a religious community may also carry with it the consequence that the community is thereby precluded from enforcing its interests in the courts, issues of access to justice may also arise under Article 6. In *Canea Catholic Church v. Greece,* above, a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality was successfully challenged, the Strasbourg Court considering that the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts: see eg *Canae Catholic Church v. Greece,* above, paras. 40-42.

Human Rights which makes specific provision for 'service of a military character'. However, virtually all European states which have military service obligations now recognise alternative civilian service in line with a clear European consensus that this is appropriate.[75] The issue is of some concern to Armenia in light of a pending case (that is, of *Bayatyan v. Armenia*)[76]. This matter is distinguishable from a situation in which an individual who is a Jehovah's Witness is penalised for refusal to carry out military service. Further, the repeated imposition of penalties upon those who refuse to carry out such service may also give rise to other considerations: in *Ülke v Turkey,* the Court determined that the repeated punishment for refusal to serve in the military had amounted to treatment in violation of Article 3 since domestic law failed to make provision for conscientious objectors was 'evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs').[77] However, while distinguishable, the case may also be somewhat analogous insofar as the repeated imposition of sanctions on a religious organisation for promoting a central precept of their beliefs may well be considered an unjustifiable interference with the European Convention on Human Rights.

5. Summary of conclusions

My principal conclusions are thus as follows:

- The law should specifically refer to 'everyone', and not merely to 'citizens. This usage should also be consistent: rights should be enjoyed (individually and collectively) by all, irrespective of nationality or citizenship.

- The law should specifically provide that freedom of religious belief includes the right to change belief

- Specific references acknowledging the establishment of the Apostolic Church and its rights should be brought together in a new and separate section regulating this establishment.

- The law should specifically prohibit as a criminal offence any expression or action by individuals or groups deliberately designed to, or which has the likely consequences of, inciting religious animosity or hatred.

- The law should also specifically provide that public officials or public authorities may not take action that may directly or indirectly restrict individual or collective manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society.

- The requirements for registration as a 'religious organisation' require extensive redrafting. Certain criteria (eg the religious organisation is based upon historically recognised holy scriptures; its doctrines form part of the internationally contemporary

[75] And see Committee of Ministers Recommendation No. R(87) 8 and Parliamentary Assembly Recommendation 1518 (2001); further, Parliamentary Assembly Opinion No. 221 (2000) concerning Armenia's application for membership of the Council of Europe notes that the State undertook to introduce a law on alternative service in compliance with European standards.

[76] No 23459/03, declared partly admissible on 12 December 2006.

[77] No 39437/98, 24 January 2006, at paras 61 and 62. (Cf para 73 where the Court refused the applicant's request to request the State to enact legislation reognising conscientious objectors, noting this was a matter for the State under the supervision of the Committee of Ministers to determine the means for meeting its obligations under the Convention.) See also *Lang v. Austria*, no 28648/03, (19 March 2009) [not yet final], at para 25:

As the privilege at issue is intended to ensure the proper functioning of religious groups in their collective dimension, and thus promotes a goal protected by Article 9 of the Convention, the exemption from military service granted to specific representatives of religious societies comes within the scope of that provision.

religious-ecclesiastical communities; it is free from materialism and is intended for purely spiritual goals; and in the event of Christian belief, they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity) seem on their face to be incompatible with the State's duty to remain neutral as to the validity of belief. The increase in the minimum number of members before an organisation can be registered seems illiberal.

- In section 7, it should be made clear that the list of rights is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith.

- The offence of proselytism should be reworded to ensure the offence is clearly defined as one of 'improper proselytism'; the definition of 'improper proselytism' should be drawn with greater care; and the penalties for improper proselytism should be reconsidered as they could appear to be unduly harsh.

- It should be acknowledged that Art 162 of the Criminal Code (as amended) should not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for encouraging refusal to undertake military or appropriate alternative civilian service if this teaching involves the promotion of a central precept of the beliefs of this organisation.

ANNEX I

Strasbourg, 8 April 2009 **DG-HL (2009) 4**

Directorate General of Human Rights and Legal Affairs
Legal and Human Rights Capacity Building Division

LEGAL OPINION

ON THE PROPOSALS TO AMEND THE LAW OF THE REPUBLIC OF ARMENIA ON THE FREEDOM OF CONSCIENCE AND ON RELIGIOUS ORGANISATIONS

Prepared

by

Prof Jim Murdoch
School of Law
University of Glasgow Glasgow
(United Kingdom)

TABLE OF CONTENTS

1. Executive summary

The Law on the Freedom of Conscience and on Religious Organisations and Article 162 of the Criminal Code both regulate certain manifestations of individual and collective belief. The current law contains certain anomalies and incompatibilities with European human rights standards, and while proposed amendments seek to address certain of these issues, other proposed amendments may have a detrimental impact upon freedom of thought, conscience and belief in the religious sphere. It is thus to be welcomed that the law in future will specifically refer to 'everyone' and not merely to 'citizens', and that the law will also provide that freedom of religious belief includes the right to change belief. On the other hand, the requirements for registration as a 'religious organisation' require extensive redrafting as certain criteria seem on their face to be incompatible with the State's duty to remain neutral, while the significant increase in the minimum number of members before an organisation can be registered seems illiberal. Moreover, care must be taken to ensure that the Criminal Code (as amended) does not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for encouraging refusal to undertake military or appropriate alternative civilian service.

Other issues outlined in the report largely concern drafting. The law should prohibit as a criminal offence the incitement of religious animosity or hatred, and the law should also specifically provide that public officials or public authorities may not take action that may restrict manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society. It should also be made clear that the list of rights enjoyed by recognised 'religious organisations' is illustrative only of the legal rights of recognised religious groups. Finally, the offence of proselytism should be reworded to ensure the offence is clearly defined as one of 'improper proselytism', and the definition of such should be drawn with greater care.

2. Introduction

1. This opinion addresses whether proposed amendments to the Republic of Armenia's Law on Freedom of Conscience and on Religious Organisations, and to Art 162 of the Criminal Code, raise any issues of incompatibility with the European Convention on Human Rights as interpreted by the (former) European Commission on Human Rights and by the European Court of Human Rights. To this end, I have been provided with copies of the following documents:

- Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations (dated 17 June 1991) [noted to be a 'non-official translation']
- Amendments and additions to the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations (undated)
- Revised version (dated 29 January 2009) of the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations
- Criminal Code of the Republic of Armenia, Art 162 ; and
- (Draft) amendment to Art 162

2. The translation of the 1991 Law refers to the various provisions as 'sections', and I retain this terminology, even although the translations of the proposed amendments employ the term 'article'.

3. The English translations of these instruments are in places not entirely clear, and my opinion is thus subject to the proviso that I may have misunderstood certain of the proposals. Further, there appears to be two separate versions of amendments to the 1991 Law (one undated, the other dated 29 January 2009). While these differ in certain respects, their broad thrust appears similar. However, where comment is called for, I have attempted to distinguish between these versions, referring to them respectively as 'undated' and 'revised'.

3. The Law on the Freedom of Conscience and on Religious Organisations

3.1 Part 1: General principles

Section 1 : statutory wording - 'everyone'

4. Section 1 aims to establish the right to individual conscience and belief. The 'revised' version of the proposed amendments refers to 'everyone' [or 'everybody']; the 1991 Law and the 'undated' version to 'citizens'. The former term is broader in scope than the latter, and more importantly reflects the key responsibility that States have to 'secure to everybody within the jurisdiction' the rights secured by the European Convention on Human Rights. The 'revised' version is clearly preferable, and is welcome. The Law should specifically refer to 'everyone', and not merely to 'citizens'.[78] Further, this usage should also be consistent (for example, Art 4 of the 'revised version' reverts to 'citizen' in respect of section 2 of the Law ('citizens… are equal before the law…)).

Section 1 : freedom to change belief

5. The 'revised' version also makes specific reference to changing religious belief (unlike the 1991 Law and the 'undated' version). This, too, is to be welcomed. The law should specifically provide that freedom of religious belief includes the right to change belief.[79] This is consistent

[78] See also fn 15 below.

[79] Cf Universal Declaration on Human Rights of 1948, Art 18 provides that 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either

with the European Convention on Human Rights (see discussion at paragraph 21 below in respect of proselytism).

Section 1 : establishment of the Armenian Apostolic Holy Church

6. There is an astonishingly wide diversity of constitutional and legal arrangements at domestic level throughout Europe. In consequence, the European Convention on Human Rights recognises the right of States to 'establish' a particular church (or churches), and the European Court of Human Rights has made no attempt to develop any doctrine of 'wall of separation' between a State and various religious groups. Secularism is a constitutional principle in certain States; in others, one particular religion may enjoy recognised status as an Established Church but the implications of such recognition can vary; elsewhere, certain religious communities may enjoy particular financial benefits through conferment of taxation benefits or recognition of charitable status. This relationship between religion and State in each instance will generally reflect local tradition and practical expediency. It is thus appropriate that the relevant domestic law makes reference to the legal consequences of any such recognition.

7. In the 'revised' version of the proposed amendments,[80] section 1 is now to contain two new clauses: first, a reference to the Armenian Apostolic Holy Church as the established church (in terms of its 'exclusive mission… in the spiritual life, development of national culture, and preservation of the national identity'); and second, a paragraph permitting relations between the Church and the State to be regulated by specific statutory provision. As a matter of drafting practice, it must be desirable that such references to the national church be removed from Section 1 since this purports to be a provision referring to *free exercise* of belief, not to establishment. These 2 new clauses are furthermore inserted awkwardly between an assertion of the principle of respect for individual belief, and the principle of collective manifestation of belief. If it is considered necessary to have specific statutory references acknowledging the establishment of the Apostolic Church, these should be placed in a separate section. This would also permit all references to the Church in the Law to be brought together to indicate, for example, the automatic recognition of the Church as a 'religious organisation' (in terms of section 6) and the relationship between the Church and the State (section 17).

Section 2 : Prohibition of discrimination on religious grounds; and interferences with religious faith, etc

8. The 'revised' amendment proposes the use of 'citizens'. As discussed, the Law should refer to 'everyone' as being equal before the law, rather than merely to 'citizens'. This would help highlight the key international legal principle that 'discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations'.[81]

9. The second paragraph of section 2 seeks to prohibit interference with personal faith, but it is not entirely clear to me if this constitutes a criminal offence or if the provision is rather directed towards public officials. There may be some merit in helping clarify what behaviour is targeted, both to meet concerns as to legal certainty and also to help emphasise that Armenian law reflects European expectations that individual faith is adequately protected by ensuring that religious liberty may flourish within a spirit of pluralism and mutual tolerance.[82] The Law should

---

alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

[80] Both the 1991 Act and the 'undated' revision merely refer to the Church in the preamble (ie, 'being cognisant' of the Church's place as the national Church).

[81] United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, Art 3.

[82] *Otto-Preminger-Institut v Austria,* judgment of 20 September 1994, Series A no. 295-A, at paras.56 and 57.

specifically prohibit as a criminal offence any expression or action by individuals or groups deliberately designed to, or which has the likely consequences of, inciting religious animosity or hatred (through, for example, action or expression taken with a view to 'formenting religious strife' or in reckless disregard of the likely consequences of such action, or the use of physical violence or intimidation when such has been occasioned by religious faith, by treating religiously-motivated assaults, etc as aggravated offences).

10. The Law should also specifically provide that public officials or public authorities may not take action that may directly or indirectly restrict individual or collective manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society. Such a restriction on the powers of public officials would help prevent inappropriate interference with collective manifestation of religious belief (for example, when considering whether to intervene in private law relationships relating to the hire, etc of premises for worship).

Section 3 : Prohibition of coercion; and permissible interferences with freedom of conscience and religion

11. Section 3, para 2 as currently worded (and also as proposed by the 'revised' amendments) refers to the need to establish the 'necessity' of any restriction. It is but a minor point, but if the intention is to reflect or replicate the wording of Article 18 of the International Covenant on Civil and Political Rights of 1966, it may be desirable to refer to 'the *fundamental* rights and freedoms of others' rather than merely to the 'rights' of others; and a possible desirable addition (from a European perspective) would be the insertion of a reference to 'democratic society' (ie, that the restriction can be shown to be 'necessary in a democratic society').

3.2 Part 2 : Definition of religious organisations

Section 4 : definition of 'religious organisations'

12. This Part of the Law is of some potential complexity. The clear aim is to subject to State scrutiny the validity of claims for recognition as a 'religious organisation'; successful groups then would possess certain rights (as provided for in Section 7). There appears to be no change proposed to the definition of a 'religious organisation' in Section 4, para 1 ('an association of citizens'). This definition should make clear that non-citizens can also be members of a religious organisation.

Section 5 : qualifications for recognition of 'religious organisations'

13. This section needs to be read alongside Part 5 of the Law on the procedure for registration and section 7 which specifies a list of 'rights' to be enjoyed following upon successful registration. The current Law has 5 requirements for recognition of a 'religious organisation'; the 'revised' version of the proposed amendments will add a sixth and also significantly increase the minimum number of adherents required for successful registration. The starting-point for discussion of this section is the 'expectation that believers will be allowed to associate freely, without arbitrary State intervention [for] the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.'[83] This follows from a reading of Article 9 of the European Convention on Human Rights in conjunction with Article 11. The imposition of a requirement of state registration is not in itself incompatible with freedom of thought, conscience and religion, but where (as here) domestic law requires official recognition in order to allow a religious group to obtain the legal personality necessary to allow it to function

[83] *Metropolitan Church of Bessarabia and Others v. Moldova,* ECHR 2001-XII, at para. 118.

effectively, the State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition.

14. Whether non-refusal will give rise to an issue falling within the scope of Article 9 (and Article 14 taken with Article 9) will be dependent on the impact of section 7: that is, whether the refusal to register involves an interference with individual or collective manifestation of belief. The European Court of Human Rights has had occasion to consider the effects of non-recogition in a number of cases. Arrangements which favour particular religious communities do not, in principle, contravene the requirements of the Convention 'providing there is an objective and reasonable justification for the difference in treatment and that similar [arrangements] may be entered into by other Churches wishing to do so'.[84] This principle applies also to the conferment of a range of privileges (rather than rights) which may follow from formal recognition.[85] In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, grant of legal personality as a private-law entity (a registered religious community) but not of the status of a public-law entity (a religious society) was found to have violated Article 14 taken with Article 9: the number and nature of privileges and advantages accorded recognised public-law entities was substantial enough to give rise to Article 9 considerations, and since one of the criteria for assessing whether the community constituted 'a religious society' had been applied in an arbitrary manner, the conclusion was that the difference in treatment had not been based upon an 'objective and reasonable justification.[86]

15. According to the existing Law and the proposed amendments, there are five existing qualifications with an additional sixth ground to be inserted. The Law (in its original form, and certainly in light of proposed amendments) does seem, however, to be somewhat open to arbitrary application. It also appears to contain a number of potentially objectionable provisions. Certainly, 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',[87] it may not go further and appear to be assessing the comparative legitimacy of different beliefs.[88]; further, 'the State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom'[89]. Any interference must thus correspond to a 'pressing social need'. It is not clear how most of the prescribed qualifications could be said to be 'necessary'.

16. Only section 5 (a) (a religious organisation can be denied registration by an Executive body if it appears necessary to do so to protect the health, morality, or rights of others, etc) seems on its face to be entirely compatible with the Convention.[90] (Curiously, the Law has an inbuilt discriminatory provision in *favour* of members of minorities: for only this condition is applicable in respect of 'religious organisations of ethnic minorities with their national doctrine'. This approach does, though, reflect European standards[91], but seems to have the potential to

[84] Appl. No. 53072/99, *Alujer Fernandez And Caballero Garcia v. Spain,* decision of 14 June 2001.

[85] Such as recognition of exemption from military service: see eg *Lang v Austria,* no 23459/03, 19 March 2009 [judgment not yet final].

[86] No 40825/98, 31 July 2008, paras 92-98.

[87] *Manoussakis and Others v. Greece,* judgment of 26 September 1996, Reports 1996-IV, at para. 40.

[88] *Hasan and Chaush v. Bulgaria* [GC], no 30985/96, ECHR 2000-XI, para. 78.

[89] *Moscow Branch of the Salvation Army v. Russia,* no. 72881/01, 5th October 2006, at para 62.

[90] See for discussion of whether there indeed exists a positive obligation upon States to so determine, *Leela Förderkreis E.V. and Others v. Germany* no 58911/00, 6 November 2008, para 99 [judgment not yet final].

[91] Cf Framework Convention for the Protection of National Minorities, Art. 8: recognition that 'every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations'.

give rise to problems if these differences in treatment in respect of non-members of ethnic minorities cannot be justified.[92])

17. Each of the remaining five grounds for refusal of registration is open to criticism. There is a strong sense from reading these provisions that the Law is designed to try to protect the hegemony of the established church by making it difficult for other, non-traditional, religious organisations to penetrate Armenian society. As the Court has stressed, 'the exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom', with States enjoying only a limited margin of appreciation.[93] In any event, 'the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate'.[94]

The following subsections call for individual comment:

(b) The religious organisation is based upon historically recognised holy scriptures : This is potentially incompatible with the requirements of Article 9 of the European Convention on Human Rights. The Commission and Court have not found it necessary to date to give a definite interpretation to what is meant by 'religion', but the key point is that 'historically recognised scriptures' do not form part of this test. In the case-law, what may be considered 'mainstream' religions are certainly readily accepted as belief systems falling within the scope of the protection.[95] However, older faiths such as Druidism which have no 'holy scriptures' also qualify[96] as do religious movements of more recent origin such as Scientology,[97] the Moon Sect[98], the Divine Light Zentrum[99] and the teachings of Osho.[100] (However, whether the Wicca movement did so appears to have been left open in one case, and thus where there is a doubt as regards this matter, an applicant may be expected to establish that a particular 'religion' indeed does exist).[101] It is thus not clear why qualification of a 'religious organisation' must be based upon historically recognised holy scriptures.

(c) Its doctrines form part of the internationally contemporary religious-ecclesiastical communities: Similar concerns as noted above are also of relevance here. Furthermore, the phrase itself seems open to differing interpretations and thus leading to arbitrary decision-making.

(d) It is free from materialism and is intended for purely spiritual goals: 'free from materialism' and 'purely spiritual goals' both involve important qualifiers ('free' and 'purely') and thus also could lead to potentially arbitrary interpretation. A religious body

---

[92] Cf *Moscow Branch of the Salvation Army v. Russia,* no. 72881/01, 5th October 2006, at para 82:

The Court observes, firstly, that the Religions Act indeed prohibited foreign nationals from being founders of Russian religious organisations. It finds, however, no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organised religious communities.

[93] *Moscow Branch of the Salvation Army v. Russia,* above, at para 76.

[94] *Moscow Branch of the Salvation Army v. Russia,* above, at para 92.

[95] See, eg, Appl. No. 20490/92, *ISKON and 8 Others v. United Kingdom,* decision of 8 March 1994, DR 76-A, p.90.

[96] Appl. No. 12587/86, *Chappell v. United Kingdom,* (1987) DR 53, p. 241.

[97] Appl. No. 7805/77, *X. and Church of Scientology v. Sweden,* decision of 5 May 1979, DR 16, p.68.

[98] Appl. No. 8652/79, *X. v. Austria,* decisionof 15 October 1981, DR 26, p. 89.

[99] Appl. No. 8118/77, *Omkarananda and the Divine Light Zentrum v. United Kingdom,* decision of 19 March 1981,DR 25, p. 105.

[100] *Leela Förderkreis E.V. and Others v. Germany,* 58911/00, 6 November 2008, para 81 [judgment not yet final].

[101] Eg, Appl. no. 7291/75, *X v United Kingdom,* (1977) DR 11, 55 [concerning the 'Wicca' faith].

may have a legitimate need to engage in certain commercial activities as a means of furthering its 'spiritual goals' (particularly if external financial assistance is precluded by section 13 when an organisation's 'spiritual centre' is outside Armenia) and thus arguably may not be 'free' from material considerations. The requirement for 'purely spiritual goals' may potentially justify registration of an organisation such as the Salvation Army whose goals specifically include 'fighting for social justice'. This provision does seem a deliberate attempt to allow the State to ascertain whether religious beliefs or the means used to express such beliefs are legitimate, rather than whether such activities are *harmful*.

(e) It has at least 500 members: The 1991 Law required an organisation to have at least 50 members, a figure which has already been extended to a requirement of 200[102] members. Now a figure of 500 members is proposed. There is no existing guidance on the compatibility of requirements for significantly greater numbers of adherents where this has an effect upon collective manifestation of faith, but the higher the number of adherents required for registration (both in real terms, or as a percentage of the community), the more difficult a State may find it to provide an adequate justification for this increase. (The 'undated' version proposes that only adults can become members of a religious organisation, but many adolescents are admitted by profession of faith to membership of a church. The 'revised' version of the proposed amendments makes no reference to age. In light of the impact of non-registration upon collective manifestation of belief, no minimum age for membership should be required.)

(f) In the event of Christian belief, they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity : this clearly will prohibit the registration of certain Christian churches such as Unitarians who do not accept the Holy Trinity. It will also discriminate against certain 'new' faiths, many of American origin. It is difficult to see how such a provision, if enacted, would allow the State to claim it was maintaining a position of 'strict neutrality' in matters of faith let alone demonstrate how it has proper grounds for refusing recognition on this basis. This is entirely objectionable.

In short, the sole justification for refusal of registration should be subsections (a) and (e) (but in the latter case, with the qualification that the minimum number of adherents may call for some reconsideration). The other grounds for refusal of registration are difficult to justify.

Section 6 : operation of 'religious organisations'

18. I regret I have some difficulty understanding the purport of this section. While it seems to recognise the Armenian Apostolic Church as a religious organisation (that is, as the established Church, there is no need for formal recognition), what is the impact of the second provision ('other religious organisations …private ownership and bylaws')? Is this merely declaratory that a non-recognised religious organisation has no rights (in terms of section 7)? [Again, however, as a matter of drafting, it may be appropriate to recognise the automatic recognition of the Armenian Apostolic Church as a consequence of formal establishment in a separate section dealing with the Church's status (see paragraph 7 above).]

[102] The 'undated' version of the amendments (in what is referred to as 'Article 5') refers to '200 believers'; the 'revised' version refers to replacement of '200' by '500'. The implication is that the Law has already been changed, but initially at least, there was no proposal to increase the number of adherents.

3.3 Part 3 : Rights of religious organisations

Section 7 : Spiritual and religious activities of 'religious organisations'

19. It is not clear whether this purports to be a definitive list of the rights and privileges of recognised religious organisations – that is, whether this section thereby excludes religious organisations from other activities. It should be made clear that this list is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith. In particular, the right of proselytism (discussed below at paragraph 21) must extend to individual members and to religious groups.

20. Equally importantly, it should be made clear that the absence of registration (and thus the absence of status of 'religious organisation') cannot in itself prevent the exercise of certain of the listed rights by members or by non-registered bodies. Many of the 'rights' listed in section 7 are rights falling within the scope of the European Convention on Human Rights, most obviously as 'manifestations' of belief (and thus a non-registered religious body may still enjoy the right to organise worship in premises, even absent planning permission).[103] However, other provisions may also be applicable (eg, 'making use of news media' clearly falls within the scope of Art 10).[104]

Section 8: Prohibition of proselytism

21. This provision makes it a criminal offence to proselytise. This prohibition, however, is contained in the Part of the Act entitled 'Rights of Religious Organisations' although its import is to *deny* rather than to affirm collective rights. This matter calls for more detailed consideration. Both the 1991 Law and the Criminal Code prohibit proselytism. 'Proselytism' is nowhere defined at present, although section 8 of the 1991 Law specifically provides it does *not* include any of the 'clearly prescribed rights' listed in section 7. The rights prescribed by section 7 do not include the right to proselytise: their focus is upon the provision of teaching, etc to *existing* members or believers ('their faithful'). The generally accepted definition of proselytism involves the attempt to convert an individual from one faith (or none) to another. In short, the existing Law is intended to restrict 'teaching' (a form of 'manifestation' of belief specifically refered to in Article 9 of the European Convention on Human Rights) to existing adherents of a faith. This is certainly a major defect in Armenian law as it stands at present. The right to try to persuade others of the validity of one's beliefs is implicitly supported by the reference in the text of Article 9 of the European Convention on Human Rights to the right 'to change [one's] religion or belief'. As the European Court of Human Rights noted in *Kokkinakis v Greece*, the right to try to convince others to convert to another faith was included within the scope of the guarantee, 'failing which ... 'freedom to change [one's] religion or belief', enshrined in Article 9, would be likely to remain a dead letter'. In other words, the right to proselytise clearly falls within the scope of Article 9 and is thus protected. But it is not an absolute right and a State can limit the right on considerations of public order or the protection of vulnerable individuals against undue exploitation.[105]

---

[103] *Manoussakis and Ors v Greece*, judgment of 26 September 1996, Reports 1996-IV, paras. 44–53 at para. 48. In contrast, see *Vergos . Greece,* no. 65501/01, 24 June 2004.

[104] Cf *Murphy v Ireland,* no 44179/98, ECHR 2003-IX.

[105] The jurisprudence of the European Court of Human Rights distinguishes between 'proper' and 'improper' proselytism, a distinction reflected in other measures adopted by Council of Europe institutions such as Parliamentary Assembly Recommendation 1412 (1999) on the illegal activities of sects which calls for domestic action against 'illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature', the provision and exchange between states of information on such sects, and the importance of the history and philosophy of religion in school curricula with a view to protecting young persons.

22. The 'revised' version proposes that this existing incompatibility is to be remedied. This is clearly to be welcomed, but with qualifications. As noted, Section 1 (according to the 'revised' version of amendments) of the Law is now to specify that freedom of conscience will also include the right to change belief. To this end, the 'revised' version (but not the 'undated' version) proposes significant redefinition of proselytism insofar as it in future will only constitute an offence when one (or more) of five factors can be established (that is, 'preaching influence' involving one or more of 'material encouragement', 'physical or psychological pressure or compulsion', incitement to religious hatred, 'expression of offences… towards other persons or religion, or two or more attempts at proselytism.)

23. While some of these five factors relate to what may fairly be deemed 'improper proselytism', not all do so. In consequence, the attempts to restrict the scope of the offence of 'proselytism' do not go far enough. First, the offence should be clearly defined as one of 'improper proselytism' to clarify that proselytism *per se* does not constitute an offence. In *Kokkinakis v Greece*, while the Strasbourg Court accepted that a prohibition on proselytism was prescribed by law and could be said to have had the legitimate aim of protecting the rights of others, it could not accept that the interference could be justified as necessary in a democratic society. A distinction had to be drawn between 'bearing Christian witness' or evangelicalism and 'improper proselytism' involving undue influence or even force, especially upon weak and vulnerable members of society. The former was accepted by Christians as part of the Christian church's mission; the latter was incompatible with respect for belief and opinion. The failure of the domestic courts to specify the reasons for the conviction meant that the state could not show that there had been a pressing social need for the conviction, and thus the sentence had not been proportionate to the aim of the protection of others.[106]

24. Second, the definition of 'improper proselytism' should be drawn with greater care. In *Kokkinakis,* the Greek courts in their reasoning had established 'the applicant's liability by merely reproducing the wording of [the legislation] and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means.' The State thus could not show that 'the applicant's conviction was justified in the circumstances of the case by a pressing social need', and thus 'the contested measure … does not appear to have been proportionate to the legitimate aim pursued or, consequently, 'necessary in a democratic society ... for the protection of the rights and freedoms of others'.[107] While in this case the European Court of Human Rights declined to provide a comprehensive definition of 'improper proselytism', it did refer to a 1956 World Council of Churches report in justification of the distinction between 'proper' and 'improper' proselytism:

25. '[Bearing Christian witness or evangelicalism]' corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. ['Improper proselytism'] represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.[108]

---

[106] *Kokkinakis v. Greece,* judgment of 25 May 1993, Series A no. 260-A, paras. 48-49.

[107] *Kokkinakis v. Greece,* above, at paras. 48-49.

[108] *Kokkinakis v. Greece,* above. Subsequently, in *Larissis v. Greece*, judgment of 24 February 1998, Reports 1998-I, 362, paras. 40–61, the Strasbourg Court accepted that a conviction of senior officers who were members of the Pentecostal faith for the proselytism of three airmen under their command was not to be a breach of Article 9 in light of the crucial nature of military hierarchical structures which could potentially involve a risk of harassment of a subordinate through abuse of influence by senior officers: the need to protect the prestige and effective operation of the armed forces and to protect individual soldiers from ideological coercion provided adequate justification for the convictions.

26. 'Improper proselytism' should thus be defined more carefully: while it should certainly include the use of 'material encouragement' and 'physical or psychological pressure or compulsion' as proposed in the 'revised' draft (ie, subsections a and b), it is difficult to see how teaching with a view to convert an individual in which 'hatred is formed' (section c), 'the expression of offences is applied towards other persons or religions' (section d), or where a person is subjected on two or more occasions to unwanted attempts at proselytism (section e) can be said to constitute 'improper proselytism' within the (albeit limited) discussion of the concept by the Strasbourg Court. The formulation of 'hatred', etc (sections c and d) is better addressed by other means (see paragraph 9 above), and should be restricted to cases in which a deliberate attempt to incite religious hatred can be proved, or at most, to cases in which the speaker has shown a wilful disregard for the likely consequences of the communication of expression. The current drafting suggests that intention is not required, and that the offence is comitted whenever such 'hatred' is occasioned. This is too broad. Further, the avoidance of nuisance (section e) will only in rare situations be likely to warrant the imposition of criminal responsibility (it is exceptionally difficult to see how the making of two unwanted calls to or on an individual should constitute a criminal offence: but a persistent pattern of harassment most certainly should do so).

27. Third, the penalties for improper proselytism appear to be unduly harsh. At the same time as this liberalising measure permitting proselytism is introduced, it appears that the penalties for proselytism are to be increased significantly: the Draft Criminal Code, Art 162, now proposes that proselytism is to be punishable by a fine of 500 times the minimum salary or by one year's imprisonment[109].

3.4 Part 4 : Property of religious organisations

Sections 9 – 12 : property rights, etc

28. These appear to be uncontroversial, although there seems to be some possible inconsistency between the provisions of sections 11 and 21.

Again, however, the law should recognise that non-registered (ie, non-recognised) religious bodies may still enjoy certain rights of property and to this end, may enjoy fair administration of justice rights: in *Canea Catholic Church v. Greece,* a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality to bring legal actions was successfully challenged since the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts.[110]

Section 13 : prohibition on receiving finance, etc

29. Churches may also hold property, and any interference with these rights is in principle liable to give rise to questions falling within the scope of Article 1 of Protocol No. 1.[111] There is a prohibition on receiving finance where a 'spiritual centre' of a religion is outside Armenia. When taken with section 12 (organisations can seek financial assistance from 'their faithful'), the clear aim of the law is to prevent religious organisations other than the Armenian Church from benefiting from external financial assistance. The justification for this provision is not clear,

[109] It is not entirely clear what the existing penalties are: Art 162 seems to suggest (if proselytism constitutes an 'encroachment on the rights of others') that the offence is punishable by a fine of between 200 and 400 minimal salaries or by imprisonment for up to 3 months: but this provision refers to the 'establishment or management of associations'.

[110] *Canae Catholic Church v. Greece,* Reports 1997-VIII, paras. 40-42.

[111] See, for example, *Holy Monasteries v. Greece,*judgment of 9 December 1994, Series A no. 301-A, paras. 54-66.

but it may nevertheless not constitute any particular incompatibility with the European Convention on Human Rights: the matter may fall within the scope of Article 1 of Protocol No 1, but in this instance, a fairly wide margin of appreciation is accorded the State. At the least, religious bodies must have access to a court to allow them to seek to uphold their rights under Article 1 of Protocol No. 1, even if not (within the terms of Armenian law) recognised as a 'judicial person' in terms of section 14.[112]

3.5 Part 5 : Registration of religious organisations

Sections 14- 16 : procedure for seeking registration, etc

30. These sections provide for consideration of applications for recognition ('registration') by an executive agency (the Committee of Religious Affairs of the Council of Ministers) and a right of appeal to the courts.[113] The Law provides only the most basic of information on the procedures to be adopted and the rights of religious bodies. It is worth again stressing, however, that as far as the European Convention on Human Rights is concerned, the expectation is that the process for registration guards against unfettered discretion and thus avoids arbitrary decision-making.

3.6 Part 6 : Relation between religious organisations and the State

31. These appear largely to be uncontroversial, although it is not clear in section 22 (in respect of the principle of separation of Church and State as proclaimed by section 17) why the Catholicos of All Armenians should be required to assume Armenian nationality. Again, however, this issue is perhaps better discussed within the context of a separate section dealing exclusively with the establishment of the Armenian Apostolic Church.

4. Criminal Code, Art 162.

Some reference to the proposed insertion of a new offence of proselytism has been made above (at paragraph 21). One additional matter is of some concern.

32. The current version of Art 162 is headed 'establishment or management of associations encroaching upon citizens' rights or against the individual'. Art 162 currently makes it an offence punishable by fine (of between 200 and 400 minimal salaries) or imprisonment (of up to 3 years) to establish or manage 'a religious or non-governmental association, whose activities inflict damage to the health of individuals, or with encroachments on other rights of individuals, [or] incite citizens to refuse to perform their civil duties'. The proposed amendment will significantly increase the penalties upon conviction: the existing offence of establishment or management, etc is now to be punishable by two years' imprisonment. Imposition of a lengthy sentence of imprisonment will be of relevance in any assessment of the proportionality of an interference with Article 9 rights, a matter which domestic courts may wish to bear in mind in any case.

33. An obvious question arises whether a religious association that believes that the legal obligation to undertake military service is contrary to an adherent's duties as a matter of religious faith could be so penalised in cases where the association actively promotes this belief and thus 'incites citizens to refuse to perform their civil duties'. The extent to which Article 9

[112] *Canae Catholic Church v. Greece,* Reports 1997-VIII, paras. 40-42.

[113] Since the refusal to register a religious community may also carry with it the consequence that the community is thereby precluded from enforcing its interests in the courts, issues of access to justice may also arise under Article 6. In *Canea Catholic Church v. Greece,* above, a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality was successfully challenged, the Strasbourg Court considering that the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts: see eg *Canae Catholic Church v. Greece,* above, paras. 40-42.

imposes a duty upon state authorities to recognise exemptions from general civic or legal obligations is still open to some doubt in light of Article 4(3)(b) of the European Convention on Human Rights which makes specific provision for 'service of a military character'. However, virtually all European states which have military service obligations now recognise alternative civilian service in line with a clear European consensus that this is appropriate.[114] The issue is of some concern to Armenia in light of a pending case (that is, of *Bayatyan v. Armenia*)[115]. This matter is distinguishable from a situation in which an individual who is a Jehovah's Witness is penalised for refusal to carry out military service. Further, the repeated imposition of penalties upon those who refuse to carry out such service may also give rise to other considerations: in *Ülke v Turkey,* the Court determined that the repeated punishment for refusal to serve in the military had amounted to treatment in violation of Article 3 since domestic law failed to make provision for conscientious objectors was 'evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs').[116] However, while distinguishable, the case may also be somewhat analogous insofar as the repeated imposition of sanctions on a religious organisation for promoting a central precept of their beliefs may well be considered an unjustifiable interference with the European Convention on Human Rights.

5. Summary of conclusions

My principal conclusions are thus as follows:

- The law should specifically refer to 'everyone', and not merely to 'citizens. This usage should also be consistent: rights should be enjoyed (individually and collectively) by all, irrespective of nationality or citizenship.

- The law should specifically provide that freedom of religious belief includes the right to change belief

- Specific references acknowledging the establishment of the Apostolic Church and its rights should be brought together in a new and separate section regulating this establishment.

- The law should specifically prohibit as a criminal offence any expression or action by individuals or groups deliberately designed to, or which has the likely consequences of, inciting religious animosity or hatred.

- The law should also specifically provide that public officials or public authorities may not take action that may directly or indirectly restrict individual or collective manifestation of worship other than in circumstances provided for by law and where such action is necessary in a democratic society.

- The requirements for registration as a 'religious organisation' require extensive redrafting. Certain criteria (eg the religious organisation is based upon historically recognised

[114] And see Committee of Ministers Recommendation No. R(87) 8 and Parliamentary Assembly Recommendation 1518 (2001); further, Parliamentary Assembly Opinion No. 221 (2000) concerning Armenia's application for membership of the Council of Europe notes that the State undertook to introduce a law on alternative service in compliance with European standards.

[115] No 23459/03, declared partly admissible on 12 December 2006.

[116] No 39437/98, 24 January 2006, at paras 61 and 62. (Cf para 73 where the Court refused the applicant's request to request the State to enact legislation reognising conscientious objectors, noting this was a matter for the State under the supervision of the Committee of Ministers to determine the means for meeting its obligations under the Convention.) See also *Lang v. Austria*, no 28648/03, (19 March 2009) [not yet final], at para 25:

As the privilege at issue is intended to ensure the proper functioning of religious groups in their collective dimension, and thus promotes a goal protected by Article 9 of the Convention, the exemption from military service granted to specific representatives of religious societies comes within the scope of that provision.

holy scriptures; its doctrines form part of the internationally contemporary religious-ecclesiastical communities; it is free from materialism and is intended for purely spiritual goals; and in the event of Christian belief, they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity) seem on their face to be incompatible with the State's duty to remain neutral as to the validity of belief. The increase in the minimum number of members before an organisation can be registered seems illiberal.

- In section 7, it should be made clear that the list of rights is illustrative only of the legal rights of recognised religious groups and is without prejudice to other forms of collective manifestation of belief required by their faith.

- The offence of proselytism should be reworded to ensure the offence is clearly defined as one of 'improper proselytism'; the definition of 'improper proselytism' should be drawn with greater care; and the penalties for improper proselytism should be reconsidered as they could appear to be unduly harsh.

- It should be acknowledged that Art 162 of the Criminal Code (as amended) should not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for encouraging refusal to undertake military or appropriate alternative civilian service if this teaching involves the promotion of a central precept of the beliefs of this organisation.

ANNEX II

COMMENTS

on the Draft Laws of the Republic of the Republic of Armenia

**"THE LAW OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS AND ADDENDA
TO THE LAW ON THE FREEDOM OF CONSCIENCE
AND ON RELIGIOUS ORGANIZATIONS"**

and

**"THE LAW OF THE REPUBLIC OF ARMENIA
ON AMENDING THE CRIMINAL CODE
OF THE REPUBLIC OF ARMENIA"**

**prepared by the OSCE/ODIHR Advisory Council
on Freedom of Religion or Belief**

I. Introduction

1. The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the "Advisory Council") has been asked by the Venice Commission to review two proposed draft laws of the Republic of Armenia called:

1) *"The Law of the Republic of Armenia on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations"* (hereinafter referred to as the "draft amendment law/Freedom of Conscience");

2) *"The Law of the Republic of Armenia on Amending the Criminal Code of the Republic of Armenia"* (hereinafter referred to as the "draft amendment law/Criminal Code").

The amendment laws have been passed in their first reading by the National Assembly of the Republic of Armenia on 19 March 2009.

2. These Comments also take into account the existing "*Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations*" (hereinafter referred to as the current law) that is currently in force. The draft amendments are closely interrelated with the other provisions of the current law. The draft amendments would change the meaning of many of the provisions of the current law or would affect their interpretation and application. These Comments, therefore, also comment on those provisions of the current law that are not going to be directly amended.

3. The OSCE/ODIHR Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE's participating States. In revising the draft law the members of the Advisory Council who drafted these Comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.

4. A member of the Advisory Council has had the opportunity to visit the Republic of Armenia on the occasion of a conference on Human Rights in Armenia on March 19-20, 2009, organized by OSIAF- Armenia (Open Society Institute Assistance Foundation – Armenia), and to participate in a round table organized by the Mission of OSCE on March 18, 2009, during which he was able to communicate with a large number of stakeholders in the law amendment process about the law and the draft amendments thereto. The Advisory Council is very grateful for the friendly and open atmosphere in which these talks took place and for the openness in providing information on the process.

II. Scope of Review

5. The Comments are based on an unofficial translation completed as of March 2009 and provided through the OSCE Office in Yerevan. This unofficial translation indicates the current law as adopted on June 17, 1991 and as amended on September 19, 1997. It has been stressed through the OSCE Office that this in fact is the latest version of the law in force. However, the official website of the National Assembly of the Republic of Yerevan exhibits an English translation of the law as amended on 03.04.2001[117] which differs substantially from the version the Advisory Council has been provided with, as does the

[117] http://www.parliament.am/legislation.php?sel=alpha&lang=eng [last visited on 07 April 2009].

version exhibited on that website in Armenian language,[118] but not the version on that website in Russian language.[119]

6. The working basis of these Comments consists of the current law ("*Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations*") into which the draft amendment law/Freedom of Conscience has been integrated, both in their English translation, by the author of these Comments. In this working document the draft amendments are printed in italics; provisions that are to be repealed are omitted. This working document is attached to these Comments as an annex (annex I), as are the current law (annex II) and the draft amendment law/Freedom of Conscience (annex III). Furthermore, the Comments are also based on the draft amendment law/Criminal Code which is also attached to the Comments as an annex (annex IV).

7. These Comments do not constitute a full and comprehensive review; rather they have been drafted to serve as priority considerations which should be taken into account in light of international standards in the field of freedom of religion or belief. Thus, no inference either positive or negative should be drawn from the fact that particular provisions are not addressed.

III. Executive Summary

8. The draft amendment laws, while taking important steps to improve the precision and the range of human rights guarantees as required by international commitments, remain unduly vague in many of their provisions. They raise concerns in respect of registration of religious communities, the prohibition of proselytism, discriminatory provisions, and limitations to freedom of religion or belief. It is recommended that the draft amendment laws as well as the current law be redrafted.

9. It is recommended that:
A. Legal terms should be made clearer throughout the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations;

B. The scope of freedom of conscience, religion or belief (e. g. Article 1) should be adjusted;

C. It be made explicitly clear in the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations that those religious communities which are not registered as a religious organization can have access to legal entity status under general provisions (e.g., under association law). If legal entity status cannot be provided for them under general provisions they should be given access to legal entity status under the registration process of the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations (e. g. Article 5);

D. The registration requirements for religious organizations should be redrafted (Article 5), and the definition of Christianity should be deleted (Article 5 Section 1 Letter f));

E. The prohibition of proselytism should be deleted (Article 8);

F. The provision on usage of religious symbols, names, etc. (Article 11 Section 2) should be redrafted;

G. Possible discriminations between religious communities should be avoided (e. g. Article 17);

[118] http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=arm [last visited on 07 April 2009].
[119] http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=rus [last visited on 07 April 2009].

H. The prohibition of control (Article 19) should be redrafted or deleted;

I. Article 1 Draft Law of the Republic of Armenia on Amending the Criminal Code of the Republic of Armenia should be redrafted or deleted.

IV. Analysis and Recommendations

1. Reference points of review

10. **1. 1.** These Comments are based on OSCE commitments that incorporate and further specify the requirements of the fundamental right to freedom of religion or belief in international law.[120] The Republic of Armenia is one of the OSCE's participating States.

11. The Comments are likewise based on the relevant provisions of international treaties, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms[121], the case law of the European Court of Human Rights, the International Covenant on Civil and Political Rights,[122] and the International Covenant on Economic, Social and Cultural Rights.[123] They are further based on United Nation declarations, most notably the Universal Declaration of Human Rights[124] and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.[125]

12. The Comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.[126]

13. **1.2.1**. The OSCE general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act reads:

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

---

[120] For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/chronological.php; and http://www.iskran.ru/cd_data/disk 2/r3/015. pdf [last visited on 07 April 2009].

[121] European Convention for the Protection of Human Rights and Fundamental Freedoms and its First Protocol, opened for signature by the Council of Europe on 04 November 1950, entered into force 03 September 1953 (hereinafter "ECHR"). The ECHR has entered into force for the Republic of Armenia on 26 April 2002.

[122] International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976 (hereinafter "ICCPR"). The Republic of Armenia has acceded to the ICCPR on 23 September 1993.

[123] International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). The Republic of Armenia has acceded to the ICESCR on 13 December 1993.

[124] Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

[125] Declaration on the Elimination of All Forms of Intolerance and of Discrimination adopted and proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981.

[126] The Guidelines were adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004) and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN. 4/2005/61 para. 57. The major international instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr /2004/09/12361 _142_en.pdf [last visited 07 April 2009]. They are referred to herein after as the "OSCE Legislative Guidelines" or simply as the "Guidelines".

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

14. This fundamental commitment has been repeatedly reaffirmed.

15. **1.2.2.** The principles of the Vienna Concluding Document[127] also have important implications for the law of religious organizations. The principles relevant for the given context provide inter alia:

Principle 13 Questions Relating to Security in Europe
(13.7) [The participating States will] ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Principle 16 Questions Relating to Security in Europe
In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.1) – take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;
(16.2) – foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;
(16.3) – grant upon their request to community of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;
(16.4) – respect the right of religious communities to
establish and maintain freely accessible places of worship or assembly,
organise themselves according to their own hierarchical and institutional structure,
select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
solicit and receive voluntary financial and other contributions;
(16.5) – engage in consultations with religions faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;
(16.6) – respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;
(16.7) – in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

[127] Concluding Document of the Vienna Meeting of representatives of the participating States of the Conference on Security and Co-operation in Europe (1989), available at: http://www.osce.org/documents/mcs/1989/01/16059_en.pdf [last visited on 07 April 2009].

(16.8) – allow the training of religious personnel in appropriate institutions;
(16.9) – respect the right of individual believers and communities of believers to acquire, posses, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;
(16.10) – allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;
(16.11) – favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

Principle 17 Questions Relating to Security in Europe
The participating States recognise that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

Principle 21 Questions Relating to Security in Europe
The participating States will ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

16. **1.2.3.** The Document of the Copenhagen Meeting of Representatives of the Participating States of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (1990) further specifies these commitments of the participating States:

Principle 9
The participating States reaffirm that

(9.4) everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;

Principle 24

The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights ("ICCPR"), and with their international commitments, in particular the Universal Declaration of Human Rights ("UDHR"). These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

17. **1.3.1.** One of the predominant and most relevant provisions of international law protecting the right of freedom of religion or belief is Article 18 ICCPR.

18. Article 18 ICCPR reads:
Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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 belief 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 the fundamental rights and freedoms of others.

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.

19. In 1993, the U.N. Human Rights Committee issued its General Comment No. 22 (48) which provides a detailed official interpretation of the meaning of Article 18 ICCPR. The General Comment begins by noting that "[t]he right to freedom of thought, conscience and religion ... is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others." It notes that "the fundamental character of these freedoms is ... reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2)."

20. The General Comment further notes that limitations on freedom of religion, to the extent permissible at all, are only allowed with respect to manifestations of religion:

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice.

These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or adherence to a religion or belief

21. Similarly, "[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted." This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in article 18(2).

22. The General Comment pays particular attention to the permissible restrictions on manifestations of religion:

In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. ... [P]aragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific

need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

23. It is important to note that thus any limitations to the right to manifest one's religion or belief must be prescribed by law, serve one of the purposes listed in Article 18 III ICCPR, and be necessary for attaining this purpose. This means that interference with this right must be set down in formal legislation or an equivalent norm in a manner adequately specified for the enforcement organs. There must be adequate certainty of the scope of the limitations.

24. Furthermore, the interference must be necessary to attain one of the purposes listed in the Article 18 III ICCPR. The restrictions must thus be proportional in severity and intensity to the purpose being sought and may not become the rule. This also means that the restriction must be proportionate in the given case.[128]

25. The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR makes it very clear that State parties are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2 I ICCPR). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties "to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant" (Article 2 II ICCPR) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (Article 2 III ICCPR). Further, Article 26 ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

26. The U.N. Human Rights Committee has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights." While the Covenant itself does not define discrimination, the Human Rights Committee States, consistent with the general usage of this term in international law, that"discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

27. General Comment No. 18 (37) also stresses that the Covenant is not limited in its reach to discrimination with respect to the protection of the substantive rights it enunciates:

While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons

[128] For these rules on the permissible restrictions cf. Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd revised edition, 2005, pp. 425-426; Sarah Joseph, Jenny Schultz, and Melissa Castan, The International Covenant on Civil and Political Rights, 2nd edition, 2004, pp. 507-508.

equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for in the Covenant.

28. **1.3.2.** The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, though not formally binding as a treaty obligation, distils many of the principles articulated in the ICCPR.

29. Article 2 II of the 1981 Declaration defines "intolerance and discrimination based on religion or belief" as:
Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

30. Article 3 of the 1981 Declaration underscores the significance of the anti-discrimination norm established by Article 2, noting that "Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights...

31. Article 6 of the 1981 Declaration spells out the implications of the foregoing religious freedom norms for a variety of recurrent and practical contexts that are vital to religious freedom. Article 6 provides:

In accordance with article 1 of the Declaration, and subject to the provisions of article 1(3), the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;
To establish and maintain appropriate charitable or humanitarian institutions;
To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
To write, issue and disseminate relevant publications in these areas;
To teach a religion or belief in places suitable for these purposes;
To solicit and receive voluntary financial and other contributions from individuals and institutions;
To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

32. **1.4.1.** The European Convention for the Protection of Human Rights and Fundamental Freedoms in its Article 9 reads:

1. 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 or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. 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 of public order, health or morals, or for the protection of the rights and freedoms of others.

33. Limitations on freedom of thought, conscience, religion or belief, to the extent permissible at all, are only allowed with respect to manifestations of religion or belief. These limitations face a number of important qualifications and restrictions. The limitation must be "prescribed by law". The European Court of Human Rights has held that this phrase "does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention".[129] Rules that are impermissibly vague fail to meet this test.

34. The second constraint is the limited set of permissible justifications: Limitations must be "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". This list narrows the range of state interests that can justify overriding religious freedom.

35. Of particular importance is the third constraint: Limitations must also be "necessary in a democratic society". The European Court of Human Rights has found that democratic society necessarily presupposes religious pluralism. In articulating the importance of freedom of religion or belief, the European Court has noted that it is "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, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it".[130] Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society".[131]

36. The Court has recognized the importance of a margin of appreciation of cultural difference that State authorities have in this area. This is vital to the gradual process of European integration while maintaining respect for difference in relation to religious and cultural matters. Nonetheless, the Court has made it clear that in delimiting the margin of appreciation that applies to religious freedom issues, it "must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society".[132] With this background in mind, the Court has construed the "necessary in a democratic society" requirement to mean that the limitation in question must be "justified in the circumstances of the case by a pressing social need" and that the contested measure must be "proportionate to the legitimate aim pursued".[133] Moreover, in assessing whether a restriction is proportionate to the legitimate aim pursued, "very strict scrutiny" must be applied.[134]

37. **1.4.2.** Oftentimes, freedom of religion or belief is closely linked with the freedom of association. Article 11 ECHR, dealing with freedom of association reads:

---

[129] European Court of Human Rights, case of Malone v. The United Kingdom, 82 Eur. Ct. H.R. (ser. A) at 32 (1984).

[130] See European Court of Human Rights Kokkinakis v. Greece, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, see also Buscarini and Others v. San Marino [GC], no. 24645/94, § 34, ECHR 1999-I.

[131] European Court of Human Rights, Manoussakis and Others v. Greece, case no. 59/1995/565/651, § 41.

[132] Ibid, § 44.

[133] Kokkinakis, cited above A 260-A (1993), § 50.

[134] Manoussakis, cited above, § 44.

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

38. The European Court's 1998 decisions in United Communist Party of Turkey v. Turkey[135] and Sidiropoulos & Others v. Greece[136] have further elaborated on freedom of association and have significant implications for the law of religious associations. In the Sidiropoulos case the Court stated categorically that "the right to form an association is an inherent part" of the right to freedom of association and that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.[137]

39. As with limitations on manifestations of religion, the Court emphasized that in assessing the right to association, exceptions in Article 11 II ECHR are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.[138]

40. **1.4.3.** Depending on their structure, religious association laws may also violate non-discrimination provisions of the Articles 1 and 14 ECHR. These provisions read:

Article 1 ECHR

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.
Article 14 ECHR

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[135] United Communist Party of Turkey [TBKP] and others v. Turkey, 30 January 1998, 19392/92.

[136] Sidiropoulos and others v. Greece, 10 July 1998, 26695/95.

[137] Sidiropoulos and others v. Greece, 10 July 1998, 26695/95, § 40.

[138] Ibid.

2. Analysis and recommendations in general

41. The draft amendment law/Freedom of Conscience takes up international commitments in that it aims at clarifying and specifying some of the terms and provisions of the current Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations. Some of the draft amendments provide more precision than the language of the current law. However, some of the draft amendments remain unclear and are ambiguous; they remain vague and open to misinterpretation and arbitrary implementation in legal practice. It is recommended the meaning of these provisions be clarified.

42. The draft amendment law/Freedom of Conscience leaves unclear the status of religious communities that do not have the status as a religious organization. It is recommended that the status of these groups be clarified in order to guarantee the necessary full freedom of religion or belief also for them.

43. The draft amendment law/Freedom of Conscience intensifies inequalities between the Armenian Apostolic Holy Church and other religious organizations or religious communities. While special treatment of religious communities can under certain conditions be justified under international instruments, these inequalities in legal treatment can be interpreted in a way that would amount to undue discrimination. It is recommended that the relevant provisions be redrafted and clarified so as to exclude discriminatory treatment.

44. The draft amendment law/Freedom of Conscience explicitly expands the scope of freedom of conscience, religion or belief to everyone whereas the existing law only extends those freedoms to citizens. However, the draft amendment law does not amend all provisions of the existing law that are overly restrictive in respect of non-citizens. It is recommended that the provisions that unduly limit the freedom of religion or belief of non-citizens be redrafted.

45. The draft amendment law/Criminal Code makes reference to the amendments on proselytism in the draft amendment law/Freedom conscience. The concerns in respect of the draft provisions on proselytism apply to both amendment laws. It is recommended that theses provisions be deleted.

3. Article-by-Article Analysis and Recommendations

3.1. The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations (the current law) in the form of the intended amendments[139]

46. **3.1.1.** Article 1 as amended reads:

The Republic of Armenia shall guarantee the freedom of conscience and religion and ensure the realization of everybody's right. This right includes the freedom of accepting, not accepting religion, faith or convictions or changing the freedom and the right of expressing them by preaching, church ceremonies and other rites of worshipping individually and (or) with others (jointly, uniting).

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.

[139] Italics show provisions of the current law in their amended form. Provisions of the current law that are to be deleted by the amendment law/Freedom of Conscience are omitted.

The relations between the Republic of Armenia and the Armenian Apostolic Holy Church, in accordance with the Article 8.1 of the Constitution of the Republic of Armenia, may be regulated through the law on the Relations of the Republic of Armenia and the Armenian Apostolic Holy Church.

Freedom of activities for all religious organizations in accordance with the law shall be guaranteed in the Republic of Armenia.

47. Article 1 Section 1 Sentence 2 should probably read in its English translation: “This right includes the freedom of accepting, not accepting religion, faith or convictions or changing the religion, faith or conviction, and the right of expressing them by preaching, church ceremonies and other rites of worshipping individually and (or) with others (jointly, uniting)." The wording as provided is distorted.

48. The draft amendments extend the explicit guarantee of freedom of conscience and religion to everybody, while the current law only mentions freedom of conscience and religion of citizens. The draft amendments in this respect implement international commitments (such as Article 9 ECH and Article 18 ICCPR) that guarantee freedom of religion or belief and freedom of conscience for everyone regardless of citizenship. However, there is a serious concern that the draft amendment does not amend many of the provisions of the existing law that restrict the freedom to manifest one’s conscience, religion or belief to citizens. It is recommended to revise the draft amendment law and the current law in order to extend freedom of conscience, religion or belief to non-citizens in compliance with the international commitments.

49. The draft amendment explicitly extends freedom of religion or belief to changing one’s religion while the current law explicitly only guarantees the right to adopt or not to adopt a religion; the draft amendment thus is nearer to the guarantees as enshrined in Article 18 UN-Universal Declaration and Article 9 I ECHR.

50. However, there are a number of deviations from the international guarantees that can give rise to problems when implementing and applying the draft amendments.

51. The right to manifest one’s religion or belief is enumerated in a manner that does not take up the full scope of guarantees in international law. The 1990 OSCE Copenhagen Principle 9.4 as well as Article 9 I ECHR provide that 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 or private, to manifest his religion or belief, in worship, teaching, practice and observance. Also, Article 18 I ICCCPR guarantees, inter alia, the “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.”

52. It is important that everyone has the right to manifest his or her religion or belief also *publicly*. Freedom of religion or belief would be an almost empty word if it would be confined to the merely private sphere. It is recommended to redraft the provision.

53. Freedom to manifest one’s religion also entails the right to do so through *teaching*. This right is not mentioned in the provision. It is recommended to redraft the provision.

54. Furthermore, the draft amendment does not explicitly state the right to manifest one’s religion through *observance* and *practice*. This could mean that very important manifestations of religion or belief such as ceremonies outside of a church or of another building of worship might be prohibited. The draft amendment also 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. For many believers it is important to wear or exhibit otherwise religious

garment or symbols such as religious clothing, a beard, a headscarf, a turban, a hat, a certain style of haircut, etc. The present phrasing of the amendment does not guarantee the right of a monk or a priest to wear the official attire prescribed by the church; a bishop would not be guaranteed the right to wear a cross or his ring. It is recommended to rephrase the clause to assure that the protections provided are as broad in coverage as they are required to be by the language of the international instruments.

55. The draft amendment takes up the reference to the role of the Armenian Apostolic Holy Church in the previously repealed preamble of the existing law. In doing so the draft amendment specifies the role of the Armenian Apostolic Holy Church. This change in general attributes greater legally binding force to the provision. It is not clear what consequences should result from such a change. The acknowledgement of the special historical role of a specific religion in a country is not per se impermissible, but must not be allowed to lead to or serve as the basis for discriminations against other religious communities that may not have the same kind of specific role.

56. **3.1.2.** Article 1.1. as amended reads:

The law on Freedom of Conscience and Religious Organizations consists of the Constitution of the Republic of Armenia, international treaties of the Republic of Armenia, this law, laws regulating the sphere and other normative acts.

57. This draft amendment restores references to the previously deleted reference to international treaties in the preamble of the existing law. These international commitments are thus more clearly reaffirmed.

58. **3.1.3.** Article 2 as amended reads:

The citizens of the Republic of Armenia are equal before law irrespective of their attitude towards religion or religious belonging.

The limitations of the rights of a person towards religion, belief or religious conviction (except for the defined cases by law), the persecutions of the religious basis or hindering other rights, as well as the excitation of religious animosity shall cause responsibility defined by the law.

59. The draft amendment seems to be inconsistent with the previous extension of freedom of religion to everybody in Article 1 Section 1 as amended. The draft amendment could be read as allowing discrimination against foreign citizens and stateless persons only because of their religious affiliation. That would violate Article 9, 14 ECHR; Article 18 ICCPR.

60. It is not clear what the meaning of “persecution of the religious basis” is. Probably, the reference is mistranslated, and it should be proscribing “persecutions *on a* religious basis.”

61. The draft amendment in using the term ‘hindering’ other’s rights is unduly vague and raises serious concerns. Very often, religious or belief rights will come into conflict with other rights and freedoms of other persons. This would happen in cases such as a procession on public streets when other people would want to use the street to get home in their cars. The procession would thus be ‘hindering’ the rights of the other users of the street. In such cases, the colliding rights would have to be balanced and be brought into a harmony as far as possible. It would clearly be inappropriate if *any* other right, however minor, would suffice to override a religious freedom right.

62. Hindering ‘other’ rights is highly imprecise and unforeseeable. It is unpredictable which other rights are meant.

63. It is not clear what religious 'animosity' would mean; the term raises serious concerns. It belongs to the very normal and internationally accepted way of religious (or anti-religious) teaching and preaching to define a core belief in which the believers differ from the belief of others. In doing so they might often, although not always, believe that they have the better truth, or that the others do not have the truth. Very often, believers would feel uncomfortable in the presence of non-believers. A law will most probably not be able to oblige people to like each other. What the law can do is to prevent people who dislike each other to resort to violent means or insulting language. At least in its English translation the term 'animosity' is not clear enough in drawing a precise line between legitimate and illegitimate expression of feelings. The most accurate term to use here according to international standards probably is "incitement of religious hatred,"[140] and this should be understood to cover only extreme cases such as physical risks to persons and property and not theological disagreements or disputes.

64. Furthermore, the term 'religious' animosity is ambiguous and vague in that a clear line between what is religious animosity and what non-religious animosity would entail. It is also hard to see why religious animosity should be prohibited, but national, economic, sport, or other fields of animosity should be tolerated. This would put religion or belief into an inferior position in relation to other aspects of human existence without a relevant need of doing so under international instruments.

65. **3.1.4.** Article 3 as amended reads:

It is forbidden to coerce or compel a citizen to make a decision to participate or not to participate in services, religious rites and ceremonies, and religious education.
The expression of the conscience and religion can be limited only by the law, if it is necessary for the defense of the social security, health, morality or rights of other members of and freedoms.

66. The wording in the English translation is grammatically incorrect. It should probably be phrased something like: "The manifestation of freedom of conscience and religion may be limited only by the law, if it is necessary for public security, health, morality or for the protection of rights and freedoms of other members of the society."

67. According to the international instruments, freedom of conscience, religion or belief is a right of everybody. The provision unduly restricts the protection of this right to citizens only. This restrictive approach also is inconsistent with the enlargement of the scope of the guarantee in Article 1 Section 1 of the draft amendment law. It is recommended to redraft the provision in order to include non-citizens in the protection.

68. While this may be a matter only of translation, it has to be noted that international commitments (Article 9 II ECHR, Article 18 III ICCPR) do not allow for limitations with the aim to protect public security, but only for public safety.[141]

69. **3.1.5.** Article 4 as amended reads:
A Religious organisation is an association of citizens established for professing a common faith as well as for fulfilling other religious needs.

70. The provision could be read as preventing religious communities from obtaining the status of a religious organization when only a few or even only one non-citizen is a member of the community. This would be non-proportionate as a limitation on the manifestation of religion

[140] See Article 20 ICCPR.

[141] See paragraph 22 above.

or belief. The provision would also ban formation of trans-denominational umbrella associations for ecumenical, humanitarian, or other reasons. Religious organizations must also be open to non-citizens. It is recommended to extend the provision also to non-citizens.

71. **3.1.6.** Article 5 as amended reads:

A citizens' association is recognised as a Religious organisation if it satisfies the following criteria:

a) It is not contrary to the provisions of Article 3 of this law;
b) It is based on a historically canonical holy book;
c) Its doctrines forms part of the international contemporary religious-ecclesiastical communities;
d) It does not pursue material goals and has an exclusively spiritual orientation;
e) It has at least *500* members. Children under 18 years of age may not be members of a religious organisation regardless of whether they participate in religious rites or other circumstances.

f) In the event of Christian belief they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity.

These conditions (except for point [a]), are not applicable to religious organisations of ethnic minorities with their national doctrine.

72. **3.1.6.1.** Religious organizations must be open also to non-citizens. There is no valid reason perceivable why a religious organization should not have also non-citizen members. The status of a religious organization and the rights attributed to it do not require any such limitation. It is recommended to redraft the provision.

73. **3.1.6.2.** Religious organizations must be able to register also when they are not based on a *"historically canonical book"*. This requirement clearly violates international norms, as there are many religions that are not "based on a historically canonical book", and the requirement is vague and could lead to arbitrary discrimination." Freedom of religion must not be reduced to the 'book-religions'.

74. Furthermore, even if a religion has a book it may not regard that as 'holy' or 'canonical'. Moreover, a religion may have a book that is not 'historical', but new. A new revelation must not be discriminated against just because it is new. Freedom of religion or belief is guaranteed by international instruments also for religions that are newly created. Historical existence of a specific teaching is not a legally relevant condition for being registered.

75. It is recommended to redraft or delete the provision.

76. **3.1.6.3.** There is no visible and valid reason to restrict religious organizations to those that have international existence or links. Religious communities must have the right to register as religious organizations also when their doctrines do not form part of *"the international contemporary religious-ecclesiastical communities"*. Freedom of religion or belief does not depend on the condition that one's religion or belief is internationally or contemporaneously acknowledged. Even when the status of a religious organization should entail a specific, elevated position in the legal order there is no valid reason perceivable why such a condition should ne necessary in a democratic society to achieve one of the legitimate aims required for a limitation of these freedoms.

77. It is recommended to delete the provision.

78. **3.1.6.4.** Registration as a religious organization depends on the condition that the applicant "*does not pursue material goals and has an exclusively spiritual orientation"*. The provision is unclear. Religious entities normally need to finance themselves in order to function. Insofar, they must necessarily pursue (also) material goals. If they must have by law "exclusively" spiritual orientation, they would be prohibited to pursue any material goals at all. That would prevent them from functioning. OSCE commitments specifically recognize the right of religious communities to autonomy in structuring their financial affairs. See paragraph 15 above (quoting inter alia Paragraph 16(4) of the OSCE's Vienna Concluding Document). While it may be permissible to require that religious associations not be "profit-making organizations that distribute profits to employees or officials", they should not be prevented from acquiring funds to pursue their non-profit activities. It is recommended that this provision be redrafted.

79. **3.1.6.5.** The relationship of the status as a religious organization with the general association law of the Republic of Armenia is not sufficiently clear, and this raises serious concerns. It is not clear whether a religious community that does not have the status as a religious organization can function as an association with legal entity status pursuant to general provisions, and that if organized as such an entity, it would be able "to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities."[142]. In the discussions on this point that were held on the occasion of the visit in the Republic of Armenia various views on this issue were held by Armenian officials.

80. **3.1.6.5.1.** As the Principle (16.3) of the 1989 Vienna Concluding Document requires participating States to "grant upon their request to communities of believers … recognition of the status provided for them in their respective countries," this means that participating States have in fact the obligation to provide some status to communities of believers. This status must meet the requirements laid out in the other principles of the 1989 Vienna Concluding Document in other international instruments.

81. Registration of religious communities also has to be considered under Article 9 ECHR. In interpreting these provisions also due regard to Article 11 of the Convention has to be had.[143] As the European Court of Human Rights has repeatedly made very clear, 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 European Convention of Human Rights. While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. Bearing witness in words and deeds is bound up with the existence of religious convictions.[144] Since religious communities traditionally exist in the form of organised structures, Article 9 ECHR must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is, thus, an issue at the very heart of the protection which Article 9 ECHR affords.[145]

82. The European Court of Human Rights has also repeatedly reiterated that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any

[142] *See Svyato-Mykhaylivska Parafiya v. Ukraine, n*o. 77703/01, 14 September 2007, § 123.

[143] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 60, Hasan and Chaush v. Bulgaria, no. 30985/96, §§ 62 and 91, ECHR 2000-XI.

[144] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 61, Kokkinakis v. Greece, judgment of 25 May 1993, Series A no. 260, p. 17, § 31; and Buscarini and Others v. San Marino [GC], no. 24645/94, § 34, ECHR 1999-I.

[145] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 61, Hasan and Chaush, cited above, § 62.

meaning. The European Court of Human Rights has consistently held the view that a refusal by the domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the exercise of the right to freedom of association.[146] Where the organisation of the religious community was at issue, a refusal to recognise it has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 ECHR.[147]

83. In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 ECHR must be seen not only in the light of Article 11 ECHR, but also in the light of Article 6 ECHR which guarantees a fair trial and due access to an independent court.[148]

84. The European Court of Human Rights has held that not having legal personality, with all the consequences attached to this lack of status, amounts to an interference with the right to freedom of religion or belief pursuant to Article 9 ECHR as seen in conjunction with Article 11 ECHR and Article 6 ECHR. It does not matter in this respect whether there has been any damage or prejudice. The lack of legal personality constitutes an interference with the rights mentioned even in the absence of prejudice or damage.[149] It is decisive for a religious group to have legal personality, which allows it to acquire and manage assets in its own name, to have legal standing before the courts and authorities, to establish places of worship, to disseminate its beliefs and to produce and distribute religious material.[150] In short, religious communities have a right to acquire legal entity status that will enable them "to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities."[151]

85. An interference with the rights of religious communities entails a breach of Article 9 ECHR, when it is not "prescribed by law", does not pursue a "legitimate aim" for the purposes of that provision, and is not "necessary in a democratic society". It is well established in the case-law of the European Court of Human Rights that the terms "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measures have some basis in domestic law, but also refer to the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects, that is, formulated with sufficient precision to enable the individual – if need be

---

[146] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 62, Gorzelik and Others v. Poland [GC], no. 44158/98, § 52 et passim, 17 February 2004, and Sidiropoulos and Others v. Greece, judgment of 10 July 1998, Reports of Judgments and Decisions 1998-IV, § 31 et passim.

[147] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 62, Metropolitan Church of Bessarabia and Others v. Moldova, n° 45701/99, § 105, ECHR 2001-XII.

[148] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 63, and mutatis mutandis, Sidiropoulos and Others v. Greece, judgment of 10 July 1998, Reports 1998-IV, p. 1614, § 40; Canea Catholic Church v. Greece, judgment of 16 December 1997, Reports 1997-VIII, p. 2857, §§ 33 and 40-41; and Metropolitan Church of Bessarabia and Others, cited above, § 118.

[149] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 66, Marckx v. Belgium, judgment of 13 June 1979, Series A no. 31, § 27; Eckle v. Germany, judgment of 15 July 1982, Series A no. 51, § 66; and Wassink v. the Netherlands, judgment of 27 September 1990, Series A no. 185-A, § 38; see also The Moscow Branch of the Salvation Army v. Russia, no. 72881/01, § 64-65, ECHR 2006-...; Church of Scientology Moscow v. Russia, no. 18147/02, § 72, 5 April 2007.

[150] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 8.

[151] Svyato-Mykhaylivska Parafiya v. Ukraine, App. No. 77703/01 (14 September 2007), §§ 83-84, 90-91, 123.

with appropriate advice – to regulate his or her conduct.[152] The Government must be able to rely on "relevant" and "sufficient" reasons justifying the interference, in the absence of which the measure goes beyond what would amount to a "necessary" restriction on the freedom of religion or belief. In general, it is clear from experience throughout the OSCE that it is not necessary to deprive religious communities of entity status to accomplish State needs; there are almost always other methods which can meet legitimate State objectives in a less intrusive and more narrowly tailored manner.

86. While States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety,[153] there are no legitimate reasons perceivable that should exclude religious communities from legal personality only because they do not reach a membership of 500 persons. The *OSCE Legislative Guidelines* specifically state "High minimum membership requirements should not be allowed with respect to obtaining legal personality."[154] The same applies also to a minimum membership of 200 persons. Most OSCE countries require that religious communities have less than fifteen individuals to acquire legal entity status.

87. Registration of religious communities must also be considered within the context of the equal treatment provision of Article 14 ECHR seen in conjunction with Article 9 ECHR. The European Court of Human Rights has observed that it is not as such contrary to the European Convention of Human Rights when specific religious organizations enjoy special treatment in many areas, even when these privileges are substantial and this special treatment facilitates a religious organization's pursuit of its religious aims. However, States have an obligation to make such special treatment available in an even-handed way. Under Article 9 ECHR, it is incumbent on the State's authorities to remain neutral in the exercise of their powers in the religious domain. Among other things, this requires that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.[155] A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[156] The State always has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs.[157] Any difference in treatment must be based on an "objective and reasonable justification".[158]

88. **3.1.6.5.2.** In the discussions during the visit to the Republic of Armenia a comparison has repeatedly been drawn with the legal situation in the Republic of Austria. It is our understanding that there is some familiarity with the Austrian law and that it is to some extent seen as

---

[152] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 71, The Sunday Times v. the United Kingdom (no. 1), judgment of 26 April 1979, Series A no. 30, p. 31, § 49; Larissis and Others v. Greece, judgment of 24 February 1998, Reports 1998-I, p. 378, § 40; Hashman and Harrup v. the United Kingdom [GC], no. 25594/94, § 31, ECHR 1999-VIII; and Rotaru v. Romania [GC], no. 28341/95, § 52, ECHR 2000-V.

[153] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 75, Metropolitan Church of Bessarabia and Others, cited above, § 113.

[154] Guidelines, Section II(F) (see note 10 above).

[155] Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 92.

[156] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 93, Van Raalte v. the Netherlands, judgment of 21 February 1997, Reports 1997-I, § 39.

[157] See Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31. October 2008 § 97, Metropolitan Church of Bessarabia and Others, cited above, § 116.

[158] Case of Religionsgemeinschaft der Zeugen Jehovah's and Others v. Austria, no. 40825/98, 31 July 2008, final 31 October 2008 § 99.

providing guidance. While there may be some disagreement about the extent to which the Austrian law complies with international standards, it should be emphasized that it does include some protections for religious associations that are absent from the draft amendment. Moreover, when Austrian laws on registration and legal entity status of religious organizations are cited as precedent for the Republic of Armenia, it is vital not to misunderstand the legal situation in the Republic of Austria.[159] A correct understanding of the legal situation in the Republic of Austria makes it clear that any religious community can acquire legal status without difficulty that entitles them to carry out the full range of their activities with a membership of only two (2) individuals. Because of the importance attached to the Austrian analogy, it is important to explain the situation there in greater detail.

89. Austria is one of the countries that have a multi-tier system of religious entity status. In the Republic of Austria, there are three different types of religious communities: (1) Recognized churches and religious communities, (2) Registered religious communities, (3) Religious communities as associations.

90. (1) The most elevated status of religious entities is that of a “recognised church or religious society”. The constitutional basis of the legal status of recognised churches and religious societies is found in the 1867 Austrian constitution (StGG) Article 15 which reads:
Every Church and religious society recognised by the law has the right to joint public religious practice, to arrange and administer its internal affairs autonomously, and to retain possession and enjoyment of its institutions, endowments and funds devoted to worship, instruction and welfare, but is like every society subject to the general laws of the land.

91. The “recognized churches and religious societies” have the status of corporations under public law sui generis. These churches and religious societies are generally included whenever state legislation relates to corporations under public law, except when the law expressly excludes them such as in the law on private radio broadcasting and in the law concerning subsidising print media. The procedure for obtaining legal recognition as a recognized church or religious society is established by the 1874 Recognition Act (AnerkennungsG 1874).[160] According to Section 1 of that Act, recognition as a religious association will be granted to the followers of a previously legally unrecognised denomination under the condition, "that (1) religious teaching, service, statutes, and chosen names do not contain anything illegal or morally offensive and (2) the creation and existence of at least one cult community created according to the requirements of this law is guaranteed." This provision has been complemented by Section 11 of the 1998 Act on the Legal Status of Religious Communities (BeKGG 1998)[161]. It requires a minimum number of believers of 2% of the Austrian population according to the latest census (2001 Census: 16,066).

92. The granting of the status as a recognized church or religious society has in the past also been provided by special laws and treaties between the State and the church or religious community. Examples of this are:

The Roman-Catholic Church has been recognized in the Concordat between the Holy See and the Republic of Austria with the Additional Protocol of 5 June 1933 and additional and complementary treaties;

---

[159] For an overview see Richard Potz, State and Church in Austria, in: Gerhard Robbers (ed.), State and Church in the European Union, 2nd ed., 2005.

[160] Anerkennungsgesetz, RGBl. 68/1874.

[161] Bundesgesetz: Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften (NR: GP XX RV 938 AB 1013 S. 102. BR: AB 5596 S. 634.), Bundesgesetzblatt für die Republik Österreich, Jahrgang 1998, ausgegeben am 9. Jänner 1998, Teil I, available at: http://www.bmukk.gv.at/medienpool/8916/1998a019.pdf [last visited 07 April 2009].

The 1861 Protestant Act (ProtestantenG 1861) in its Section 1 Subsection 1 gives separate legal recognition to the Church of the Augsburg Confession and the Church of the Helvetic Confession, in addition to the Church of the Augsburg and Helvetic Confessions, at their express request;
The 1967 Orthodox Act (OrthodoxenG 1967) recognised the Greek Orthodox Church in Austria in addition to the existing communities;
The 1890 Israelits Act (IsraelitenG 1890) as amended in 1984 recognizes the Jewish religious communities at their request;
Muslims were given the status of adherents of a recognised religious community by 1912 Islam Act (IslamG 1912); the institutional recognition of the Islamic Religious Community took place by way of an ordinance in 1988;
The 2003 Oriental Act (OrientalenG 2003) put an end to the unequal treatment between the Coptic-Orthodox Church and the two other Oriental-Orthodox churches which were already recognised – the Armenian-Apostolic Church since 1973 and the Syrian-Orthodox Church since 1985.

93. In various Austrian laws specific reference is made to recognised churches and religious societies. The following list, which is not exhaustive, sets out the main instances:

Under section 8 of the Federal School Supervision Act (Bundes-Schulaufsichtsgesetz), representatives of recognised religious societies may sit (without the right to vote) on regional education boards; Under the Private Schools Act (Privatschulgesetz), recognised religious societies, like public territorial entities, are presumed to possess the necessary qualifications to operate private schools, whereas other persons have to prove that they are qualified;

Under section 24(3) of the Military Service Act, ordained priests, persons involved in spiritual welfare or in religious teaching after graduation from theological studies, members of a religious order who have made a solemn vow and students of theology who are preparing to assume a pastoral function and who belong to a recognised religious society are exempt from military service and, under section 13 of the Civilian Service Act, are also exempt from alternative civilian service;

Under sections 192 and 195 of the Civil Code (ABGB), ministers of recognised religious societies are exempt from the obligation to submit an application to be appointed as guardians, and under section 3 (4) of the 1990 Act on Juries of Assizes and Lay Judges (Geschworenen- und Schöffengesetz) they are exempt from acting as members of a jury of an assize court or as lay judges of a criminal court;

Section 18(1)(5) of the Income Tax Act provides that contributions to recognised religious societies are deductible from income tax up to an amount of 100 euros (EUR) per year;

Section 2 of the Land Tax Act (Grundsteuergesetz) provides that real property owned by recognised religious societies and used for religious purposes is exempt from real-estate tax;

Under section 8(3)(a) of the 1955 Inheritance and Gift Act (Erbschaft- und Schenkungsteuergesetz), which was still in force at the relevant time, donations to domestic institutions of recognised churches or religious societies were subject to a reduced tax rate of 2.5%.

94. (2) A second, only somewhat elevated status of religious communities is that of a (publicly) “registered religious community”.

95. The Act on the Legal Status of Religious Communities (BeKGG) 1998[162] creates a legal basis for religious communities to obtain legal personality without at the same time giving them the status of a public law corporation. A legal personality in private law is created at the time of registration. As part of the application, the applicant must prove that at least 300 persons resident in Austria belong to the religious community; these persons must not belong to another religious community or legally recognised church or religious community (Section 3(3) BeKGG 1998).

96. The religious communities obtain with registration a sort of seal of approval. This has legal relevance beyond the grant of legal personality, where the legal order draws legal consequences from the religious dimension as such and not merely from the status of recognition. The religious community has the right to call itself a "publicly-registered religious community".

97. (3) The base-level entity status available to religious communities in Austria is that of a normal registered civil association.

98. Religious groups that are neither recognized churches and religious societies nor registered religious communities can obtain legal entity status according to the 2002 Association Act (VereinsG 2002).[163] According to Section 1 Subsection 1 VereinsG 2002 "an association in the meaning of this federal law is a voluntary union of at least two persons aiming at duration and organized on the basis of statutes for the pursuit of a specific, common, idealistic aim. The association enjoys legal personality (section 2 Subsection 1)". Religious associations constituted according to the Association Act have equal status with other ideological associations.

99. It can thus be summarized that, in Austria, religious groups can obtain (civil law) legal entity status as an association when they have at least two members. They can obtain the (civil law) legal status of a registered religious community with some additional specific rights when they have at least 300 members. And finally, they can obtain legal status as (public law) recognized churches or religious societies when they have a membership of at least 2% of the Austrian population, i. e. about 16,000 members. The differences in status and the step by step increasing requirement of a certain number of members is based on differences in specific rights that are attached to the respective status. In Austria, only very few members are required in order for a religious group to be registered as a legal entity and to take part in all aspects of legal life as an association like other association.

100. **3.1.6.5.3.** The requirement in Armenia's draft amendment law of 500 members to be registered as a religious organization is too high if this means that religious communities which are not registered as religious organizations cannot acquire legal entity status. It would not be proportional. It is indispensable that religious communities must have access to legal personality in order to function as a religious entity in a legal way. Even 200 members as a minimum number for registration – as required by the law currently in force - are too many. This number would exclude smaller groups (and even larger groups that for theological reasons organize on a congregational basis) from functioning in a legal way without valid and legally acceptable reasons. Smaller groups have a legal right under international instruments and OSCE commitments to access to legal personality.

---

[162] Bundesgesetz: Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften (NR: GP XX RV 938 AB 1013 S. 102. BR: AB 5596 S. 634.), Bundesgesetzblatt für die Republik Österreich, Jahrgang 1998, ausgegeben am 9. Jänner 1998, Teil I. Section 3 Subsection 3 of the Act on the Legal Status of Religious Communities reads: "Together with the application it has to be proven that at least 300 persons resident in Austria, who are not members of a religious community with legal entity status according this federal law nor of a legally recognized church or religious society, are members of the religious faith community."

[163] Vereinsgesetz 2002, VerG BGBl I Nr. 66/2002, available at: http://www.bmi.gv.at/vereinswesen/gesetze_vereinsgesetz.asp [last visited 07 April 2009].

101. As Principle 21 of the Vienna Concluding Documents explicitly states, restrictions to the freedom of religion or belief as described by that document must have the character of exceptions. When all religious groups with less than 500 or 200 members are excluded from legal entity status, however, this limitation does not any more have the character of an exception, but amounts to a rule. There are many religious groups that are perfectly loyal to the law and do not constitute any threat to the rights and interests that are legitimately protected by the law. To exclude these from legal entity status would be non-proportionate, and thus impermissible under international standards.

102. **3.1.6.5.4.** It is recommended that the guarantee for smaller religious communities to have access to legal entity status according to the law of the Republic of Armenia should be explicitly stated in the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organization. While it may be possible to understand other laws of the Republic of Armenia, such as the Civil Code in its provisions on legal persons (especially Article 122 I Civil Code of the Republic of Armenia), to include access to legal entity status for smaller religious communities, such an explicit provision would exclude misunderstandings. The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organization can easily be understood as having priority over the general provisions of other laws and to supplant those general norms. This is all the more the case as Article 14 of the current law states that "A religious organization is declared a legal entity when it acquires State registration by the central body of State Registry according to the procedure established by law." This can be taken as saying that only religious organizations have legal entity status. Such an interpretation is also supported by Article 18 of the draft amendment law/Freedom of Conscience when it states that in the case of failing necessary re-registration the activities and not only the status of the religious organization will have to stop. Interpreted in this way, the law would violate the international commitments.

103. **3.1.6.5.5.** It is not appropriate for the State to determine the conditions of membership in a religious organization. Some religious traditions believe that children become members at birth or at the time of (infant) baptism; others believe membership status is attained at other times. This is an internal matter of religious belief and practice. The State may provide that minors cannot be members of a legal entity, but if this is the intent, the provision should not be worded so as to suggest that there is something inappropriate about theological membership doctrines that contemplate membership at younger ages. It is recommended to redraft the provision.

104. **3.1.6.6.** Article 5 Sentence 1 Letter f) as framed by the draft amendment law/freedom of Conscience gives a definition of Christianity: "*In the event of Christian belief they shall believe in Jesus Christ as God and Saviour and accept the Holy Trinity."*

105. As the European Court of Human Rights has repeatedly made very clear, the State, in exercising its regulatory power in the sphere of religion and in its relations with the various religions, denominations and beliefs, has a duty to remain neutral and impartial. What is at stake here is the preservation of pluralism and the proper functioning of democracy.[164] The State must be neutral and impartial in religious matters including the teaching of a religious community. The right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is

[164] Metropolitan Church of Bessarabia and Others v. Moldova, n° 45701/99, § 116, ECHR 2001-XII; see Hasan and Chaush, cited above, § 78.

thus an issue at the very heart of the protection which Article 9 ECHR and the other pertinent international commitments afford.[165]

106. The provision is an undue intrusion into the freedom of doctrine and teaching, and into religious autonomy. There may well be religions which define themselves to be Christian while not complying with the definition provided for in the draft amendment. There is no visible and valid reason why such a religious community should not be allowed to define itself in the way that it needs to do in order to stay in line with its beliefs and religious convictions. There are apparently more than 39.000 denominations worldwide that define themselves to be Christian;[166] it can hardly be assumed or even guaranteed that all of these denominations would define themselves in the way that the draft amendment prescribes. The definition as Christian, but also as Muslim, Jew, Buddhist, or any other religious creed is a specifically religious matter.

107. There is no visible and valid reason why the State law should provide a definition of a specific religion – in this case Christianity – while it does not provide a definition for other religions such as Judaism, Islam, Buddhism, or Hinduism. Moreover, some of the worst forms of religious discrimination occur when a State defines a religion in a way intentionally designed to exclude or delegitimize a minority religious position.

108. It is recommended that the provision be deleted.

109. **3.1.6.7.** It is not clear why the exceptions in Article 5 Section 2 of the existing law are only applicable to ethnic minorities which have a national doctrine. Others must also be able to function. There is no valid reason perceivable why only a national doctrine should qualify for this exception. Limitations which are discriminatory on their face cannot be said to be necessary.[167]

110. It is recommended to redraft the provision.

111. **3.1.7.** Article 6 as amended reads:

In the Republic of Armenia the following Religious Organisations operate: the Armenian Apostolic *Holy* Church ("Armenian Church") with her traditional organisations;
other religious organisations which are established and function within the circle of their respective faithful in accordance with their own property and charter.

112. The second half sentence of Article 6 as appears to authorize restricting the activities of other religious organizations than the Armenian Apostolic Holy Church to the circle of their respective faithful. That would exclude any activities such as preaching, teaching or charity towards other people than the believers or members of these religious organizations. That would interfere with the general rights to manifest one's religion or belief in private or in public as guaranteed in the international instruments. There is no valid reason perceivable that could legitimate such a far reaching prohibition and discrimination of those religious organizations. While in view of translation issues it might be possible to read the provision in another way that would be consistent with the international instruments it is recommended that the meaning of the provision be clarified.

113. **3.1.8.** Article 7 as amended reads:

---

[165] Metropolitan Church of Bessarabia and Others v. Moldova, n° 45701/99, § 116, ECHR 2001-XII; see Hasan and Chaush, cited above, § 62.

[166] http://en.wikipedia.org/wiki/List_of_Christian_denominations_by_number_of_members.

[167] See U.N. Human Rights Committee, General Comment 48(22), para. 8.

The spiritual and religious activities of Religious Organisations shall be carried out within the following clearly prescribed rights:

To unify their faithful around them;
To satisfy the religious-spiritual needs of their faithful;
To perform religious services, rites, and ceremonies in prayer homes and the territory attached to them, in places of pilgrimage, in institutions of religious organisations, as well as cemeteries, houses and residences of citizens, hospitals, in nursing homes, places of incarceration, and military units at the request of citizens living there who are members of the given religious organisation. In other cases public religious services, rites, and ceremonies are conducted in the procedure established for meetings, rallies, demonstrations and marches within approved guidelines;
To establish groups for religious instruction aimed at training members and their children with the consent of parents, utilising facilities belonging to them or set aside for them;
To engage in theological, religious and historical and cultural studies;
To train members for clergy or for scientific and pedagogical purposes for the educational institutions;
To obtain and utilise religious significance objects and vessels;
To make use of news media in accordance with the law;
To establish ties with religious organisations of other countries regardless of their national and religious affiliation, to send their faithful abroad to participate in pilgrimages, meetings and other religious events as well as for educational and recreational purposes;

To engage in charitable activity.
The publishing activities of Religious Organisations is regulated by the applicable law of the Republic of Armenia.
The above-mentioned rights are applicable upon registration of the given religious organisation in the Republic of Armenia.

114. **3.1.8.1.** The list of rights provided is too narrow. According to the international instruments religious communities must have, inter alia, the right also to establish and maintain freely accessible places of worship or assembly, or the right to select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State. While the list of activities does in fact describe activities in which many religious communities engage, many of the provisions are worded in ways that would impose limitations on the activities of many religious groups that cannot be justified under international standards. In general, international limitations clauses such as Article 18 III ICCPR or Article 9 II ECHR define a narrow range of circumstances in which some limitations on manifestations of religion are permissible. It is quite another thing for a State to attempt to describe what is permissible, with the apparent implication that other things might not be. Virtually all of the foregoing provisions impose limitations that cannot be justified under the limitation clauses. This constitutes excessive intervention in religious affairs, and an unnecessary invitation to state officials to interfere with normal religious practice. It is recommended that this provision be deleted. A carefully and narrowly drafted list of proscribed activities might be substituted here.

115. **3.1.8.2.** It must be quite clear that any religious group must have access to legal personality status. The minimum number required for legal entity status must be proportionate. This minimum number must be small enough so that any group can easily obtain access to entity status which is sufficient to allow the group to engage in the full range of religious activities it is prepared to undertake on its own initiative. A higher minimum number of members can only be proportionate when special rights and duties involving affirmative state cooperation or support is at stake such as special tax benefits, representation on public boards, etc.

116. It must be quite clear that the rights mentioned in Article 7 of the law as amended are also guaranteed for smaller religious groups.

117. Most of the rights enumerated in Article 7 of the law as amended must also be accessible even for individuals, because they are normal manifestations of freedom of religion or belief also of individuals. The freedom to manifest one's religion or belief is guaranteed by Article 9 I ECHR and Article 18 ICCPR "alone" as well as "in community with others" and "in private" as well as "in public". In this sense, it is important to remember that individuals should be free to carry out these activities without any entity status at all, if they so choose. In fact, for a variety of reasons, most groups will prefer to avail themselves of legal entity status, but such status should not be mandatory. As stated by the OSCE Legislative Guidelines, "Registration of religious organizations should not be mandatory per se, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."[168]

118. It is recommended that the provision be redrafted or dropped.

119. **3.1.9.** Article 8 as amended reads:

Proselytism is forbidden in the territory of the Republic of Armenia. Proselytism is considered the preaching influence towards the citizens having other religious or belief views or not having them, during which:

a) material encouragement is proposed or provided,
b) physical or psychological pressure or compulsion is exerted,
c) hatred to other religious organizations, to their faith and activity is formed,
d) expression of offences is applied towards other persons or religion,
e) the person is prosecuted double or more times in his/her flat, work, in the resting or other places, as well as by telephone talk without his/her wish or request.

120. **3.1.9.1.** It has to be noted that bearing witness in words and deeds is bound up with the existence of religious convictions. If bearing witness should not be possible any more, the freedom of religion or belief would be void and only an empty word. In dealing with proselytism the utmost care must be shown.

121. Many provisions of international human rights law state that "no one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice"[169]. Missionary activities are included in the freedom "either individually or *in community with others* and in *public* or private, to manifest one's religion or belief in worship, observance, *practice* and *teaching*"[170]. Under international law, there are also guarantees to "*write*, *issue* and *disseminate* relevant publications" and "to *teach* a religion or belief in places suitable for these purposes"[171]. In addition, the right to change one's religion or belief is articulated in a number of international

[168] OSCE Legislative Guidelines, Section II(F).

[169] See article 18 (2) of the International Covenant on Civil and Political Rights [ICCPR], and article 1 (2) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief [1981 Declaration]. Significantly, however, it is important to remember that the original intention of this provision was not only to allow regulation of missionaries exerting too much pressure, but also to assure that coercion was not used to prevent individuals from changing their religion. *See* Paul M. Taylor, Freedom of Religion: A Critique of Universal and European Standards, Chap. 2, § 3.1 (Cambridge University Press, 2005).

[170] See article 18 (1) of the ICCPR and article 1 (1) of the 1981 Declaration [emphasis added]; Article 9 I ECHR.

[171] See article 6 (d) and (e) of the 1981 Declaration [emphasis added].

instruments[172]. The Human Rights Committee has illustrated the different facets of this right: "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to *choose* a religion or belief, including the right to *replace* one's current religion or belief with another or to *adopt atheistic views*, as well as the right to *retain* one's religion or belief. Article 18 III ICCPR bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to *adhere* to their religious beliefs and congregations, to *recant* their religion or belief or to *convert*."[173]

122. **3.1.9.2.** In the discussions during the visit to the Republic of Armenia reference was repeatedly made to the legal situation of proselytism in Greece. It is worth to be noted that the large majority of democratic States has refrained from prohibiting proselytism. Moreover, when the Greek example of prohibition of proselytism is taken as a model, the specific context of this prohibition has to be taken into account. It is also important that the European Court of Human Rights has repeatedly dealt with the Greek proselytization norms and has provided strict limitations to such a prohibition.

123. **3.1.9.2.1.** The Greek provisions concerning proselytism are the following:

124. Article 13 of the Greek Constitution provides, as relevant:

"1. Freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights shall not depend on an individual's religious beliefs.
2. There shall be freedom to practise any known religion; individuals shall be free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not prejudice public order or public morals. Proselytism is prohibited."

125. It is noteworthy that proselytism was made a criminal offence for the first time in Greece during the dictatorship of Metaxas (1936-40). It was done so by section 4 of Law no. 1363/1938. In 1939 that section was amended by Section 2 of Law no. 1672/1939, in which the meaning of the term "proselytism" was clarified:

"1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.
The term of imprisonment may not be commuted to a fine.
2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.

The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance."

126. In a judgment numbered 2276/1953 the Greek Supreme Administrative Court gave the following definition of proselytism:

---

[172] See article 18 of the Universal Declaration of Human Rights ("this right includes freedom to change his religion or belief", emphasis added) and article 18 (1) of the ICCPR ("this right shall include freedom to have or to adopt a religion or belief of his choice", emphasis added); see also 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, art. 8, GA Res. 36'/55 (25 November 1981).

[173] Human Rights Committee, General Comment No. 22 (1993) on article 18 of the ICCPR, para. 5 [emphasis added].

"Article 1 of the Constitution, which establishes the freedom to practise any known religion and to perform rites of worship without hindrance and prohibits proselytism and all other activities directed against the dominant religion, that of the Christian Eastern Orthodox Church, means that *purely spiritual teaching does not amount to proselytism,* even if it demonstrates the errors of other religions and entices possible disciples away from them, who abandon their original religions of their own free will; this is because spiritual teaching is in the nature of a rite of worship performed freely and without hindrance. Outside such spiritual teaching, which may be freely given, any determined, importunate attempt to entice disciples away from the dominant religion by means that are unlawful or morally reprehensible constitutes proselytism as prohibited by the aforementioned provision of the Constitution." (Emphasis added.)

127. **3.1.9.2.2.** In the cases of Kokkinakis v. Greece[174] and Larissis and Others v. Greece,[175] the European Court of Human Rights has established strong protections for activities involving religious persuasion, and has made it quite clear that only "improper proselytism" can be restricted by the State.[176] The European Court of Human Rights has held that, "[a]s 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 European Convention of Human Rights. 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, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."[177] The Court has further emphasized that while "religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion'. *Bearing witness in words and deeds is bound up with the existence of religious convictions.*" [178] The European Court of Human Rights has made clear beyond doubt that freedom of religion or belief "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', enshrined in Article 9 ECHR, would be likely to remain a dead letter."[179] While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions. According to Article 9 ECHR, "freedom of thought, conscience and religion . . . includes freedom . . . either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

128. The European Court of Human Rights has held it a violation of Article 9 ECHR to convict someone of proselytism who has called at the home of someone without being invited to do so and engage in a conversation about religious issues. While the European Court of Human Rights has held that it is consistent with Article 9 ECHR to punish someone for proselytism who has exploited his position as a superior in the armed forces to attempt to convert someone to is own religious beliefs,[180] it has held it to be a violation of Article 9 ECHR, however, to punish someone who had approached civilians even several times in order to convert them when they were in a state of distress because e. g. of marital problems.[181]

---

[174] ECtHR, Kokkinakis v. Greece, no. 14307/88, 25 May 1993.

[175] ECtHR, Larissis and Others v. Greece, no. 140/1996/759/958-960, 24 February 1998.

[176] Kokkinakis, para. 48; Larissis, para. 45.

[177] Kokkinakis, para. 31.

[178] Id.

[179] Id.; Larissis, para. 45.

[180] Case of Larissis and Others v. Greece, (140/1996/759/958–960) 24 February 1998, §§ 47-55.

[181] Case of Larissis and Others v. Greece, (140/1996/759/958–960) 24 February 1998, §§ 58-61.

129. While the European Court of Human Rights has not found it necessary to define with precision what constitutes improper proselytism, it has identified cases which are clearly protected, and has given some indication of the narrow class of cases where limitations may be permissible. Thus, door-to-door evangelizing of the type engaged in by Kokkinakis, without clear demonstration of the use of improper means, is clearly protected. Similarly, an "exchange of ideas which the recipient is free to accept or reject" is protected.[182] On the other hand, "the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church" may constitute improper proselytism.[183] *A fortiori,* coercion or violence is impermissible,[184] as is fraud or other manipulative practice. Similarly, abuse of authority and presumably other forms of undue influence may be regulated.[185] As the European Court of Human Rights has pointed out in respect of proselytism by Christian denominations,[186] a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it.

130. Even if there should be legitimate reasons to prohibit proselytism under specific severe circumstances, the law that provides for such prohibition must meet certain requirements. Prohibition of proselytism amounts to an interference with the exercise of the freedom to manifest one's religion or belief. Such an interference is a violation of Article 9 ECHR unless it is "prescribed by law", directed at one or more of the legitimate aims enumerated in Article 9 II ECHR and "necessary in a democratic society" for achieving them. Such provisions must be sufficiently clear in order to make State action foreseeable for everyone. While the European Court of Human Rights has noted that the wording of many statutes cannot be absolutely precise[187] in order to avoid excessive rigidity and to keep pace with changing circumstances, norms that interfere with the rights and freedoms set out in the European Convention of Human Rights must not be overly vague. The expression "prescribed by law" in Article 9 § 2 ECHR requires, inter alia, that the law in question must be both adequately accessible to the individual and formulated with sufficient precision to enable him to regulate his or her conduct.[188] It is important to note that the European Court of Human Rights has accepted the Greek norms on proselytism to be sufficiently clear (only) in view of existing case law in Greece that has added important clarifications that substantially limited the potential scope of liability otherwise suggested by the mere text of the law.

131. **3.1.9.3.** It is furthermore worth to be noted that the Republic of France has refrained from directly penalizing proselytism as such, and has taken a more general approach, instead. [189] In fact, one can also say that this law has proved unnecessary in practice, with

---

[182] *See* Larissis, para. 51.

[183] Kokkinakis, para. 48; Larissis, para. 45.

[184] Kokkinakis, para. 48.

[185] Larissis, para. 51.

[186] ECHR, Kokkinakis v. Greece, no. 14307/88, 25 May 1993, § 48; Case of Larissis and Others v. Greece, (140/1996/759/958–960) 24 February 1998, § 45.

[187] See for example and mutatis mutandis, ECHR, Müller and Others v. Switzerland, judgment of 24 May 1988, Series A no. 133, p. 20, § 29.

[188] Case of Larissis and Others v. Greece, (140/1996/759/958–960) 24 February 1998, § 40; mutatis mutandis, the Sunday *Times* v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49.

[189] The relevant French norms read in their official translation into English language (http://195.83.177.9/code/liste.phtml?lang=uk&c=33&r=3709): (French) PENAL CODE, FIRST PART - ENACTED PARTS, BOOK II - FELONIES AND MISDEMEANOURS AGAINST PERSONS, TITLE II - OFFENCES AGAINST THE HUMAN PERSON, CHAPTER III - ENDANGERING OTHER PERSONS, ARTICLE 223-15-2, (Act no. 2001-504 of 12 June 2001 Article 10 Official Journal of 13 June 2001), (Ordinance No. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September into force 1 January 2002):

only two or three cases ever having been filed under the Act, and at least as yet, no convictions.

132. **3.1.9.4.** It must be acknowledged that the draft amendment law goes some distance toward making the prohibition of proselytism more foreseeable than it is under the law currently in force. The draft amendment law introduces somewhat more precise wording by attempting to define what proselytism is. In doing so the draft amendment implicitly distinguishes between proper proselytism and improper proselytism. This goes in the direction of the practice of the European Court of Human Rights when dealing with proselytism in a number of its judgments. However, the steps taken are not sufficient to keep the law consistent with the international commitments.

133. **3.1.9.4.1.** The phrasing of the provision is open to many divergent interpretations. It is unclear what "preaching influence" means. It can mean that a factual influence on someone else must be exerted. In this case it would be necessary to prove that the preaching in fact did have an influence on a specific person. But of course, preaching influence per se could be wholly legitimate witnessing. The draft's language could also mean that general public preaching can be prohibited. That would be in conflict with the right to manifest one's religion or belief in public. While preaching can be performed in spoken words, it can also be exercised by printed words. It can also take the form of publicly visible action such as processions, or more simply, unadorned religious example. When a believer or a representative of a religious community speaks on radio or television this could be seen as preaching and taking influence.

"Fraudulently abusing the ignorance or state of weakness of a minor, or of a person whose particular vulnerability, due to age, sickness, infirmity, to a physical or psychological disability or to pregnancy, is apparent or known to the offender, or abusing a person in a state of physical or psychological dependency resulting from serious or repeated pressure or from techniques used to affect his judgement, in order to induce the minor or other person to act or abstain from acting in any way seriously harmful to him, is punished by three years' imprisonment and a fine of €375, 000.

Where the offence is committed by the legal or de facto manager of a group that carries out activities the aim or effect of which is to create, maintain or exploit the psychological or physical dependency of those who participate in them, the penalty is increased to five years' imprisonment and to a fine of €750, 000."

ARTICLE 223-15-3, (Inserted by Act no. 2001-504 of 12 June 2001 Article 10 Official Journal of 13 June 2001):

"Natural persons convicted of the misdemeanour under the present section also incur the following additional penalties:

1° forfeiture of civic, civil and family rig hts, pursuant to the conditions set out under article 131-26;

2° prohibition, in accordance with the provi sions of article 131-27, to exercise for a period of up to five years the professional or social activity in the exercise of which, or on the occasion of which, the offence was committed;

3° the closure, for a period of up to five y ears, of the establishments or one or more of the establishments of enterprise used to commit the offences in question;

4° confiscation of the thing which was used in or was intended to be used in the commission of the offence, or of the thing which is the product of it, except for articles liable to restitution;

5° area banishment, in accordance with the p rovisions of article 131-31;

6° prohibition to draw cheques, for a period of up to five years, except for those enabling the withdrawal of funds by the drawer from the drawee or certified cheques;

7° the public display or dissemination of th e decision pronounced, in the manner as set out under article 131-35."

ARTICLE 223-15-4, (Inserted by Act no. 2001-504 of 12 June 2001 Article 10 Official Journal of 13 June 2001):

"Legal persons may incur criminal liability for the offence defined in this Section of the present Code under the conditions set out in article 121-2.

The penalties applicable to legal persons are:

1° a fine, pursuant to the conditions set ou t under article 131-38;

2° the penalties set out in article 131-39;

The prohibition determined under 2° of artic le 131-39 applies to the activity in the exercise of which or on the occasion of the exercise of which the offence was committed."

134. **3.1.9.4.2.** It is unclear, what “towards” the citizen means. General public preaching and teaching would normally also be taken note of by non-believers. However, manifesting one’s religion or belief in public is a way of exercising one’s religion that lies at the very heart of the human right’s guarantee.

135. **3.1.9.4.3.** It is also not clear what “other” religious or belief views means. In its present wording the amendment is also applicable to preaching within a defined and specific religious organization. Even within a particular religious organization, members very often do not have the same religious convictions or beliefs, but hold different positions, at least in details and often on major points. It is unclear where the line between a specific set of views runs so that deviations from a certain position count as an “other” view. Preaching within one and the same religious community more often than not is about reassuring common beliefs. Individual members very often start to doubt certain specific religious teachings of their own church or religious community. The community’s task of convincing them in their beliefs again and again often is called the “inner mission”. The present wording of the draft amendment law is so vague that it could conceivably prohibit such preaching.

136. It is not clear whether the provision would prohibit efforts to convince a Shiite Muslim to become a Malakite Muslim, a Hanafiyan Muslim. It is also not clear whether it would violate the law to urge a liberal Jew to join an Orthodox Jewish community, or to urge an individual to change from one Christian Orthodox Church to another, or to persuade an Eastern Rite Catholic to become an unqualified Roman Catholic, or to encourage a Protestant to become (or return to being) a member of the Armenian Apostolic Holy Church.

137. The law also fails to clarify whether persuading someone to leave e. g. one specific monastery of a Christian Orthodox Church in order to join another Christian Orthodox monastery would amount to an act of prohibited proselytism. Also, simply persuading someone to join a monastery or to leave a monastery of a Christian Orthodox Church could be a case of illegal proselytism under the draft amendment law. The same would hold true in respect of orders of the Roman Catholic Church such as the Dominicans.

138. Very often the lines also between two different religious organizations are not very clear. Some religious denominations do not object to double or plural membership. Sometimes, religious denominations with different teachings merge while keeping the teachings distinct or even separate. It is not within the state's authority to impose such terms on religious beliefs or communities.

139. **3.1.9.4.4.** It is, furthermore, not clearly expressed in the draft amendment whether the preaching influence must aim at diverting the other person from his or her beliefs. Preaching influence may even have the effect and is meant to have the effect of confirming someone in his or her convictions and beliefs, even when they differ from those of the one who is preaching.

140. **3.1.9.4.5.** It is unclear, at least in the English translation of the draft amendment, whether the qualifying ways of preaching influence in Article 8 Sentence 2 Letters a) through e) are meant to be cumulative or whether each one of them would constitute prohibited proselytism. While it is likely that each one of them should constitute improper proselytism, this is not completely clear, because an “or” or and “and” is not provided at the end of Article 8 Sentence 2 Letter d). Not only is the law unclear in stating whether one or more of the examples is a violation of the amendment, it is substantively in violation of international standards in supposing that the actions may be prohibited.

141. **3.1.9.4.6.** The draft amendment, in its Article 8 Sentence 2 Letter a), prohibits proselytism when “material encouragement is proposed or provided”.

142. It is unclear what the term “material encouragement” should mean. It is a very broad term which makes it unforeseeable for anyone involved which activity is legal and which activity would be considered to be a violation of the law. The limitation is thus insufficiently clear to meet the “prescribed by law” as is required under Article 9 II ECHR and Article 18 III ICCPR. “Material” encouragement can be the direct promise of money, offering a promotion in business or offering similar advantages, thus “paying” for a change of religion or belief. However, “material” could also be meaning charitable work such as feeding hungry persons, providing victims of natural disasters or catastrophes with blankets or tents, applying medical care to ill people. Note that the provision may deter those who engage in preaching from also doing charitable work, because charity plus preaching—even if there is no intention that the charity lead to conversion—would violate the statute. It could also mean giving advice on how to proceed in specific circumstances. “Material” can also imply travelling. It can mean a grant for educational purposes, a place to study. “Material” could mean free education or teaching, even free religious preaching. Religious organizations that engage in charitable work can thus easily be held responsible for illegal proselytism. This is all the more the case as the draft amendment law repeals Article 8 Sentence 2 of the current law which states: “Any activity mentioned under Article 7 within the framework of rights shall not be considered proselytism.” After having explicitly repealed that provision the law now would be open to an understanding pursuant to which any such activities mentioned in Article 7 can in fact be regarded as part of proselytism.

143. The draft amendment does not require that the material advantage should be offered in order to change one’s religion or belief, it does not link the offer with the change in a way that the offer must be the reason or the cause of the change in view. It suffices that the advantage is applied during the preaching.

144. The term “encouragement” is very vague. It is not clear what encouragement entails.

145. **3.1.9.4.7.** The draft law, in its Article 8 Sentence 2 Letter b), prohibits proselytism when “physical or psychological pressure or compulsion is exerted”.

146. These terms are vague and their meaning in practice is unforeseeable. In practice, the term “psychological pressure” could be construed to mean that a religion may not preach anymore to anyone holding views different from its own that he or she will be condemned. The existence and the meaning of hell are disputed among religions. However, it is a widespread notion of religions that non-believers will suffer eternal or temporary pains and agony after death. Many religions teach that non-believers will not be saved or will not have eternal life. For a religious person, such teaching could amount to a severe pressure that could be understood as psychological pressure or compulsion. If such preaching were to be prohibited, large parts of religious teaching would be prohibited. That would amount to non-proportional treatment that would not be necessary in a democratic society.

147. **3.1.9.4.8.** The draft law, in its Article 8 Sentence 2 Letter c) prohibits proselytism when “hatred to other religious organizations, to their faith and activity is formed”.

148. It is problematic when the formation of “hatred” is regarded as being sufficient to prohibit teaching of religion without also requiring that such hatred must be manifested by any outward action. “Hatred” can be completely personal and remain in the purely internal sphere of someone’s mind. In such a case it would not hurt anyone or inflict any damages on someone else’s rights or legitimate interest. It is hard to see how such a situation could be necessary to pursue a legitimate aim in a democratic society.

149. It is also hard to see how the purely mental state of “hatred” should be made evident. It can remain completely confined in the minds of people while not leading to any social disturbance or attacks on the rights or freedoms of other people.

150. **3.1.9.4.9.** The draft law, in its Article 8 Sentence 2 Letter d) prohibits proselytism when "expression of offences is applied towards other persons or religion". The term "expression of offences", at least in its English translation, is unclear. The term could be read as entailing any negative expression about another religion or person. However, this could seriously impede theological debate about the truth or the value of another religion. "Offence" is a very and unduly vague expression.

151. **3.1.9.5.** Taking into account all these difficulties it is recommended to delete Article 8.

152. **3.1.10**. Article 11 as amended reads:

Religious Organisations have the obligation of maintaining the buildings, properties and other possessions given to them by the government and shall maintain and make appropriate use of the historical monuments belonging to them.

It is forbidden without consent of the registered and the given functioning religious organization to make use the pictures and names, the saints' names and pictures of the religious mystery, religious buildings (irrespective of the property form) in the goods and service marks, company names or signs, advertisement, except for the social advertisement by the defined order of the law. Those relations can be regulated on the contractual basis.

The provisions of the 2nd part of this article shall not be spread towards the artistic works of the physical persons and the objects having copyright towards them.

153. **3.1.10.1.** The language of the draft amendment Article 11 Section 2 in its English translation is grammatically unclear. It can be put as follows: "It shall be prohibited to use religious symbols, pictures and names of religious constructions (regardless of the property type), names and pictures of the saints on product and service signs, firm titles or signs, advertisements, with the exception of social advertisement, without the consent of the religious organization registered and functioning in the procedure set out by the Law. These relations may be regulated on the contractual basis".

154. **3.1.10.2.** It is not clear the consent of which religious organization is needed when several of them has the same symbol, saint, etc. When the cross is used, is the consent of the Armenian Apostolic Holy Church needed, or is the consent of any one of the other registered religious organizations sufficient? Or is the consent of all of these needed?

155. The provision could be understood to mean that if even just one religious community does not give its consent the use of the symbol etc. is prohibited.

156. **3.1.10.3.** The cross would probably qualify as a religious symbol. The wording of the provision can be understood as prohibiting the production of crosses for the jewellery industry for necklaces, etc.

157. **3.1.10.4.** There are many Saints. The provision would prohibit the use of all of those names. Most traditional names including Michael, Gabriel, Luke, Thomas, etc., are names of saints in the teaching of numerous churches. It is neither appropriate nor proportionate to make the use of such names depend on the consent of a religious organization.

158. **3.1.10.5.** The draft provision – at least in its English translation - also makes the use of such symbols, etc. depend on the consent of the registered religious organizations even when the registered religious organization does not have anything to do with that religious symbol, the saint or the religious building or 'religious construction'. There is no valid reason conceivable or any legitimate aim for such a limitation.

159. **3.1.10.6.** The term 'social advertisement' is not clear. It is not clear whether it would comprise the Red Cross or the Red Crescent.

160. **3.1.10.7.** The draft amendment does not make any statement about the situation when a new saints or a new religious symbol is created. It is not clear what then happens with the prior use of such names.

161. **3.1.10.8.** It is recommended to delete the draft provision.

162. **3.1.11.** Article 12 as amended reads:

163.
Religious Organisations may appeal to their faithful for voluntary contributions of money and other gifts, and to receive and administer the same.

Religious Organisations shall pay no tax on the monetary and other gifts that they may receive.

164. It is not clear why a religious organization should not be allowed to appeal for contributions also to persons who are not their faithful. There may well be people who would find activities of religious organizations worth supporting by contributions even though these persons are not members or the faithful of that specific religious organization. According to Principle 16 (4) of the Vienna Concluding Document, OSCE participating States are committed "to respect the right of religious communities to solicit and receive voluntary financial and other contributions" regardless of the religious membership of the persons willing to support them.

165. It is recommended to redraft the provision.

166. **3.1.12.** Article 13 as amended reads:
Religious Organisations whose spiritual centres are outside the Republic of Armenia cannot be financed by other centres. Religious organisations may not be financed by political organisations nor may they finance them.

167. The meaning of this provision is not clear. It is unclear, what the term 'other centres' means. The provision could prohibit the financing of religious organizations whose spiritual centres are outside of the Republic of Armenia by those spiritual centres. That would mean that foreign religious communities may not finance their branches in the Republic of Armenia. There is no valid reason perceivable why that should be prohibited. It would amount to an undue discrimination of religions that operate on a supra-national scale.

168. It is recommended to redraft the provision.

169. **3.1.13.** Article 14 as amended reads:

A religious organization is declared a legal entity when it acquires State registration by the central body of State Registry according to the procedure established by law. In order to register a religious organization, it is necessary to include with the documents which legal entities must present to the State Registry the expert opinion of the religious affairs body authorized by the State regarding conditions set out *in the first part, except for the 'a' item* of Article 5 of the present law. To obtain an expert opinion a religious organization is required to present documents confirming that the conditions set out by Article 5 are met.

The expert opinion is issued to the applicant not later than *30* days from the time of application. The form of the expert opinion is established by the religious affairs body authorized by the State.

170. It must be made clear that religious communities which do not qualify as a religious organization have also access to legal entity status. More significantly, it is vital that the "religious affairs body" created to render opinions about a religious community's qualification to become a religious organization maintains its neutrality in evaluating different religious groups. In this regard, the European Court has held that it is inappropriate in such contacts to delegate licensing power to representatives of other communities, or to otherwise compromise the neutrality of the state.[190]

171. It is recommended that the provision be redrafted to clarify how appoints to the review commission are made and to limit the discretion of the reviewing body.

172. **3.1.14.** Article 17 as amended reads:

In the Republic of Armenia, Church and State are separate. On the basis of this separation the State:

Shall not force a citizen to adhere to any religion;
Shall not interfere in the activities and internal affairs of church and Religious Organisations as long as they operate in accordance with the law, no state agency or person acting on behalf of such agency shall operate within a Religious Organisation*, except for the cases defined by law;*
Prohibits the participation of the Church in governing the State and shall not impose any governmental functions on the Church or Religious Organisation*, except for the cases defined by law.*

The State shall not obstruct the efforts of the Armenian Apostolic *Holy* Church in pursuing the following activities which we expressly reserved to be her privilege solely:

- To preach and disseminate her faith freely throughout the Republic of Armenia. Official education of the teachings of the Armenian Apostolic *Holy* Church through the mass media or during mass events can be carried out only with the consent of the Armenian Apostolic *Holy* Church;
- To re-create her historical traditions, structure, organisations, dioceses and communities;
- To construct new churches, make historical (monument-churches) belonging to her functional whether at the request of the faithful or on its own initiative;
- To contribute to the spiritual edification of the Armenian people and to carry out the same in the state educational institutions within the law;
- To take practical measures which enhance the moral standards of the Armenian people;
- To expand benevolent and charitable activities;
- To have a permanent ecclesiastical representative in hospitals, nursing homes, military units, and in incarceration zones, including isolation cells.

At the same time, the Armenian Apostolic *Holy* Church as the national Church of Armenians, which also operates outside the Republic, shall enjoy the protection of the Republic of Armenia, within the framework of international legal norms.

Working days following the National Easter holidays are moved to the previous or following Saturday by decision of the Government of the Republic of Armenia.

[190] Manoussakis and Others v. Greece (ECtHR, App. No. 18748/91, 26 September 1996) (23 EHRR 387 (1997)), §§ 43, 48, 51.

173. **3.1.14.1.** While in some of its parts the article is in accord with international standards, it raises serious concerns in many points; it is therefore recommended to redraft the article.

174. **3.1.14.2.** Article 17 Section 1 Sub-Sentence 2 Point 1 is unduly narrow. The State must also not force non-citizens to adhere to any religion. The State must not only refrain from forcing citizens or non-citizens to adhere to any religion. The State must also not force anyone not to adhere to any religion or to take part or not to take part in religious activities. It is recommended that the provision be redrafted.

175. **3.1.14.3.** Article 17 Section 1 Sub-Sentence 2 Point 3 states that the State prohibits "the participation of the Church in governing the State and shall not impose any governmental functions on the Church or Religious Organisation, except for the cases defined by law." The provision is unclear. While the first half sentence prohibits the participation of only 'the Church' in governing the State, it prohibits in its second half sentence to impose governmental functions on 'the Church or Religious Organizations' [Emphasis added]. It is unclear what this difference should mean. It is recommended to clarify the provision.

176. **3.1.14.4.** Article 17 Section 2 refers to the Armenian Apostolic Holy Church only. Some of the rights of the Armenian Apostolic Holy Church are highly discriminatory to other religious organizations and groups when these rights are "reserved to be her privilege solely":

177. This could mean that only the Armenian Apostolic Holy Church should be allowed "to preach and disseminate her faith freely throughout the Republic of Armenia", as is stated in Article 17 Section 2 Point 1 Sentence 1.

178. It could further mean that only the "official education of the teachings of the Armenian Apostolic *Holy* Church through the mass media or during mass events can be carried out only with the consent of the Armenian Apostolic Holy Church;" while such "official education" in the teaching of other religious communities would not need the consent of the relevant religious community, as is stated in Article 17 Section 2 Point 1 Sentence 2.

179. Moreover, the provision could be read as allowing only the Armenian Apostolic Holy Church "to re-create her historical traditions, structure, organisations, dioceses and communities", as is stated in Article 17 Section 2 Point 2. It is clearly stated in Principle 16 (4) of the Vienna Concluding Document that all religious communities must be free "to organise themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State."

180. Furthermore, while the provision in its Article 17 Section 2 Point 3 could be read as allowing only the Armenian Apostolic Holy Church "to construct new churches, make historical (monument-churches) belonging to her functional whether at the request of the faithful or on its own initiative", Principle 16 (4) Vienna Concluding Document explicitly stipulates that all religious communities must be free "to establish and maintain freely accessible places of worship or assembly."

181. In Article 17 Section 2 Point 4 and 5 it is made the privilege of the Armenian Apostolic Holy Church solely to "contribute to the spiritual edification of the Armenian people and to carry out the same in the state educational institutions within the law;" and to "take practical measures which enhance the moral standards of the Armenian people." There are no valid reasons perceivable why other religious communities should not be allowed to contribute to the spiritual well-being of the Armenian people, to do this under certain specific conditions within

the State educational system, or to enhance the moral standards of the Armenian people by practical measures.

182. The provision could also mean that other religious communities than the Armenian Apostolic Holy Church would not be allowed to expand benevolent and charitable activities (Article 17 Section 2 Point 6). There is no legitimate reason perceivable why only the Armenian Apostolic Holy Church should be allowed to engage in benevolent or charitable activities.

183. All the aforementioned provisions would amount to discriminations against other religious communities when interpreted as a privilege of only and exclusively the Armenian Apostolic Holy Church. Such discriminations would violate Articles 9 and 14 ECHR, Article 18 ICCPR, and Principle 16 (4) Vienna Concluding Document.

184. The provision could also mean that other religious communities than the Armenian Apostolic Holy Church would not be allowed to have permanent ecclesiastical representatives in certain institutions (Article 17 Section 42 point 7). Very good reasons are needed to exclude other religions and denominations from having permanent representatives in the institutions enumerated in order to avoid violation of these international commitments.

185. **3.1.14.5.** It is recommended the provision be redrafted and that all undue discrimination against other religious communities and religious organizations be eliminated.

186. **3.1.15.** Article 19 as amended reads:

Obligations imposed on the citizens by the law in effect shall be binding upon the members of Religious Organisations as to any other citizen.

In the territory of the Republic of Armenia the activity of the religious organizations, which they carry out or try to carry out control of the personal life, awareness, health and property of the members, is banned.

187. Every religion tries to take some control over the consciousness, thinking, personal life, awareness, and behaviour of their members. Religions traditionally and virtually always teach how best to think and lead one's personal life. By their very nature, religions seek to have influence on the conscience of people. They often ask for property as gifts donations, etc. They often want to influence health by giving advice on how best to live a healthy and sound life.

188. The draft amendment could easily be interpreted as banning all religious manifestations performed "in community with others." Further, it could easily be read as prohibiting religious monasteries or religious orders in which such control is a most common feature. Internal organization within any church or other religious community would become impossible if the hierarchy should not be able anymore to exercise control of the personal life of the clergy or staff. A common binding teaching would become impossible.

189. The draft provision is non-proportionate. It turns the exception to freedom of religion into a rule and would constitute a clear violation of the international commitments.

190. It is recommended the provision be redrafted or deleted.

3.2. The draft amendment law/Freedom of Conscience

191. Article 18 reads:

The religious organizations, which are registered after coming into force of this law and not corresponding to the provisions of this law with their activity shall be re-registered during three months and correspond their activity with the provisions of this law.
The activity of the religious organizations, which are not registered in the defined cases in the 1st part of this article and in the terms, shall stop, if any other thing is not defined by the law.

192. The provision is unclear. What may be meant is re-registration of religious organizations that have been registered before coming into force of the draft amendment law, while this is not said in the present text. It is not clear what will happen to religious organizations that are registered and are in compliance with the provisions of the law: Shall they not be re-registered, will they have to re-register or will they remain registered without doing anything. It is likely that previously registered religious organizations will not have to re-register and remain registered when they are in compliance with the law as amended. However, there is no procedure provided in the law as to how to establish whether a previously registered religious organization in fact does comply with the requirements of the law as amended. This would mean that all religious organizations will be under the continuous threat of being de-registered.

193. Assuming that a religious organization does need to re-register to bring its charter into compliance with the current law, three months is an impossibly short time—both for the churches that need to redraft charter documents, and for the personnel in state offices who would have to process the documents thus generated. Greater clarity should be provided about exactly who will need to re-register, and a considerably longer time period should be allowed for the process.
194. The draft provision would stop “the activity” of the religious organization. That contributes to an understanding of the whole draft amendment law as prohibiting the activity of all religious communities that do not have the status as a religious organization. What could legitimately be stopped if anything is only the status as a religious organization; the activity of the religious community could then be continued in the form of an association. Note that inadequate care is taken to protect the vested rights of organizations currently existing. If the legal entity of a particular organization is dissolved, what happens to property the organization has acquired?
195. It is recommended to redraft the provision

3.3. The Draft Law of the Republic of Armenia on Amending the Criminal Code of the Republic of Armenia

196. Article 1 reads:
Formulate the Article 162 of the Criminal Code (hereinafter Code) of the LA-528 of April 4, 2003 of the Republic of Armenia with the following edition:

“Article 162. Forming associations encroaching the rights of the persons or against a person, leading or supporting them, proselytizing

Establishment, management such religious or non-governmental association, or support them, whose activities inflict damage to the health of individuals or with encroachments on other rights of individuals, as well as incite the individuals to refuse their civil duties:
is punished with detention maximum for the term of two years.

Proselytism is punished with a fine in the amount of five hundredfold of the minimum salary or detention maximum for the term of one year.”

197. The provision is unduly vague as it renders punishable “encroachments on other rights of individuals”. These “other rights” are not defined. They thus can be any other rights of individuals including contractual rights. Given the extremely broad character of the provision it would also be non-proportional. It is recommended to specify these rights.

198. It is likely that the term “proselytism” in the draft provision would refer to the term proselytism as described in the draft amendment law to the current Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations. As has been shown, the relevant provisions in that law are unduly vague and non-proportionate. This also affects the draft amendment of Article 162 Criminal Code of the Republic of Armenia.

199. It is recommended that the draft amendment be dropped.