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

**COMMENTS**

**OF THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN**

**ON THE DRAFT JOINT OPINION  
BY THE VENICE COMMISSION  
AND THE OSCE/ODIHR**

**ON THE LAW ON FREEDOM OF RELIGIOUS BELIEF  
OF THE REPUBLIC OF AZERBAIJAN**

## COMMENTS

### **of the Government of the Republic of Azerbaijan on the Draft Joint Opinion on the Law of the Republic of Azerbaijan “On Freedom of Religious Belief” by the Venice Commission and the OSCE/ODIHR**

Azerbaijan is the only country in the South Caucasus, where the neutral attitude of the State to any denomination has been implemented in the most consistent way. The secular nature of Azerbaijan is explicitly enshrined in its Constitution (Articles 7 (I) and 18 (I)). In the other two South Caucasian countries the constitutional regulation of the relationship between the State and Religion is to a certain extent different from the one in Azerbaijan. The Constitution of Georgia, for example, provides for the status of so-called traditional religion. On that basis, the Government signed a “Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia”, granting the latter a number of preferences. The Preamble and Article 17 of the Law of Armenia “On freedom of conscience and religious organizations” introduce the Armenian Apostolic Church as the national church of the Armenian people. According to the Law, the Armenian Apostolic Church, operating also abroad, shall be protected by the Republic of Armenia in accordance with international legal rules.

The neutral attitude of Azerbaijan towards Religion has its deep cultural and historical roots. Azerbaijan historically has been a crossroad of three world religions – Islam, Christianity and Judaism. Starting from the IV century, Christianity spread in the territory of Azerbaijan through efforts of Parthian Christian missionaries. North of Azerbaijan became a part of the Khazar Khanate, the official religion of which was Judaism. Until now, a part of the population in the North-East of Azerbaijan continues to practice Judaism. After the Arab conquest of Azerbaijan in the VII century, most of the population converted to Islam, however the Christian Albanian Church retained its autonomous (autocephalous) status until the first half of the XIX century. 10 Azerbaijani states (khanates) have been joined to Russian empire until 1828 and already in 1836, at the request of the Catholicos of the Armenian Gregorian Church, the Albanian Autocephalous Church was abolished by the tsarist government, and its assets were transferred to the Armenian Catholicos. Since the collapse of the Soviet Union, steps have been taken in Azerbaijan to revive the Albanian Christian Church. The Albanian-Udin Christian community was registered in 2003 and currently work is underway to restore the autonomous (autocephalous) status of the Albanian Christian Church. In addition to these three religious confessions, history of which in Azerbaijan lasts for almost one and a half of millennium, Baku-Azerbaijan Eparchy of the Russian Orthodox Church, the Roman Catholic Apostolic Prefecture, Baku Evangelical Lutheran “Salvation” Community currently operate in our country.

These were key prerequisites for the legal framework for governing the relationship between the State and Religion in Azerbaijan, both in the constitutional and statutory legislation and, thus, are essential for proper understanding of this legal framework.

The Law of the Republic of Azerbaijan “On Freedom of Religious Belief” was prepared with due regard to relevant cultural and historical heritage, in which State interference with religious worship is minimized.

When drafting amendments to the Law “On Freedom of Religious Belief”, the Azerbaijani authorities took into consideration OSCE/ODIHR – Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief, adopted in 2004, the ultimate aim of which is to harmonize, as far as possible, the legislative practice of European countries in regulating the relationship between the State and Religion.

## **Key recommendations**

**A. to expand the scope of the Law on Freedom of Religion to cover freedom of religion or belief**

**B. to expand the definition of “freedom of religion” by prescribing also the right to adopt, or to change, a religion or belief and to manifest a religion or belief in private or public and in worship, teaching, practice and observance.**

It should be noted that the principal aim of the Law “On Freedom of Religious Belief” is to provide an adequate framework for ensuring freedom of religious belief in Azerbaijan as well as to determine the legal status of religious associations. In the draft Joint Opinion, the authors indicate that the OSCE/ODIHR – Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief emphasize the basic values underlying international standards for freedom of religion or belief, such as the principle that the right to have, adopt or change religion and belief is not subject to any limitation. In this regard, it should be recalled that pursuant to Article 48 (II) of the Constitution of the Republic of Azerbaijan “everyone has the right to freely determine his/her own attitude to religion, to profess individually or together with others any religion or to profess no religion, and to express and disseminate his/her beliefs concerning his/her attitude to religion”. It is noteworthy that the Constitution provides for the concept of religious belief in Article 18. So, if the law does not repeat this provision, it cannot be concluded that the said right is not recognized.

Apparently, the authors of the draft Joint Opinion mean that the Law excludes protection of theistic, non-theistic, atheistic and agnostic beliefs. However, all these cases are covered by the wording of Article 48 (II) of the Constitution, namely that “everyone has the right to freely determine his/her own attitude to religion”. For example, one can have no relation to religion, i.e. to be an atheist, etc. The Constitution also guarantees that no one, under any circumstances, may be forced to proclaim his/her religious or other beliefs, thoughts, and persecuted for them (Article 71 (IV)).

The provision of the Constitution stating that “everyone has the right to freely determine his/her own attitude to religion” includes, *inter alia*, the right to accept or change religion or beliefs.

Thus, the implementation of the above-mentioned recommendations is not deemed necessary.

**C. to ensure that the Law prescribes permissible limitations only to manifestations of freedom of religion or belief, in strict compliance with international law**

Religion is generally a private matter of any individual. The Law deals with public manifestations of religious belief. The Law does not aim to influence private religious beliefs of individual persons. Religious beliefs of individual persons concern the State only to the extent that they are manifested in the public sphere. The State may restrict the activity of groups of believers or non-believers, if it interferes with the right to freedom of religious belief of others. Thus, in accordance with Article 3.6 of the Constitutional Law of the Republic of Azerbaijan “On Regulation of Implementation of Human Rights and Freedoms in the Republic of Azerbaijan”, the right to practice any religion, to express and disseminate beliefs associated with the attitude to religion, set out in part II of Article 48 of the Constitution of the Republic of Azerbaijan, may be restricted in the interests of national security, for the protection of health or morals, for the protection of rights and freedoms of others, for the prevention of crime, protection of public safety and public order. So, the said constitutional law, being an integral part of the Constitution, reproduces Article 9 (2) of the European Convention on Human Rights, and therefore there is no need to repeat the same provision in a statutory law.

**D. to explicitly allow proper proselytism and remove from Article 1 par. 4 the prohibition on religious propagation by foreigners and persons without citizenship**

Proselytism is allowed in Azerbaijan, in accordance with the above-mentioned Article 48 (II) of the Constitution. We would like to reiterate that the right to freely determine one's attitude to religion referred to in that provision clearly implies the right to freely choose any religion. We would like to recall that proselytism is explicitly prohibited in some countries (see, e.g., Article 13 (2) of the Constitution of Greece).

Religious propagation in Azerbaijan is understood as public preaching of one's beliefs in places of worship – mosques, synagogues or churches. This restriction should be read in conjunction with a more general limitation set forth in Article 21 (3) of the Law "On Freedom of Religious Belief". This does not mean that foreigners and persons without citizenship may not exercise freedom of expression guaranteed by Article 47 of the Constitution of Azerbaijan. Foreigners and persons without citizenship may successfully propagate their religious beliefs through mass media.

**E. to expressly allow in Article 4 for alternative civilian service for persons who refuse to perform military service owing to their religious or nonreligious conscientious beliefs**

Pursuant to Article 76 (II) of the Constitution, "If military service is contrary to a person's convictions, then, in cases provided by law it may be permissible to replace regular military service with alternative service". This provision is also laid down in Article 3.3 of the recently adopted Law "On Military Duty and Military Service". Furthermore, this issue will be governed by a separate law, the adoption of which is one of the commitments of the Republic of Azerbaijan before the Council of Europe.

**F. to explicitly submit (in Article 6 para 3 and 6) that public school instructions in religious subjects is given in a neutral and objective way and that if public education includes instruction in a particular religion or belief that a provision is made for a non-discriminatory exemptions or alternatives that will accommodate the wishes of parents and guardians**

Azerbaijan recognizes freedom of conscience, however does not support any religious organization. Therefore, religious subjects are not taught in any form in educational institutions. Moreover, given the controversial practice of some European countries, the above observation of the distinguished experts appears to be irrelevant. For example, a law prohibiting both staff and pupils to demonstrate any religious symbols, including crosses, was passed in France in 2004. Further, the Constitutional Court of Italy passed a decision in 2006 according to which crucifixes were required to be displayed in classrooms of state schools.

This recommendation does not reflect reality, as no instruction in a particular religion or belief is currently included into public education. Article 2.3 of the Law "On Education" states that the present law stipulating fundamental principles of state policy in the field of ensuring the right to education and general conditions of regulation of educational activity does not apply to religious educational institutions operating in the territory of the Republic of Azerbaijan. Article 6 (2) of the Law "On Freedom of Religious Belief" merely provides for possibility of inclusion of theological, religious-epistemological and religious-philosophical subjects, as well as acquaintance with the fundamentals of sacred-cult books into educational programs of state educational institutions.

As for the issue of accommodating the wishes of parents and guardians in education of children, it should be noted that under Article 14 of the Law of the Republic of Azerbaijan "On the Rights of the Child", every child has the freedom of conscience, thought and opinion, and parents, others and state authorities are obliged to respect the right of the child to freedom of conscience, thought and opinion.

It should also be added that Article 6 (2) of the Law “On Freedom of Religious Belief” referred to above is being implemented within higher education institutions, and several such institutions have faculties of theology.

**G. to consider changing or deleting the prescriptive provisions of Articles 7, 8 and 9 imposing a particular organizational structure on religious communities, and to provide religious communities with greater autonomy and self-determination on matters regarding issues of faith, belief or their internal organization as a group, as well as the choice of place of worship**

As for the remarks of the authors of the draft Joint Opinion concerning the requirement for religious associations to operate in accordance with the law and their charters, it should be noted that this requirement is based on the fact that this law is the only normative legal act directly related to the freedom of religious belief and the legal status of religious associations. In this regard, the view that this provision may facilitate the interference by the state with the activity of religious associations and autonomy seems to be disputable, since the law does not provide for such opportunities for state authorities. It should also be noted that the organization of the activity of religious associations, including their autonomy should be enshrined in their charters, and not in the Law, since this issue is not a subject-matter of the law.

As regards submission of reports of Islamic religious associations to and subordination of religious communities to Caucasian Muslims Board, it should be noted that the subordination of religious communities is envisaged solely for organizational issues. According to the Charter of the Caucasian Muslims Board, this entity is the highest historical center of the Islamic religion that combines religious associations of Muslims residing in the Republic of Azerbaijan, Republic of Armenia, Georgia and region of North Caucasus of the Russian Federation (paragraph 1.2 of the Charter) and originates from the time of Russian Empire in the XIX century. This entity was established on 5 April 1872 by the decision of the government in accordance with the “Statute on the Shia and Sunni Mohammedan Sacred Board of the Caucasus”.

As for the observation of the distinguished experts concerning Paragraph 4 of Article 9 of the Law on granting the right to establish religious educational institutions, it should be noted that this right is reserved for religious centers and offices, since under paragraph 1 of Article 7 of the Law they are representative bodies of religious associations, and religious communities are just local religious associations of adult believers uniting together on a voluntary basis with the purpose of exercising common service to religion.

**H. to reconsider or delete the prescriptive provision concerning the name of a religious association and the compliance of a charter of a religious organisation with the statutes of its religious centre (department)**

In Azerbaijan, the state does not stay apart from the interaction with religious confessions and grants them certain privileges. Religious confessions in Azerbaijan are registered as non-profit organizations and thereby are fully exempted from payment of any taxes, regardless of the profits that religious confessions obtain as a result of their activities. Moreover, the Law provides for budget subsidies (paragraph 6 of Article 18) for registered religious organizations. Accordingly, the state is entitled to introduce specific requirements, including structural ones, for religious organizations.

Pursuant to part II of Article 18 of the Constitution of the Republic of Azerbaijan, dissemination and propagation of religions (religious movements) that humiliate human dignity and contradict the principles of humanism shall be prohibited. This provision implies a requirement for a religious association to reflect in its name the religion to which it belongs so that citizens become aware of any religious movement they are dealing with.

It should be added that there also exist other restrictions on the activities of religious organizations in some European countries. For instance, in Germany, one of such requirements is the loyalty to the state. Thus, Jehovah's Witnesses were not recognized in Germany as a public law corporation because this religious movement bans its members to take part in elections.

**I. to reform the system of state registration of religious communities by:**

- **allowing individuals and religious communities to practice religion without state registration, if they so choose**
- **clarifying which information and documents require state registration**
- **ensuring that state authorities in charge of registration do not engage in a substantive review of the statute or character of a religious group**
- **setting a deadline for the state authorities to decide on registration**

The law does not prohibit citizens to unite in religious communities without state registration. This Law establishes rules for operation of registered religious communities. The existing Azerbaijani legislation does not envisage any liability for such an action. As mentioned earlier, religious beliefs are a private matter of every individual as guaranteed by Article 48 of the Constitution of the Republic of Azerbaijan. Individuals are free in their religious beliefs to the extent that such beliefs do not interfere with the public sphere.

Paragraph 1 of Article 12 of the Law provides that religious associations may qualify for preferences granted by the Law (receipt of state subsidies, opening of bank accounts and owning of property of a legal entity, etc.) only after formal registration. They may exercise freedom of belief and religious worship without state registration; however they will not be public law entities, with all the ensuing consequences.

In accordance with Article 44.1 of the Civil Code of the Republic of Azerbaijan, civil rights and obligations of an entity arise as from the time of its state registration. Thus, without having civil rights, a religious organization with no state registration, is deprived of the opportunity to dispose of the property, to engage production and economic activity, and to exercise other rights conferred on a legal entity (see Articles 18 and 19 of the Law "On Freedom of Religious Belief").

Given the specific nature of religious organizations and exceptional sensitivity of this sphere, state authorities in charge of registration of ordinary legal persons are not involved, in any form, in a substantive review of the statute or character of a religious entity, since this matter falls under the exclusive competence of the State Committee for the Work with Religious Associations.

As regards the recommendation to set a deadline for the state to decide on state registration, it should be emphasized that although such deadline is not foreseen in the Law, this matter is governed by Article 8.1 of the Law of the Republic of Azerbaijan "On State Registration and State Register of Legal Entities", which stipulates that state registration of non-profit legal persons is performed within a period not exceeding 40 days.

As for the remarks of the distinguished experts concerning the lack of administrative appeal and judicial review in cases when registration is denied, we would like to recall that this issue is regulated by the Law of the Republic of Azerbaijan "On judicial appeal against decisions or actions (inaction) violating the rights and freedoms of citizens" which sets out the procedure and terms for filing complaints, adoption of decisions on complaints, enforcement of such decisions, etc. In this regard, one should also mention the Administrative Procedure Code of the Republic of Azerbaijan, which establishes procedures for considering and resolving by courts disputes arising from legal relations that are governed by administrative legislation.

**J. to amend the rules governing the liquidation of religious organizations by:**

- removing clauses which are unduly restrictive or overly vague - providing, besides liquidation, for a range of administrative sanctions of varying severity, which could be proportionately applied to religious organizations that breach the law
- providing for an appeals procedure for religious organizations facing liquidation or other sanctions

As regards the recommendation on the grounds for liquidation of religious associations referred to in Article 12-1 of the Law, it should be noted that whatever the ground for the liquidation, a religious association may be liquidated only under judicial procedure, which excludes probability of arbitrariness and undue influence by a state authority when considering and adopting relevant decision.

As for the appeal procedure for religious associations facing with liquidation or other sanctions, it should be noted again that this matter is governed by the Law of the Republic of Azerbaijan "On judicial appeal against decisions or actions (inaction) violating the rights and freedoms of citizens". Again, we should also mention here the Administrative Procedure Code.

With regard to administrative sanctions that could be applied to religious organizations that violate the law, it is to be noted that under Article 30 of the Law, officials, natural and legal persons shall be held liable as provided for in the legislation of the Republic of Azerbaijan for breach of legislation in the field of freedom of religious belief. The relevant legislation is the Code of Administrative Offences, Article 300 of which (Breach of legislation on freedom of religious belief) provides for a number of administrative sanctions, including fines for such breaches.

**K. to remove from Article 21 the provision stating that "Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan [who] studied in the Republic of Azerbaijan"**

There is a special procedure in Azerbaijan for the recognition of diplomas of foreign educational institutions. Diplomas issued by foreign Islamic religious educational institutions are recognized only if such country has signed an agreement on mutual recognition of religious education with the Republic of Azerbaijan. Up to now, the Republic of Azerbaijan has not concluded any such agreement. It should be recalled that by virtue of Article 151 of the Constitution, any international agreement ratified by Parliament of Azerbaijan shall prevail over Article 21 of the Law.

As an example of the above-mentioned agreements or international instruments, one could mention "Agreement between the Government of the Republic of Azerbaijan and the Government of the Russian Federation on mutual recognition of qualifications, academic degrees and academic titles" signed on 23 September 2002 (approved by the Law of 13 May 2003), as well as Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the European Region dated 21 December 1979 (ratified by the Law of 16 July 1996) and Convention on the Recognition of Qualifications concerning Higher Education in the European Region dated 11 April 1997 (ratified by the Law of 30 September 1997).

**L. to remove undue restrictions on the rights of individuals and religious groups to produce, import, export, and freely disseminate, and sell religious literature, items and other informative materials**

This restriction stems from Article 18 (II) of the Constitution, which prohibits dissemination and propagation of religions (religious movements) that humiliate human dignity and contradict the principles of humanism. This provision was introduced into the Law for the purpose of implementing the said provision of the Constitution.

**M. to cancel the requirement of the consent of a “relevant executive authority” for sending citizens abroad for religious education and for the foreign exchange of clergymen**

Government has no intention and neither is it able to track its citizens receiving religious education abroad. The present Article deals with sending abroad by registered religious organizations of citizens for acquisition of religious education so that they could engage in legal activities within the said religious organizations after having acquired appropriate education. We would like to reiterate that the State may recognize religious education diplomas obtained abroad only if there is relevant international agreement. Otherwise, religious associations may not use citizens who have received religious education abroad in worshiping in mosques operating in the territory of Azerbaijan.

**N. as concerns the executive authorities’ prerogative to “obtain necessary information” from religious groups, to either repeal this provision or to phrase it in a more precise manner with safeguards against arbitrary and abusive state interference**

The only information that is required from religious organizations are documents referred to in Article 12 of the Law, including data on number of members, the legal address, etc. Requiring from legal persons any information that is not foreseen in the existing law is prohibited by law.

**Additional recommendations**

**P. to redraft Article par 3 so as to ensure that non-citizens are also allowed to learn theology and receive religious education**

The term “citizens” used in paragraph 3 of Article 6 of the Law implies both Azerbaijani and foreign citizens. Having said that, we agree that persons without citizenship do not fall under this concept; so, the term could be clarified.

**Q. to reconsider the rule stating that religious organizations may only function at legal addresses indicated in the information submitted for state registration**

Since registered religious organizations are recipients of certain preferences, including state subsidies, and are required to report about the use of such preferences, they must indicate precise legal address, to which relevant state authority can communicate its requests.

**R. to prescribe a right of religious groups to appeal against a decision rejecting their application for state registration**

This right to appeal against such decisions is envisaged in the Law “On judicial appeal against decisions or actions (inaction) breaching the rights and freedoms of citizens”. In this context, the Administrative Procedure Code should also be mentioned.



**S. to consider either deleting or making more transparent and consultative the process of selecting clergymen who supervise prayer sites belonging to the Islamic faith**

It is a matter for each individual religious community and the State has no right to interfere with it.

**T. to allow religious organizations to raise funds with care taken also to avoid possible discrimination**

This article provides for the possibility for several religious organizations to set up a common fund, which will finance cultural and enlightenment activities. It is specified that religious associations may engage in such activities on an individual basis and independently.

**U. to allow religious organizations to receive donations also from non-citizens**

As mentioned earlier (see comments on paragraph P above), the term “citizens” used in paragraph 3 of Article 6 of the Law implies both Azerbaijani and foreign citizens. However, we agree that persons without citizenship are not covered by this concept, and therefore the term could be clarified.

**V. to redraft the provision stating that statutes (regulations) of religious organizations shall be adopted at general meetings of pious individuals or religious congresses or conferences**

Similar to other public law entities that are legal persons, the Law should establish most possible democratic procedures for adoption of their fundamental acts. In particular, similar requirements for legal persons are laid down not only in the Civil Code of Azerbaijan, but also in the civil codes of a number of European states.

**W. to ensure that the system of licensing religious educational institutions is fair, transparent and non-discriminatory**

Any injustice or discrimination may be appealed to a court of law in accordance with the Administrative Procedure Code or the Law “On judicial appeal against decisions or actions (inaction) breaching the rights and freedoms of citizens”.

**X. to redraft the provision stating that only religious centres and departments may establish religious educational institutions for the training of clergy and other religious staff**

See comments on paragraph G above.