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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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COMPILATION
OF VENICE COMMISSION OPINIONS
CONCERNING FREEDOM OF ASSOCIATION¹

¹ *This document will be updated regularly. This version contains all opinions and reports/studies adopted up to and including the Venice Commission 92nd Plenary Session (12-13 October 2012).*

TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. DEFINITION OF FREEDOM OF ASSOCIATION	4
2.1. FREEDOM OF ASSOCIATION AS A KEY HUMAN RIGHT.....	4
2.2. RELATION WITH OTHER HUMAN RIGHTS.....	5
3. INTERNATIONAL AND NATIONAL FRAME OF REFERENCE	5
3.1. INTERNATIONAL AND EUROPEAN STANDARDS	5
3.2. REFERENCE TO NATIONAL STANDARDS.....	7
4. CONTENT OF FREEDOM OF ASSOCIATION.....	7
5. EXPRESSION OF FREEDOM OF ASSOCIATION	8
5.1. EXERCISE OF FREEDOM OF ASSOCIATION	8
5.2. RESTRICTIONS ON THE EXERCISE OF FREEDOM OF ASSOCIATION	9
5.2.1. <i>Legal basis of the restriction</i>	10
5.2.2. <i>The test of justification of the restriction</i>	11
6. LEGAL STATUS AND REGISTRATION OF AN ASSOCIATION.....	12
6.1 DISSOLUTION OF AN ASSOCIATION	14
7. NON GOVERNEMENTAL ORGANISATIONS (NGO)	15
7.1. LEGAL STATUS OF NGOS.....	15
7.2. REGISTRATION OF NGOS	15
7.3. LIABILITY AND DISSOLUTION OF NGOS.....	16
8. RELIGIOUS ORGANISATIONS	17
8.1. LEGAL STATUS OF RELIGIOUS ORGANIZATIONS	17
8.2. REGISTRATION OF RELIGIOUS ORGANIZATIONS	17
8.3. LIABILITY AND DISSOLUTION OF RELIGIOUS ORGANIZATIONS	20
9. REFERENCE DOCUMENTS	22

1. INTRODUCTION

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning the freedom of association. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of reference for drafters of constitutions and of legislation relating to freedom of peaceful association, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. It merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

The compilation is not a static document and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

Each opinion referred to in the present document relate to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the wider text adopted by the Venice Commission from which it was taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken.

The references religious organizations are to illustrate their aspects related to the freedom of association. For a full description of what the Venice Commission has adopted on this topic, see the concerned opinions.

Venice Commission opinions may change or develop over time as new opinions are given and new experiences acquired. Therefore, to have a full understanding of the Venice Commission's position, it would be important to read the entire Compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a citation is missing, superfluous or filed under an incorrect heading (Venice@coe.int).

2. DEFINITION OF FREEDOM OF ASSOCIATION

2.1. Freedom of association as a key human right

“Freedom of association is an individual human right which entitles people to come together and collectively pursue, promote and defend their common interests.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §39

“It is a complex right which encompasses elements of civil, political and economic rights. Its civil right element protects individual against unlawful intervention by the state into the individual wish to associate with others. The political right element helps individuals defend their interests against the state or other individuals in an organised and hence more efficient way. Finally, the economic right element allows individuals to promote their interests in the area of labour market, especially by means of trade unions.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §40

“The combination of the three elements makes the freedom of association a unique human right whose respect serves in a way as a barometer of the general standard of the protection of human rights and the level of democracy in the country.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §41

“Freedom of association should form the basis of any pluralist democracy. All groups in society should therefore have the freedom to participate in associative life as this contributes towards the development of a strong democratic civil society.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §79

“Freedom of association (...) guarantees the freedom of natural persons and legal entities to collaborate on voluntary basis within the context of an association without public interference in order to realise a common goal.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §39

2.2. Relation with other human rights

“Freedom of association is an essential prerequisite for other fundamental freedoms.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §45

see also

CDL-AD(2012)016 - Opinion on the Federal law on combating extremist activity of the Russian Federation, §64

“The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §102.

“Freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) is partially dependent upon free association. As such, freedom of association must also be guaranteed as a tool to ensure all citizens are able to fully enjoy their rights of expression and opinion, whether practiced collectively or individually.”

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §37

“(…), freedom of association without freedom of expression amounts to little if anything. The exercise of freedom of association by workers, students, and human rights defenders in society has always been at the heart of the struggle for democracy and human rights around the world, and it remains at the heart of society once democracy has been achieved.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §101

3. INTERNATIONAL AND NATIONAL FRAME OF REFERENCE

3. 1. International and European standards

“The freedom of association is enshrined in Article 20 of the Universal Declaration of Human Rights which declares:

1. *“Everyone has the right to freedom of peaceful assembly and association.*
2. *No one may be compelled to belong to an association. “”*

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §35

“The ICCPR grants the freedom of association in its Article 22 which states:

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

“The beneficiaries of the rights under the ICCPR are individuals, but they may enjoy their rights in community with others. The right of freedom of association is one of those rights under the ICCPR that is enjoyed in community with others. “

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §36

“The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (General Assembly resolution 53/144 (A/RES/53/144), 8 March 1999 can also be regarded as a frame of reference, although non binding.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §50

The *ECHR* contains a largely similar provision, Article 11,24 under which:

“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. “

“The protection of personal opinions guaranteed by Articles 18 and 19 of the ICCPR and Articles 9 and 10 of the ECHR is one of the purposes of the guarantee of freedom of association”.

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §100

3.2. Reference to national standards

“The Venice Commission recalls that the mere fact that an association does not fulfill all the elements of the legal regulation concerned does not mean that it is not protected by the internationally guaranteed freedom of association. In *Chassagnou and Others v. France* the ECtHR emphasized the autonomous meaning of "association (...)": "The term “association” (...) possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §89

“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 assure 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”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §72

“Therefore, requirements in domestic law must be compatible with the obligation of the State to protect freedom of association.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §80

4. CONTENT OF FREEDOM OF ASSOCIATION

“The freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §42

“There are in fact two fundamentals underpinning the principle of freedom of association – that is the personal autonomy where the individual has a right to join or not to join (the negative freedom) and the freedom of natural persons and legal entities to collaborate on a voluntary basis within an organizational context without government intervention, in order to realise a mutual goal.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §68

“Freedom of association entails both the “positive” right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law. The “negative” freedom of association has been dealt with in many cases before the European Court of Human Rights.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §66

“The positive aspect of freedom of association implies the right to form and join an association.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §70

“The “negative” right of freedom of association implies that no one can be forced to form and join an association.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §68

5. EXPRESSION OF FREEDOM OF ASSOCIATION

5.1. Exercise of freedom of association

“As a civil right and political right, freedom of association grants protection against arbitrary interference by the State, for whatever reason and for whatever purpose, and it is an indispensable right for the existence and functioning of democracy. (...)”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §44;

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §63

“In *Gorzelik and Others v. Poland* the ECtHR held as follows: "The most important aspect of the right to freedom of association is that citizens should be able to create a legal entity in order to act collectively in a field of mutual interest. Without this, that right would have no meaning".”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §71

“It lies at the heart of the freedom of association that an individual or group of individuals may freely establish an association, determine its organization and lawful purposes, and put these purposes into practice by performing those activities that are instrumental to its functions.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §65

“The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. “

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §47

“States have to respect the freedom of association by not interfering, for instance by means of prohibitions, into the operation of associations. They have to protect the freedom by ensuring that its exercise is not prevented by actions of individuals. And they have to fulfill this freedom by actively creating the legal framework, in which associations can operate. The obligation to respect means that the State must refrain from interfering with or curtailing the enjoyment of human rights.”

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §66

5.2. Restrictions on the exercise of freedom of association

“No restrictions may be placed on the exercise of the right of associations to protect their rights “other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, the protection of public health or morals or the protection of the rights and freedoms of others.” Restrictions on the freedom of association are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, § 63

“(…). The legitimate purposes for a limitation to the right of freedom of association are national security, public safety, prevention of disorder or crime, protection of public health and morals or the protection of the rights and freedoms of others. There must furthermore be a pressing social need for restricting this fundamental right.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §44

“Only indisputable imperatives can justify interference with the enjoyment of freedom of association under the European Convention.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §85

5.2.1. Legal basis of the restriction

“Any restrictions on free association must have their basis in law of the state constitution or parliamentary act, rather than subordinate regulations, and must in turn conform to relevant international instruments. Such restrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them. Restrictions must be necessary in a democratic society, and full protection of rights must be assumed in all cases lacking specific restriction. To ensure restrictions are not unduly applied, legislation must be carefully constructed to be neither too detailed nor too vague.”

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §49

See also

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §103

“In the view of the Human Rights Committee, for the interference with freedom of association to be justified, any restriction on this right must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be “necessary in a democratic society” for achieving one of these purposes.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §57

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

drawn, since by hypothesis the group has not yet come into formal legal existence at the time it is seeking registration.”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §67

5.2.2. The test of justification of the restriction

“The Venice Commission also recalled that any restriction of these must meet a strict test of justification: *“Any restriction of the right to freedom of association must according to Article 11.2 of the ECHR be prescribed by law and it is required that the rule containing the limitation be general in its effect, that it be sufficiently known and the extent of the limitation be sufficiently clear. A restriction that is too general in nature is not permissible due to the principle of proportionality. The restriction must furthermore pursue a legitimate aim and be necessary in a democratic society.”*

CDL-AD(2012)016 - Opinion on the Federal law on combating extremist activity of the Russian Federation, §64

“Any limitations (...) which restrict their right to free association must be constructed to meet the specific aim pursued by authorities. Further, this aim must be objective and necessary in a democratic society. The state has the burden of establishing that limitations promote a general public interest unable to be fulfilled absent the limitation.

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §50

“Any limitation on the formation or regulation of the activities of political parties must be proportionate in nature. Dissolution or refusal of registration should only be applied if no less restrictive means of regulation can be found. Dissolution is the most severe sanction available and should not be considered proportionate except in cases of the most significant violations. In the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308 (2002), the PACE stated in paragraph 11 that “a political party should be banned or dissolved only as a last resort” and “in accordance with the procedures which provide all the necessary guarantees to a fair trial”.

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §51

“Proportionality should be considered on the basis of a number of factors, including:

- The nature of the right in question
- The purpose of the proposed restriction
- The nature and extent of the proposed restriction
- The relationship (relevancy) between the nature of the restriction and its purpose

Whether there are any less restrictive means available for the fulfillment of the stated purpose in light of the facts.”

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §52

“Paragraph 24 of the OSCE Copenhagen Document states, regarding proportionality:

“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, 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. 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.”

CDL-AD(2010)024 - Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, §52

6. LEGAL STATUS AND REGISTRATION OF AN ASSOCIATION

“The right to form an association is an inherent part of the right set forth in Article 11 ECHR. The ability 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 that right would be deprived of any meaning.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §71

“The Venice Commission considers that “burdensome constraints or provisions that grant excessive governmental discretion in giving approvals prior to obtaining legal status [of an association] should be carefully limited.”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §68

“As the recognition of the association as a legal entity is an inherent part of the freedom of association, the refusal of registration is also fully covered by the scope of Article 22 of the ICCPR and Article 11 of the ECHR”.

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §52

“The Venice Commission reiterates that to make it mandatory for an association to register need not in itself be a breach of the right to freedom of association.”

CDL-AD 2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §54

“The Venice Commission is of the opinion that domestic law may require some kind of registration of associations, and that failure to register may have certain consequences for the legal status and legal capacity of the association involved.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, § 56

See also

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §56

“According to Article 11 of the ECHR and the case law of the European Court of Human Rights, the right to freedom of association not only guarantees the right to form and register an association, but also includes those rights and freedoms that are of vital importance for an effective functioning of the association to fulfil its aims and protect the rights and interests of its members; the freedom of association presupposes a certain autonomy.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §61

“However, the Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §77

“Arbitrary denial and discriminatory practices in denying an organization registration also touch upon the relationship between the enjoyment of freedom of association and freedom of expression and their interdependence. The former right may be seriously affected by the extent to which the latter freedom is guaranteed.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §98

6.1 Dissolution of an association

“There must be convincing and compelling reasons justifying the dissolution and/or temporary forfeiture of the right to freedom of association. Such interference must meet a pressing social need and be “proportionate to the aims pursued.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §88

see also

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §120

“(…). A dissolution that does not pursue a pressing social need cannot be deemed necessary in a democratic society.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §87

“The Venice Commission cannot but recall that a decision that serves as the basis for a court’s decision to dissolve an association must meet the requirements of being prescribed by law and pursue a legitimate aim and be necessary in a democratic society. A warning preceding dissolution based on a broad interpretation of vague legal provisions does in itself constitute a violation. (…)”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §87

See also

CDL-AD(2012)016 - Opinion on the federal law on combating extremist activity on the Russian Federation, §52

“The Venice Commission acknowledges that the final decision with regard to the liquidation of an association or organisation having engaged in extremist activities belongs to a court. (...) A generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to its real activities and to conduct proceedings which would determine whether these are prohibited by law.”

CDL-AD(2012)016 - Opinion on the federal law on combating extremist activity on the Russian Federation, §59

7. NON GOVERNEMENTAL ORGANISATIONS (NGO)

7.1. Legal status of NGOs

“The legal status of NGOs is also the subject of two non-binding Council of Europe instruments, namely the 2002 Fundamental Principles on the Status of Non-governmental Organisations in Europe and the 2007 Recommendation CM/Rec (2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe. The two documents contain a comprehensive set of recommendations that should serve as minimum standards guiding member states of the Council of Europe in their legislation, policies and practice towards NGOs.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §52

“Over the past three decades, special instruments related to the legal status of NGOs have been adopted in the Council of Europe framework. The most important of them is the European Convention on the Recognition of the Legal Personality of International Non- Governmental Organisations (Convention No. 124), adopted in 1986 and entered into force in 1991. (...) It is often quoted as an authoritative source with respect to the definition of an NGO and the mutual recognition of their legal status and capacity in various European countries.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §54

“The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (General Assembly resolution 53/144 (A/RES/53/144), 8 March 1999, constitute a relevant frame of reference at the level of the United Nations.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §50

7.2. Registration of NGOs

“While NGOs can operate without legal personality, on an informal basis, the acquisition of the personality is the precondition for various benefits. However, the Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.”

CDL-AD (2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §58

See also

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §120

“The principles and protection laid down in the ICCPR and the ECHR consequently apply also to non-registered NGO’S. This implies that, as the recognition of the association as a legal entity is an inherent part of the freedom of association, the refusal of registration is also fully covered by the scope of Article 22 of the ICCPR and Article 11 of the ECHR”.

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §93

“To condition the views, activities and conduct of an NGO before allowing it to obtain the legal personality necessary for its operation, goes against the core of the values underlying the protection of civil and political rights. It clashes with the whole ideological framework underlying democracy such as pluralism, broadmindedness and tolerance.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §120

7.3. Liability and dissolution of NGOs

“The Venice Commission recalls that the dissolution of an NGO is an extreme measure, which needs to be based on a well-founded rationale and it is well established under the international case-law that it can only be resorted to in exceptional situations.”

CDL-AD(2011)036 - Opinion on the compatibility with universal human rights standards on the article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus, §107

“The European Court of Human Rights has dealt with several cases relating to problems with NGO registration and dissolution. In a recent case against Azerbaijan the European Court of Human Rights stated that: *“A mere failure to respect certain legal requirements or internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution. [. . .] The immediate and permanent dissolution of the Association constituted a drastic measure to the legitimate aim pursued. Greater flexibility in choosing a more proportionate sanction could be achieved by introducing in the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits.”*

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §85

“Moreover, the Venice Commission wishes to stress that “liquidation” should occur, in principle, as a last resort or in particularly serious cases and following a public hearing providing the possibility for the organisation or individual concerned to be aware of and challenge the evidence brought against it or him/her.”

CDL-AD(2012)016 - Opinion on the federal law on combating extremist activity on the Russian Federation, §61

8. RELIGIOUS ORGANISATIONS

8.1. Legal status of religious organizations

“Article 9 ECHR and Article 18 ICCPR both guarantee the freedom to manifest religion or belief "in public or private". (...)”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §35

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

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §91

8.2. Registration of religious organizations

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

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §39

“Therefore, as the OSCE ODIHR/Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief have submitted, legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate.”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §42

See also

CDL-AD(2004)028 – OSCE/ODIHR/Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief, §6.2

“Registering an association should be optional and not a legal requirement. There may, of course, be certain benefits to legal registration and hence it may be appropriate to impose certain necessary formalities upon religious communities for the purpose of registration. Nevertheless, making registration mandatory goes against the fundamental principle of freedom of religion and the applicable international human rights standards, also as regards freedom of association, protected under Article 11 of the ECHR and Article 22 of the ICCPR.”

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §79

See also

CDL-AD(2004)028 - Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission, p.17

“Care must be taken that cumbersome legal requirements (such as high minimum membership) to those seeking registration do not deter registration. The right to voluntarily establish an association to pursue any legitimate goal without undue interference from the State is an inherent aspect of the right to freedom of association. Broad grounds for denial of registration would violate this fundamental right. Furthermore, the requirement that a religious association can operate only at the place identified in its registration documents seems overly restrictive and not required in a democratic society.”

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §81

“As the Venice Commission has emphasized, “official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited”. If a religious community does not wish, for whatever reason, to submit its registration application through the higher religious and/or organizational authority as provided for in this Article, forcing it to do so, as the said provision does, would appear to raise serious issues under the ECHR. Also, it is unclear what happens when a religious center/department does not forward to the authorities an application by the religious community, thereby effectively preventing its registration.”

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §82

“1 .Registration of religious/belief organisations. Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that should be addressed:

- Registration of religious organisations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.
- Individuals and groups should be free to practice their religion without registration if they so desire.
- High minimum membership requirements should not be allowed with respect to obtaining legal personality.
- It is not appropriate to require lengthy existence in the State before registration is permitted.
- Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.

- Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited.
- Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed. (See section III.D above)
- Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.
- Adequate transition rules should be provided when new rules are introduced.
- Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern. (A registered religious entity should not have “veto” power over the registration of any other religious entity.)”

CDL-AD(2004)028 - Guidelines for legislative reviews of laws affecting religion or belief adopted by Venice Commission, II.F.1

“As emphasized in the Guidelines religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organizations. (...) It is however appropriate to require registration for the purposes of obtaining legal personality and similar benefits, provided that the process is not unduly restrictive or discriminatory. While informal or unregistered associations are not unknown to the law, working through such organizations is unduly cumbersome and subjects the group to the vicissitudes of individual liabilities. As a result, denial of legal entity status may result in substantial interference with religious freedom. Legal status is for example necessary for receiving and administering voluntary contributions from members, (...), renting or acquiring places of worship, hiring employees, opening bank accounts, etc.

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §64

See also:

CDL-AD(2004)028 – OSCE/ODIHR-Venice Commission Guidelines for review of legislation pertaining to religion or belief §6.2

“With regard to membership requirements for registration purposes as such, the Venice Commission, on several occasion, has encouraged limited membership requirements. It has also, along with the Parliamentary Assembly of the Council of Europe’s recommendations, called for considering equalising the minimum number of founders of religious organizations to those of any public organizations.”

CDL-AD(2012)004 - Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, §54.

CDL-AD(2008)032 - Joint opinion on freedom of conscience and religious organisations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §32 (related to a membership requirement of 200).

CDL-AD(2009)036 - Joint opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations 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 to the Council of Europe, the

OSCE/ODIHR Advisory Council on Freedom of Religion Belief (related to a membership requirement of 500).

“However, this condition (requirement of submitting a document signed by a minimum of individuals) may become an obstacle for small religious groups to be recognized. The difficulty arises primarily for religious groups that are organized as a matter of theology not as an extended church, but in individual congregations.”

CDL-AD(2012)004 - Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, §52

“Hurdles to registration threaten the existence and rights of religious organizations. Precisely because legal entities have become so vital and pervasive as vehicles for carrying out group activities in modern societies, the denial of entity status has come to be seen as clear interference with freedom of religion and association. Accordingly, the right to acquisition of legal personality is firmly entrenched in OSCE commitments, and has been the subject of a burgeoning body of judgments of the European Court of Human Rights.”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §66

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

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §90

8.3. Liability and dissolution of religious organizations

“It should be borne in mind that the liquidation or termination of a religious organization may have grave consequences for the religious life of all members of a religious community, and for that reason, care should be taken not to terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organizations should be addressed in personal, through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organization accountable. Among other things,

consideration should be given to prescribing a range of sanctions of varying severity (such as official warnings, fines, temporary suspension) that would enable organizations to take corrective action (or pursue appropriate appeals), before taking the harsh step of liquidating a religious organization, which should be a measure of last resort. It is recommended to include such a procedure in the new Article 24.”

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §99

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §92

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

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §98

“On a more general note, it is recommended that the Law provide for a range of sanctions of varying severity (such as official warnings, (proportionate) fines, temporary suspension), rather than prescribing just one drastic sanction in the form of liquidation. This would help ensure that the sanctions applied to religious organizations are proportionate to the contravention committed. Moreover, it would also enable religious organizations to take corrective action (or pursue appropriate appeals) before facing liquidation. In general, the harsh sanction of liquidating a religious organization should be a measure of last resort. It is recommended to include such a procedure in Article 12 §1.”

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §93

“The Law should furthermore provide for a detailed appeals procedure so that a religious organization which is facing liquidation (or other sanctions) could contest the respective underlying decision, preferably before a judicial body⁴⁴. To prevent arbitrary sanctioning, the Law should require a written and reasoned decision by the decision-making body, which decision should be appealable before a court of law within a reasonable period of time and following a transparent procedure lay down in the Law.”

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, §94

9. REFERENCE DOCUMENTS

CDL-AD(2004)028 - Guidelines for legislative reviews of laws affecting religion or belief

CDL-AD(2008)032 - Joint opinion on freedom of conscience and religious organisations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief

CDL-AD(2009)036 - Joint opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations 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 to the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion Belief

CDL-AD(2010)054 - Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR

CDL-AD(2011)035 - Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan

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CDL(2011)060 - Comments on the compatibility with universal human rights standards of article 193-1 of the criminal code vis-à-vis the rights of non-registered associations of the Republic of Belarus

CDL-AD(2012)004 - Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities

CDL-AD(2012)016 - Opinion on the federal law on combating extremist activity of the Russian Federation

CDL-AD(2012)022 - Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by OSCE/ODIHR and Venice Commission