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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS

CONCERNING FREEDOM OF ASSOCIATION[1]

(revised July 2014)

[1] *This document will be updated regularly. This version contains all opinions and reports/studies adopted up to and including the Venice Commission 99th Plenary Session (13-14 June 2014).*

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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 Venice Commission 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 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. In order to shorten the text, further references and footnotes are omitted in the text of citations; only the essential part of relevant paragraphs is reproduced.

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

"Freedom of association should be recognized to all persons, including foreigners, and not limited to citizens […]."

> CDL-AD(2014)010, Opinion on the draft law on the review of the Constitution of Romania, §82

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

"[…] [F]reedom 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-registred associations of the Republic of Belarus, §50

"The *ECHR* contains a largely similar provision, Article 11, 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'."

> CDL-AD (2011)035, Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, §37

"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-registred associations of the Republic of Belarus, §100

"Non-governmental organizations engaged in human rights advocacy are traditionally considered as particularly vulnerable and, hence, in need of enhanced protection. Both at the universal and regional levels, special instruments have been adopted over the past decades codifying the standards applicable to human rights defenders. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders) confirms that 'everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels' (Article 1) and stipulates that States have to adopt measures to ensure this right.

The UN Declaration on Human Rights Defenders provides specifically (Article 13) that 'everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration'. The right of access to funding is to be exercised within the juridical framework of domestic legislation – provided that such legislation is consistent with international human rights standards."

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §17,18

3.2. Reference to national standards

"[…] [T]he 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-registred associations of the Republic of Belarus, §92

"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-registred 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-registred 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 fundaments 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-registred 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-registred 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-registred 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-registred 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 indispensible 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;
> 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-registred associations of the Republic of Belarus, §62

"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-registred 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-registred 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-registred 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

“Non-governmental organizations (NGOs) play a crucial role in modern democratic societies, allowing citizens to associate in order to promote certain principles and goals. Such public engagement, parallel to that of participation in the formal political process, is of paramount importance and represents a crucial element of a healthy civil society. Members of NGOs, as well as NGOs themselves, enjoy fundamental human rights, including freedom of association and freedom of expression.”

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §15

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-registred 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-registred 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

"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

"Restrictions imposed upon both freedom of association and freedom of expression must not exceed what is 'necessary in a democratic society'; this means that the interference must correspond to a pressing social need and be proportionate to this need. The Venice Commission and the OSCE/ODIHR recall that under international standards, freedom of expression extends also to information or ideas which may be found offending, shocking, and disturbing."

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §39

"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 the OSCE/ODIHR and the Venice Commission, §52

"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 the OSCE/ODIHR and the Venice Commission, §51

"Non-governmental organisations engaged in human rights advocacy are traditionally considered as particularly vulnerable and, hence, in need of enhanced protection. […]"

CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §20

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-registred 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 the 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-registred 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

"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-registred 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-registred 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-registred associations of the Republic of Belarus, §98

"The Venice Commission and OSCE/ODIHR stress that NGOs should not be required to seek authorisation in order to establish branches, whether within the country or abroad.

It is true that foreign non-governmental organizations may be required to obtain authorization to operate in a country other than the one in which they have been established. However, they should not be required to establish a new and separate entity for this purpose. Foreign non-governmental organizations may be subjected to the same accountability requirements as other non-governmental organizations with legal personality in their host country, but these requirements should only be applicable to their activities in that country."

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§42, 43

7. 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-registred 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-registred 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-registred 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

"[A]rticle 40(2) does not seem to take into account the distinction made by the Venice Commission between the objectives and activities of political parties when it comes to the criteria for the prohibition or dissolution of parties. A comparative overview shows that 'only a few states prohibit party objectives and opinions as such. It is more common that the national criteria refer to illegal means, such as the use of violence. But the most common model in those countries that have rules on party prohibition is that prohibition requires both unlawful means (activities) and illegitimate ends (objectives)'."

CDL-AD(2014)010, Opinion on the draft law on the review of the Constitution of Romania, §83

8. NON GOVERNEMENTAL ORGANISATIONS (NGOs)

8.1. 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) 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-registred associations of the Republic of Belarus, §50

8.2. 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-registred 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-registred 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-registred associations of the Republic of Belarus, §120

"The Venice Commission recalls that under international standards, a system of prior authorization of some or all of the activities of an association is incompatible with the freedom of association. In addition, the Commission finds such a system would almost inevitably be impracticable, inefficient and costly, as well as likely to generate a significant number of applications to courts, with a consequent unwarranted transfer of workload (and danger of clogging up) to the judiciary."

> CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §61

8.3. Funding

"Foreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs. […]"

"The Venice Commission believes that it is justified to require the utmost transparency in matters pertaining to foreign funding. An administrative authority may be entrusted with the competence to review the legality (not the expediency) of foreign funding, using a simple system of notification – not one of prior authorisation. The procedure should be clear and straightforward, with an implicit approval mechanism. The administrative authority should not have the decision-making power in such matters. This should be left to the courts."

> CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §40 and §43

"Article 63 provides for a system of prior authorisation for an Egyptian NGO to receive foreign funding and carry out the related activities, which as such is not in line with international standards. In addition, it fails to provide a clear legal basis for refusing the authorisation to receive the funding. **This system should be replaced by a system of mere notification with the possibility for the Co-ordination Committee to object on the basis of Article 59 of the Draft Law only**."

"The UN Declaration on Human Rights Defenders provides specifically that 'everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration'. The right of access to funding is to be exercised within the juridical framework of domestic legislation – **provided that such legislation is consistent with international human rights standards**. **This implies *inter alia***

that there can be no discrimination among NGOs, notably on the basis of the nature of the activities which they carry out.

Funds raised by the NGO as gifts, donations or voluntary contributions are therefore part of the legitimate resources of the NGO."

> CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §§48, 51-52

"Specific standards which relate to the ability of associations to access financial resources can be found in the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55), which in Article 6 (f) explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the freedom 'to solicit and receive voluntary financial and other contributions from individuals and institutions'. […]"

"It bears recalling in this context that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. In the Special Rapporteur's view, measures which compel recipients of foreign funding to adopt negative labels such as 'foreign agents' constitute undue impediments on the right to seek, receive and use funding. […]"

"On the point of financial reporting and accountability, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that 'associations should be accountable to their donors, and at most, subject by the authorities to a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities', and has called upon States to 'adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received'. […]"

"Interfering with financial transactions of a structural unit of a foreign non-commercial organization is a serious interference with the work of such organizations, and should be limited only to the most serious offences affecting national security, the public order, health and morals, or the rights and freedoms of others. References to 'the constitutional order' should be removed from the new wording of Article 17, as proposed by the Draft Law."

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §19, 57, 70, and 88

8.4. 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-registred 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

"The dissolution of a NCO and the prolonged suspension, amounting to its de facto dissolution should be limited to the three grounds recognised by the international standards: bankruptcy; long-term inactivity and serious misconduct. They should only be applied as a last resort, when all less restrictive options have been unsuccessful. Enforced dissolution of a NCO may only be pronounced by an impartial and independent tribunal in a procedure offering all guarantees of due process, openness and a fair trial. The effects of the decision on dissolution should be suspended pending the outcome of judicial review. Severe criminal sanctions should only be applied in case of serious wrongdoing and should always be proportional to this wrongdoing."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §106

"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

"The Venice Commission and OSCE/ODIHR recall that the principles and protection laid down in the ICCPR apply also to non-registered NGOs. While it is legitimate for states to sanction violations of their legal order, the sanction always needs to comply with the principle of proportionality. As the Committee of Ministers stated in the Recommendation CM/Rec(2007)14, 'the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality' (para 72). The European Court of Human Rights has indicated that a mere failure to respect certain legal requirements or internal management of non-governmental organisations might justify sanctions such as a fine or withdrawal of tax benefits. 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."

"Interfering with financial transactions of a structural unit of a foreign non-commercial organization is a serious interference with the work of such organizations, and should be limited only to the most serious offences affecting national security, the public order, health and morals,

or the rights and freedoms of others. References to 'the constitutional order' should be removed from the new wording of Article 17, as proposed by the Draft Law."

> CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§81 and 88

"Article 70 provides for sanctions 'without prejudice to any greater penalty stipulated in the Criminal Code or any other law'. The Venice Commission has been informed that there exist very restrictive provisions in the Egyptian criminal code which severely punish NGOs which carry out activities without having been specifically authorised to do so. The Venice Commission urges the Egyptian authorities to proceed with the abrogation of the existing restrictive criminal provisions by way of urgency, either through this Draft Law or otherwise.

The Venice Commission finds that it is very positive that the principle of proportionality is explicitly provided in the application of penalties by courts (article 72)."

> CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §§67-68

"[…] The Venice Commission endorses the assessment of the Constitutional Court of Russia that 'the amounts of administrative fines should correspond to the nature and degree of social danger of offenses and have a reasonable deterrent effect to ensure the enforcement of prohibitions under administrative and tort law. […] Courts should take into account the nature of digressions from the rules of exercise of political activity by a non-commercial organization performing the functions of a foreign agent, the scale and consequences of political actions organized and/or carried out, and other circumstances characterising the degree of social danger of the committed administrative offense, and impose a maximum fine only if a smaller fine would not properly ensure the prevention of new offenses by the same or other offenders'. The Court moreover assessed that: 'it becomes extremely difficult and sometimes impossible to ensure, as the Constitution requires, an individual approach to imposing an administrative fine with the minimum of one hundred thousand Rubles for officers and three hundred thousand Rubles for legal persons, especially because no alternative is provided for. […]. Thus, the provision of part 1 of Article 19.34 of the Code of the Russian Federation on Administrative Offenses that establishes minimum sizes of the administrative penalty in the amount of one hundred thousand Rubles for officers and three hundred thousand Rubles for legal persons does not conform to the Constitution of the Russian Federation […]."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §63

8.5. Foreign-funded NGOs

8.5.1. The label of "foreign agent"

"Many sources have already commented upon the choice of the term 'foreign agent'. The Venice Commission cannot but concur with those who consider this term unfortunate. As rightly noticed by the Council of Europe Commissioner for Human Rights, the term 'has usually been

associated in the Russian historical context with the notion of a 'foreign spy' and/or a 'traitor' and thus carries with it a connotation of ostracism or stigma'. […]"

"It follows that being labelled as a 'foreign agent' signifies that a NCO would not be able to function properly, since other people and - in particular - representatives of the state institutions will very likely be reluctant to co-operate with them, in particular in discussions on possible changes to legislation or public policy."

"The Venice Commission considers that the imposition of the very negative qualification of 'foreign agent' and the obligation for the NCO to use it on all its materials cannot be deemed to be 'necessary in a democratic society' to assure the financial transparency of the NCO receiving foreign funding. The mere fact that a NCO receives foreign funding cannot justify it to be qualified a 'foreign agent'."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §§54, 55 and 60

"Registering NCOs as foreign agents without their consent amounts to depriving them of the right guaranteed by Article 11 ECHR to form an association in a free manner. This measure is not proportionate to the objective of protecting the public interest of sovereignty of the state, as the authorities always have full discretion to check whether the association's aim and activities are in conformity with the rules laid down in the legislation. In addition, depriving the association of its own discretion to define its aims and objectives when registering impinges on the freedom of expression of its members. […] Authorizing the authorities to register groups in civil society as foreign agents at their discretion and without the prior consent of the relevant groups is a very invasive measure which represents a disproportionate interference with the right to freedom of expression."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §63

8.5.2. Foreign funding as a criterion for differential treatment

"Foreign funding of NGOs is at times viewed as problematic by States. There may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §68

"The Venice Commission has explained above, in connection with the procedure of prior authorisation of fund-raising activities, that the applicable Egyptian legislation on specific forms of activities (demonstrations, public events, television campaigns and so on), coupled with the financial reporting obligations and the publicity and transparency requirements which are imposed on associations suffice to enable the Egyptian authorities to put an end to illegal activities. Sanctions may be applied. For foreign NGOs, the procedure of licensing provides an additional

possibility for the Egyptian authorities to make sure that the legal requirements of Articles 56 and 57 should be met. **The Venice Commission therefore finds that there is no justification for closely monitoring foreign NGOs**."

CDL-AD(2013)023, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, §62

"It bears recalling in this context that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources. In the Special Rapporteur's view, measures which compel recipients of foreign funding to adopt negative labels such as 'foreign agents' constitute undue impediments on the right to seek, receive and use funding."

CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §57

"The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs."

CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §68

"Law 121-FZ does not make the legal status of 'foreign agent' conditional on any minimal amount of funding received from abroad or on any minimal period of time during which a NCO would have to receive foreign funding. Thus, a single Rouble/Euro/dollar sent by a foreign citizen to the bank account of a NCO would turn this NCO, provided the political activities element is present, into a foreign agent and make it subject to a set of additional legal obligations. Moreover, the Law does not distinguish between various forms of 'funding and other property'. Thus, a NCO regularly funded from abroad, a NCO which receive an international prize for its activity, or a NCO receiving a laptop from an international business company would, again provided the political activities elements is met, be all considered as 'foreign agents'. Such a situation is obviously extremely problematic and it is hardly imaginable that the law is intended to cover all these very different situations. The Venice Commission finds that if foreign funding continues to be viewed as necessitating a specific treatment, the law should at the very least define what features (minimum amounts, duration, sources) it must have for it to fall within the scope of application of the law."

"The Russian authorities certainly have the right to submit non-commercial organisations receiving foreign funding to a certain control and to impose upon them reporting and auditing obligations. However, the current Law lacks minimum requirements in the amount of the used money and the length of operation."

CDL-AD(2014)02, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §§70 and 88

8.5.3. Foreign-funded NGOs involved in political activities

"Under Article 6(2) of the Law on Non-Commercial Organizations, for a NCO to count as a 'foreign agent', it needs – in addition of being registered as a NCO and receiving foreign funding – to participate in political activities exercised in the territory of the Russian Federation. […]"

"In *Zhechev v. Bulgaria*, the European Court of Human Rights rightly claimed that the term 'political' is 'inherently vague and could be subject to largely diverse interpretations'. Law 121-FZ seeks to define the 'political activities'. Yet, when doing so, it resorts to other, equally vague and unclear terms such as 'political actions', 'state policy', or 'shaping of public opinion'.

Moreover, the scope of the activities which the law deems not to be 'political activities' is unclear. 'Activities in the field of… science' are excluded, but it is unclear whether a scientific activity can only be conducted by a university or a recognized scientific institute, or also by a NCO which e.g. conducts research on the compliance of the Russian policies with the international human rights treaties. 'Activities in the field of … arts' are equally excluded, but it is uncertain whether an artistic expression of criticism of public authorities is also excluded from the application of the law. […]

These activities are guaranteed both in the Russian Constitution and in the international human rights treaties. They cannot deemed to be 'in the interests of foreign sources', but have to be considered in the interest of Russia and the Russian population. […]"

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §§ 71, 78, 79 and 80

"Federal Law n° 121-FZ appears to afford the Russian authorities a rather wide discretion. As a result, it is difficult for NCOs to know which specific actions on their part could be qualified as 'political activities' and which activities are exempted from this qualification. […]"

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, § 81

"[…] [T]he unclear meaning of the term is not the only problematic aspect of the provisions relating to "political activities. The experience of the application of the law during the first months after its entry into force shows that the NCOs which have been subject to law enforcement measures were mostly active in the field of human rights, democracy and the rule of law. […]. All of these activities belong among the classical activities exercised by NGOs and, especially, by human rights defenders and the engagement in them should therefore not entail any negative consequences for NCOs, including additional legal obligations.

In addition, the scope of 'political activities' is limited to activities carried out '*for the purpose of influencing the adoption by the state bodies of decisions aimed at changing the state policy pursued by them, as well as in forming public opinion for the cited purposes'* […]. Thus, two NCOs receiving foreign funding and engaging in the same type of activities would or would not

count as a 'foreign agent' depending on whether their actions are or are not in line with the state policy. […]

"The Venice Commission is therefore of the opinion that the definition of 'political activities' needs to be carefully *reformulated* – and consistently applied – so as not to target human rights defenders and NCOs advocating, by lawful means and within the limits of the national legislation, peaceful changes of governmental policy."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §§ 83, 84 and 86

8.5.4. Additional supervision and sanctions in respect of foreign-funded NGOs

"Recommendation CM/Rec(2007)14 states that '*NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent'* (par. 68), and '*NGOs should not be subject to search and seizure without objective grounds for taking such measures and appropriate judicial authorisation'* (par. 69).

The way in which the law is applied in practice does not seem to be consistent with this standard. More than 200 extraordinary inspections of NCOs were carried out in 2011-2012; other inspections followed after the entry into force of Law 121-FZ. The reasons and legal grounds for these inspections in many cases did not appear to be clearly defined. The extent of the inspections differed. […]"

"The Venice Commission recommends that the practice of inspections be brought in line with international standards. Extraordinary inspections should not take place unless there is suspicion of a serious contravention of the legislation or any other serious misdemeanour. Inspections should only serve the purpose of confirming or discarding the suspicion and should never be aimed at molesting NCOs and preventing them from exercising activities consistent with the requirements of a democratic society."

> CDL-AD(2014)02, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §§95, 96, and 98

"The dissolution of a NCO and the prolonged suspension, amounting to its de facto dissolution should be limited to the three grounds recognised by the international standards: bankruptcy; long-term inactivity and serious misconduct. They should only be applied as a last resort, when all less restrictive options have been unsuccessful. Enforced dissolution of a NCO may only be pronounced by an impartial and independent tribunal in a procedure offering all guarantees of due process, openness and a fair trial. The effects of the decision on dissolution should be suspended pending the outcome of judicial review. Severe criminal sanctions should only be applied in case of serious wrongdoing and should always be proportional to this wrongdoing."

CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §106

8.6. Supervision and reporting obligations

"The Venice Commission and the OSCE/ODIHR recall that, under current human rights standards, 'states have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation', provided they do so 'in a manner compatible with their obligations under the [European] Convention' and other international instruments. While it is understood that state bodies should be able to exercise some sort of [limited] control over non-commercial organizations' activities with a view to ensuring transparency and accountability within the civil society sector, such control should not be unreasonable, overly intrusive or disruptive of lawful activities. Excessively burdensome or costly reporting obligations could create an environment of excessive State monitoring over the activities of non-commercial organizations. Such an environment would hardly be conducive to the effective enjoyment of freedom of association. Reporting requirements must not place an excessive burden on the organization. […]"

"Overall, the State has the duty not to interfere with the crucial activities of any established association. Once the association is set up, the essential relationships are between this body and its members and between this body and non-members. State supervision and intervention should only be limited to cases in which this is necessary to protect the members, the public, or the rights of others. Non-commercial organizations should, therefore, not be subject to direction by public authorities. The corollary to the principle of the independence of associations from the government is that they should be entitled to decide their own internal structure, to choose and manage their own staff and to have their own assets. The State may not issue instructions on the management and activities of the associations.

State supervision should be limited to cases where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent. In the absence of evidence to the contrary, the activities of associations should be presumed to be lawful."

CDL-AD(2013)030, Joint Interim Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic, §§69, 75, 76

9. RELIGIOUS OR BELIEF ORGANISATIONS[2]

9.1. Right to associate with others on the basis of religion or other belief

"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

[2] It is recommended to read this section together with section XI of the compilation of the Venice Commission on the freedom of religion and belief, CDL(2013)042 (check for latest revisions of that document)

criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §35

"[…] [T]he autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection which the freedom of religion or belief affords. […]"

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §18

"[…] The freedom to manifest a religion or belief consists of the freedom of worship and the freedom to teach, practice and observe one's religion or belief.[…]

The *freedom to worship* includes, but is not limited to, the freedom to assemble in connection with a religion or belief and the freedom of communities to perform ritual and ceremonial acts giving direct expression to religion or belief as well as various practices integral to these, including the building and maintenance of freely accessible places of worship […].

The *freedom to observe and practice* includes […] the freedom to establish and maintain appropriate charitable or humanitarian institutions […].

The *freedom of practicing and teaching religion or belief* includes, but is not limited to, acts integral to the conduct by religious groups of their basic affairs, such as the right to organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel […]."

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §§12, 13, 14 and 15

9.2. Access to legal personality

"Any denial of legal personality to a religious or belief community would therefore need to be justified under the strict conditions set out in Part I of the Guidelines. At the same time, under international human rights law, religious or belief communities should not be obliged to seek legal personality if they do not wish to do so. The choice of whether or not to register with the state may itself be a religious one, and the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status. […]"

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §21

"There are a variety of ways of ensuring that religious or belief communities who wish to seek legal personality are able to do so. Some national legal systems do so through procedures involving the courts, others through an application procedure with a government agency. Depending on the individual state, a variety of different forms of legal personality may be available to religious or belief communities, such as trusts, corporations, associations, foundations, as well as various sui generis types of legal personality specific to religious or belief communities."

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §22

"[…] [G]aining access to legal personality should not be made more difficult for religious or belief communities than it is for other types of groups or communities. […]"

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §17

"[…] [A]ccess to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory."

CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §24

9.3. Registration of religious or belief organisations

9.3.1. General principles governing the process of registration

"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 the 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 the OSCE/ODIHR, §42
See also
CDL-AD(2004)028, the OSCE/ODIHR and the Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief, §6.2

"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 the OSCE/ODIHR, §64
See also
CDL-AD(2004)028, the OSCE/ODIHR and the Venice Commission Guidelines for review of legislation affecting religion or belief, II.F.1

"The Venice Commission understands that, in the light the historical and political context prevailing in Kosovo*[3], this margin of appreciation might be needed in trying to reach a compromise on issues relating to the sensitive area of religious freedom. Such a margin of appreciation is all the more warranted because there are no common European standards on all aspects of the legal recognition of religious communities. The Commission furthermore notes that, in this particular case, the differential treatment does not seem to be related to the possibility of obtaining legal personality, but only to its procedural dimension. […]"

CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §57

"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, the OSCE/ODIHR and the Venice Commission Guidelines for review of legislation affecting religion or belief, II.F.1

"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

9.3.2. Non-discrimination in matters of registration

[3] As stipulated in this opinion, all references to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

"The process of obtaining legal personality status should be open to as many communities as possible, not excluding any community on the ground that it is not a 'traditional' or 'recognized' religion, or through excessively narrow interpretations or definitions of 'religion' or 'belief'."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §26

"States may choose to grant certain *privileges* to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system, membership in public broadcasting agencies. It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §38

"The existence or conclusion of agreements between the state and a particular religious community or legislation establishing a special regime in favor of the latter does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so. Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country's history and society. A difference in treatment between religious or belief communities which results in granting a specific status in law – to which substantial privileges are attached, while refusing this preferential treatment to other religious or belief communities which have not acceded to this status – is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status and the criteria established are applied in a non-discriminatory manner.

Even the fact that a religion is recognized as a state religion or that it is established as an official or traditional religion or that its followers comprise the majority of the population, may be acceptable, provided however that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, and also not in any discrimination against adherents to other religions or non-believers. […]"

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §§40-41

"[…] [T]he basis set out in the draft law for the difference in treatment - i.e. that the five communities 'constitute the historical, cultural and social heritage of the country' - is questionable, as it suggests that religious communities which are not expressly named are not part of that 'historical, cultural and social heritage'. This is all the more so given that the requirement to apply for registration does not only relate exclusively to religious communities in Kosovo* established after the Draft Law comes into force.

To avoid a discriminatory approach, it is essential that the authorities of Kosovo* ensure that all other established religious groups which form part of the historical, cultural and social heritage of Kosovo* are included in the list.

In deciding whether there are other religious communities that can be compared with the five listed communities, the authorities have a certain margin of appreciation according to the European standards. Nonetheless, as it appears from the case law of the European Court of Human Rights, state authorities must apply the criteria in a neutral way and on an equal basis in assessing whether or not to include a given religious community in the list of those communities in Article 4.A.1 of the Draft Law. The decision to grant or not to grant this special treatment is a delicate question and the authorities must be careful to treat all religious communities fairly in deciding whether they meet the criteria set in the Draft Law, i.e. whether they also constitute the 'historical, cultural and social heritage of the country'. Including one religious community with particular relevant characteristics whilst at the same time excluding another which also has those characteristics is unlikely to be justified."

CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §§60, 61, and 62

"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
See also
CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §28

"[…] Examples of burdensome requirements which are not justified under international law include, but are not limited to the requirement that the registration application be signed by all

members of the religious organization and should contain their full names, dates of birth and places of residence, to provide excessively detailed information in the statute of the religious organization, to pay excessively high or unreasonable fees for registration, to have an approved legal address or the requirement that a religious association can operate only at the place identified in its registration documents. […] Also, religious or belief communities interested in obtaining legal personality status should not be confronted with unnecessary bureaucratic burdens or with lengthy or unpredictable waiting periods. Should the legal system for the acquisition of legal personality require certain registration-related documents, these documents should be issued by the authorities."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §25

"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 the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §32 (related to a membership requirement of 200)
> See also
> 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, §36 (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

"Article 7.B.1.1., requiring the religious community a minimum of fifty members, adult citizens of the Republic of Kosovo*, does not give rise to criticism, although no specific explanation was given to the Rapporteurs for setting the minimum number at fifty (other than an attempt to find a compromise between various views within the religious communities).The Guidelines state that high minimum membership requirements should not be allowed with respect to obtaining legal personality (see Guidelines, II.F.1)."

> CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §68

"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

"[…] [R]egistration may be refused if a community's name 'is identical or similar with the names of another community recognized under Article 4A' (new Art. 7B. 3). To avoid a too restrictive approach, this formulation would benefit from being more specific, for example by stating that registration may be refused only *if there is a very high risk that the name of an applicant community will be confused* with the name of another community recognized under Article 4A."

> CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §38

"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 the OSCE/ODIHR, §91

"[…] [L]egislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign, non-citizen persons or that its headquarters are located abroad."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §29

"[…] The Venice Commission recalls that in the Moscow Branch of the Salvation Army v. Russia Case, the European Court for Human Rights was reluctant to accept the foreign origin of an NCO as a legitimate reason for a differentiated treatment; the same reluctance would a fortiori be in place in case of mere foreign funding."

> CDL-AD(2014)025, Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, §92

"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

"Article 7.B.1.2 requires the religious community to have 'their statute/regulation and a clear hierarchy of organization'. This condition seems to exclude from registration the religious communities without 'a clear hierarchy of organization'. However, not all religions have a 'clear hierarchy of organization'; there are also communities which are more loosely organized or have a democratic-horizontal structure.

It is not clear to the Venice Commission for what purpose only religious communities organized on a clear, hierarchical basis, can be registered, and no comprehensive explanation was given to the rapporteurs during the visit to Kosovo*.[…]"

"Instead of requiring a 'clear hierarchy of organization', the Draft Law should only require that the religious community be able to present a representative body for the purpose of its contacts with the public authorities and its capacity to operate as a legal entity. Moreover, in order to guarantee legal certainty to the natural and legal persons dealing with other religious communities, it should be made clear which organs of the legal entity can make decisions that are binding on itself and its members."

> CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §§69, 70 and 71

"[…] [T]he legal personality status of any religious or belief community should not be made dependent on the approval or positive advice of other religious or belief communities […]."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §30

"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

"New Article 7.B.1.2 requires the purpose or practices of the religious community '*not to be in contradiction with the inter-religious tolerance and the Constitution of the Republic of Kosovo**[…]'. This condition is very vague and may open the door to arbitrary denial of registration. The

legislature should indicate more precisely at least in the *travaux préparatoires*, what kind of purposes and activities are deemed to be 'in contradiction with the inter-religious tolerance and the Constitution'. The Venice Commission recalls its stance in a previous opinion: '*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. The state may interfere if the religion concerned is an extremely fundamentalist one, if it has certain goals which threaten State security or public safety, in particular if it does not respect the principles of a democratic state, or infringe upon the rights and freedoms of its adherents*.' In this connection, new Article 7.B.2 should not be interpreted as prohibiting legitimate proselytism. It is only when the activities of the religious community have the potential to seriously harm societal interests, mentioned in the restriction clause of Article 9(2) ECHR, that registration should be refused."

> CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §75

"[…] Religious or belief communities therefore have a right to prompt decisions on registration applications (where applicable) and a right to appeal. […] [A]ccess to court and a proper and effective review of relevant decisions should always be possible. This principle applies regardless of whether an independent tribunal decides on legal personality directly, or whether such decision is taken by an administrative body, in which case subsequent control of the decision should be exercised by an independent and impartial court, including the right to appeal to a higher instance."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §35

"The obligation for the Office to take its decision within 30 days after the reception of a request for registration and the possibility to appeal against a negative decision before the competent court within 30 days, in compliance with the Guideline according to which 'Parties asserting religious claims should have rights to effective remedies', is welcome. […]"

> CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §78

"In cases where new provisions to the system governing access to legal personality of religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities. Where laws operate retroactively or fail to protect vested interests of religious or belief organizations (for example, requiring re-application for legal personality status under newly introduced criteria), the state is under a duty to show that such restrictions are compliant with the criteria set out in section I. In particular, the state must demonstrate what objective reasons would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons. Religious or belief organizations should not be subject to excessively burdensome or discriminatory transfer taxes or other fees if transfers of title to property owned by the prior legal entities are required by new regulations."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §36

9.4. Liability and dissolution of religious or belief organisations

"The state must respect the autonomy of religious or belief communities […]. [S]tates should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, the substantive content of its beliefs, the structure of the community and methods of appointment of the clergy and its name and other symbols. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization. Considering the wide range of different types of organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area."

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §31

"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."

> 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 the 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
> See also
> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §33

"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 body. 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

"The withdrawal of legal personality from a religious or belief *organization* should not in any way imply that the religious or belief *community* in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms. […]"

> CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §34

10. 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 the 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 or Armenia by the Venice Commission and the 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

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

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 the OSCE/ODIHR and the Venice Commission

CDL-AD(2013)023 - Interim Opinion on the Draft Law on Civic Work Organisations of Egypt

CDL-AD(2013)030 - Interim Joint Opinion on the Draft Law amending the Law on non-commercial Organisations and other legislative Acts of the Kyrgyz Republic

CDL-AD(2014)010 - Opinion on the draft law on the review of the Constitution of Romania

CDL-AD(2014)012 - Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*

CDL-AD(2014)023 - Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR

CDL-AD(2014)025 - Opinion on Federal Law No. 121-FZ on non-commercial organisations ("Law on foreign agents") and on federal laws No. 18-FZ and No. 147-FZ on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation