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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF THE VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING

FREEDOM OF RELIGION AND BELIEF[1]

(revised in November 2020)

[1] *This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 124th Plenary Session (8-9 October 2020).*

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I. 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 Religion and Belief. 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 references for drafters of constitutions and of legislation relating to Freedom of Religion and Belief, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document 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 relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

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

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been 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 corresponding opinion or report/study. 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 Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order 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 quote is missing, superfluous or filed under an incorrect heading (Venice@coe.int).

II. International standards on freedom of religion and belief

"The most relevant instruments are the International Covenant on Civil and Political Rights (ICCPR hereinafter), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) […]"

> **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, §16.**

"International Human Rights instruments identify the circumstances in which a State may legitimately limit religious freedom. Article 9.2 of the ECHR and Article 18.3 of the ICCPR set strict limitations clauses; laws must satisfy three criteria:

- Limitations have to be imposed by law;
- Limitations have to preserve one of the interests explicitly mentioned in Article 9. 2 ECHR or in Article 18.3 ICCPR i.e.: public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others;
- Limitations have to be 'necessary in a democratic society'. An interference with the religious activities of churches is only necessary when there is a 'pressing social need' and when the measure taken is 'proportionate to the legitimate aim pursued'."

> **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 of Hungary, §25.**

"Article 10 (2) of the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms ("CISCHR") reads as follows:

'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others'."

> **CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §4.**

"A. International Conventions, United Nations, and UN Specialized Agencies

- International Covenant on Civil and Political Rights (1966) (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Universal Declaration of Human Rights (1948) (UDHR)
- Relevant obligations from other international conventions
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
- United Nations Human Rights Committee General Comment 22
- Reports of United Nations Special Rapporteurs
- Other United Nations and specialized agency documents

B. Council of Europe

- [European] Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR)
- Decisions of the European Court of Human Rights
- Other Council of Europe documents

C. OSCE

- Commitments and Concluding Documents of the OSCE process (particularly the 1989 Vienna 1989 Concluding Document)
- 'Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities'
- Previous Panel legislative analyses
- Recommendations by the OSCE High Commissioner for National Minorities
- Other OSCE documents"

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 3-4.

III. Definition of Freedom of Religion or Belief

"Article 18 of the ICCPR is almost identical in wording to Article 9 of the European Convention, stating:

*"*1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or freedom of his choice.*

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others.*

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.*"

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, §18.

CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §11.

"Article 9 of the ECHR provides for the Freedom of thoughts, conscience and religion in the following terms:

'1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion and belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection on public order, health or morals, or for the protection of the rights and freedoms of others'."

CDL-AD(2007)005, Opinion on the draft law on the legal status of a church, a religious community and a religious group of "the former Yugoslav Republic of Macedonia", §19.

A. Religion or belief

"To be compatible with international human rights standards the term belief must have a broad scope and not be limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The term belief must be detached from religion so that it is clear that the law protects freedom of religion *and* belief in a very broad sense, i.e. also theistic, non-theistic, atheistic and agnostic beliefs."

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, §34.

"There is no comprehensive definition of 'religion' available in the jurisprudence of the European Court of Human rights and it is inherently ambiguous as a concept. However it necessarily involves some form of religious belief though it does not necessarily require a belief in God. The Guidelines observe that international standards for protection of thought, conscience and religion speak of religion in the sense of religion or belief commenting that '[the] 'belief' aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world' and therefore atheism and agnosticism are entitled to protection the same way as religious beliefs. Furthermore the rights of non-believers are also protected.

Any prior restraints inherent in a pre-authorization of what counts as religion call for the most careful scrutiny. Attempts to define religion must avoid being arbitrary, subjective or creedbound."

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, §§46-47.

"As no historical manifestation of religion is known that has not exhibited an unvarying process of change, evolution and development, any criteria of defining religion must be flexible […]".

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, §55.

"Generally, in human rights documents, 'freedom of religion' and 'freedom of conscience' are dealt with separately. On the other hand, international standards guarantee the freedom of religion together with freedom of belief. The 'belief' aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Both religion and belief are entitled to protection."

CDL-AD(2007)041, Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania, §8.

"Legislation often includes the understandable attempt to define 'religion' or related terms ('sects', 'cults', 'traditional religion', etc.) There is no generally accepted definition for such terms in international law, and many states have had difficulty defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent

ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counterexamples are classical Buddhism, which is not theistic, and Hinduism (which is polytheistic). In addition, terms such as 'sect' and 'cult' are frequently employed in a pejorative rather than analytic way."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 4.

"Religion or belief. International standards do not speak of religion in an isolated sense, but of 'religion or belief'. The 'belief' aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 4.

B. Content of Freedom of Religion and Belief

"[…] As mentioned above, it is recommended to define the right to freedom of religion or belief. As such, this right is not restricted to only professing or not professing a religion or belief. It has the absolute inner dimension of thought and conscience (which includes the right to have or adopt a religion or belief or change a religion or belief) and external manifestations through worship, teaching, observance and practice, either alone or in community with others, in public or in private. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §25.

"It is important to underscore that the freedom to manifest one's religion or belief encompasses the right to try to convince others of the validity of one's religion or beliefs or to attempt to persuade others to convert to another's religion, for example through "*preaching*" or "*teaching*". As such, "*inculcating religious views*" and "*exerting ideological influence on a perso*n" are legitimate activities protected by the right to freedom of religion or belief as long as they are not accompanied by coercion. […]"

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §46.

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §51.

"Freedom of religion or belief entails the freedom to teach the tenets of one's religion or belief to others. Article 18 of the ICCPR contains an explicit reference to the right to manifest one's religion or belief in public or in private – individually or in community with others – through "teaching", as does Article 9 of the ECHR. [...]

More generally, the appointment of experts to assess religious or belief materials should be considered with great caution. The right to freedom of religion or belief includes the right of religious or belief communities to provide their own authorized interpretations of the community's sacred texts or doctrinal works. As such, this right – along with the principle of "separation of religion from the state", supporting that right – in principle excludes any

discretion on the part of the State to determine whether religious or other beliefs or the means used to express such beliefs, including religious literature or any other materials containing so-called “religious content” are legitimate.”

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§53, 63.**

“[…] Indeed, it is important to underscore that the freedom to manifest one’s religion or belief also encompasses the right to try to convince others of the validity of one’s religion or beliefs or to attempt to persuade others to convert to another’s religion, for example through “preaching” or “teaching”. […]”

> **CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §38.**

“Both Article 9 (1) ECHR and Article 18 (1) ICCPR expressly recognize that the right to freedom of religion ‘includes freedom to change [one’s] religion or belief’.”

> **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, §31.**

“[…] It is recommended to specify that one’s religious belief can be exercised ‘in worship, teaching, practice and observance’ as guaranteed by international human rights instruments.”

> **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, §33.**

“[…] [T]he right to have, adopt or change religion or belief is not subject to any limitation. Moreover, the right to manifest religion or belief must be broadly construed. Legislation that protects only worship or narrow manifestation in the sense of ritual practice is therefore inadequate.

[…] No one can be compelled to determine or reveal his/her thoughts or adherence to a religion or belief. The European Court of Human Rights has underlined that the freedom to manifest one’s religion has the negative aspect of not being obliged to disclose one’s religion. International human rights standards require there to be a clear distinction between the right to believe and the freedom to manifest religion or belief.”

> **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, §§28, 30.**

“Freedom of thought, conscience and religion and of beliefs is one of the foundations of a ‘democratic society’.”

> **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 of Hungary, §18.**

“[…] [T]he United Nations Human Rights Committee in its General Comment on Article 18.1 of the ICCPR has drawn the attention of States parties to the fact that the freedom of thought and the freedom of conscience are equally protected with the freedom of religion and belief.”

“[…] The term practice unlike worship may include not only ceremonial acts, as pointed out by the Human Rights Committee but ‘also such customs as the observance of dietary regulations, the wearing of distinctive clothing [...] , participation in rituals associated with certain stages of

life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications'."

"[…] [T]he protection afforded with the right to freedom of thought, conscience and religion in both Article 9 of the ECHR and Article 18 of the ICCPR is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions […]."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§22-24.**

"That the scope for belief and practicing religion should be 'broadly construed' is further confirmed in the UN Human Rights Committee's General Comment No. 22, stating that Article 18 of the ICCPR is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. Both the ECHR and the ICCPR protect theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. Article 9 of the ECHR protects pacifism and any belief akin to 'religious or philosophical convictions', 'views that attain a certain level of cogency, seriousness, cohesion and importance'."

> **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, §43.**

"Religious freedom involves freedom to manifest one's religion in private and in community with others […]."

> **CDL-AD(2007)005, Opinion on the draft law on the legal status of a church, a religious community and a religious group of "The Former Yugoslav Republic of Macedonia", §46.**

C. Inter-relationship of human rights norms

"Freedom of association and freedom of expression, including in the formation and functioning of political parties, are individual and collective rights that must be respected without discrimination, including on the ground of religion or belief. Further, the United Nations Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) states that "[p]ersons belonging to minorities may exercise their rights… individually as well as in community with other members of their group, without any discrimination" (Article 3 para. 1). Manifesting religious convictions in the political field is protected by the right to freedom of religion or belief, expression and association. […]"

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §34.**

"The freedom of thought, conscience and religion (Article 9 ECHR and 18 ICCPR), is a complex right, which is closely linked to and must be interpreted in connection with the freedom of association (Article 11 ECHR and 22 ICCPR), and the right to non-discrimination (Article 14 ECHR and 26 ICCPR)."

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 of Hungary, §19.

"The European Court of Human Rights has specifically stated: 'Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is, thus, an issue at the very heart of the protection which Article 9 affords'.

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 of Hungary, §31.

"The fundamental right to freedom of thought, conscience and religion is laid down in Article 9 of the European Convention of Human Rights, which is the basic provision for assessing the case at hand. It is, however, not the only one. As has been stressed in the case law of the European Court of Human Rights (ECtHR), freedom of religion is not merely an individual right, but also has a collective dimension. As a consequence the ECtHR has held in a number of cases that Article 9 should be interpreted and applied in conjunction with Article 11 on freedom of association, in such a way that religious communities are offered the possibility to register in a way which makes it possible for them to exercise effectively and collectively their religious beliefs. This was held inter alia in the case of Hasan and Chaush v. Bulgaria from 2000, and then reiterated and developed in the case of The Metropolitan Church of Bessarabia v. Moldova from 2001, in which the Court held, inter alia, that:

'118. Moreover, since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords (see Hasan and Chaush, cited above, §62).

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

CDL-AD(2010)005, Opinion on Legal Status of Religious Communities in Turkey and the Right of the orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §9.

"Freedom of expression as guaranteed by Article 10 ECHR is an essential foundation of a democratic society. It is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend shock or disturb. This is of particular relevance in the context of religious expression."

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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights

and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §25.

"International standards pertaining to freedom of religion and belief do not arise solely from clauses in covenants, conventions, and documents addressing religion and belief specifically. They come also from other clauses, such as those pertaining to association, expression, and rights of parents. For example, some European Court of Human Rights cases that with important implications for religion do not necessarily rely on article 9, but on other grounds. Important examples include Hoffmann v. Austria (1993)."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 5

D. Margin of appreciation

"The Venice Commission understands that, in the light the historical and political context prevailing in Kosovo, 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."

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*[2], §57.

"While it is recognized that a State benefits from a large margin of appreciation this should not be interpreted with a degree of latitude that would permit the undermining of the substance of human rights values."

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 of Hungary, §§16, 20.

"International standards generally, and the European Convention organs in particular, recognize that a certain measure of discretion, a margin of appreciation, must normally be left to States to enact laws and implement policies that may differ from each other with regard to different histories and cultures.

The margin of appreciation is particularly relevant with respect to freedom of religion and the so-called political rights protected in articles 8-11 of the ECHR. The margin of appreciation is usually applied when there is a need to balance conflicting rights against each other or against competing public interests. The doctrine may however not be resorted to when there is the slightest possibility of a measure involving discrimination between groups or the undermining of the substance of human rights values. The margin of appreciation is not to be understood as a reserved domain for the Member States of the Council of Europe to implement legislation circumventing important underlying 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, §§48-49.

[2] 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.

"Although States enjoy the margin of appreciation in assessing what is necessary to protect believers and the public in general from the potential abuse of religious organizations, the drafters should take care not to deter believers from engaging in religious conduct that should be protected exercise of freedom of religion."

> **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, §70.**

"The Commission recalls in this respect that the wide margin of appreciation of Contracting States about Church/State regimes is not given a carte blanche: no legal regime of Churches-State relationships is exempted from the provisions of the ECHR, especially article 14 linked to article 9. Religious freedom has to be equally guaranteed to any religious community. Only distinctions which are reasonable in a democratic society may be acceptable."

> **CDL-AD(2007)041, Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania, §19.**

"Contracting States to the Convention benefit from a specifically large margin of appreciation with regard to Church and state relationships and with regard to the choice of their policies and regulations in this field. However, even if the margin of appreciation is large and even if various solutions have been found throughout the countries, the European guarantees must not be undermined because of this […]."

> **CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §12.**

"The Commission draws the attention of the drafters to the fact that this vagueness in the drafting may leave too wide a margin of discretion to state authorities. A law governing specific issues should be more precise than international general obligations and principles."

> **CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §65.**

"International standards generally, and the European Court of Human Rights specifically, presume that there is a 'margin of appreciation' that must be respected that allows States to enact laws and implement policies that may differ from each other with regard to different histories and cultures. While this margin of appreciation should be respected, it should not be interpreted with a degree of latitude that would permit the undermining of the substance of human rights values. While laws of different States do not need to be identical and while they should be allowed some flexibility, this flexibility should nevertheless respect the important underlying rights."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 6.**

IV. Basic principles underlying international standards for freedom of religion or belief

A. Internal freedom (forum internum)

"Article 18 [of the ICCPR] distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in Article 19.1. In accordance with Articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief."

CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, §36.

"[…] Both Article 9 (1) ECHR and Article 18 (1) ICCPR expressly recognize that the right to freedom of religion 'includes freedom to change [one's] religion or belief'. It is recommended that this right is also guaranteed, as it falls within the domain of the *forum internum*, which is absolute […]."

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, §31.

"[…] One of the most fundamental international standards concerns the right to internal freedom of belief — the so-called forum internum. According to Article 18(3) (and this is replicated in other limitation clauses in other international instruments), limitations may only be imposed on manifestations of belief. The internal right to have or adopt a religion may not be regulated by the state."

CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §3.

"[…] [A]ccording to international standards the forum internum cannot be subjected to limitations of any kind."

CDL-AD(2007)041, Opinion on the draft law on freedom of religion, religious organisations and mutual relations with the state of Albania, §58.

"1. The key international instruments confirm that '[e]veryone has the right to freedom of thought, conscience and religion'. In contrast to manifestations of religion, the right to freedom of thought, conscience and religion within the 'forum internum' is absolute and may not be subjected to limitations of any kind. Thus, for example, legal requirements mandating involuntary disclosure of religious beliefs are impermissible. Both the UDHR (art. 18) and the ECHR (art. 9) recognize that the protection of the internal forum includes the right to change one's religion or belief. The U.N. Human Rights Committee's General Comment No. 22 (48) on Article 18 states that 'freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief'**.** *In any event, the right to 'change' or 'to have or adopt' a religion or belief appears to fall within the domain of the absolute internal freedom right, and legislative provisions which impose limitations in this domain are inconsistent with internal freedom requirements***."**

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 6-7.

B. External freedom (forum externum)

"The freedom to *manifest* thought, conscience and religion or belief *(forum externum)* can be limited, as opposed to the right to have, adopt or change a religion or belief (*forum internum*), which is absolute and cannot be subject to limitations of any kind. […]"

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 10.

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §44.

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

> **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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §17.**

"Everyone has the freedom, either alone or in community with others, in public or private, 'to manifest his [or her] religion or belief in worship, observance, practice, and teaching'. ICCPR, Art. 18.1. As suggested by this phrase, the scope of protected manifestations is broad. Thus, legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate. Also, it is important to remember that it is both the manifestations of an individual's beliefs and those of a community that are protected. Thus, the manifestation of an individual's beliefs may be protected even if the individual's beliefs are stricter than those of other members of the community to which he or she belongs. Recognizing this fact, however, does not imply that the beliefs of a community as a collectivity do not also warrant respect. Manifestations of religion or belief, in contrast to internal freedom, may be limited, but only under strictly limited circumstances set forth in the applicable limitations clauses."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 6**.

C. Equality and non-discrimination

"[L]egislation should *'assure that any differentiations among religions are justified by genuine objective factors and that the risk of prejudicial treatment is minimized or better, totally eliminated. Legislation that acknowledges historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for ongoing discrimination*'.

[…] [W]hile international law does not oblige States to provide an identical status to all religious communities, it nonetheless regards all advantages granted exclusively to one religious community as unjustified unless they are based on a legitimate justification and remain proportionate."

> **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*, §§51-52.**

"[T]he basis set out in the draft law for the difference in treatment [between different religious communities] - 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*, §§60-62.**

"[…] States are obliged to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind. Freedom of religion or belief is a human right that is not restricted to citizens. It is therefore recommended to extend the scope of the prescribed rights to non-citizens, unless specific limitations are necessary in a democratic society for the purposes established under international 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, §99.**
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> **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 of Hungary, §93.**

"[…] Freedom of religion or belief is a human right that is not restricted to citizens. […]"

"[…] [U]nder international law, freedom of religion cannot be restricted on grounds such as nationality or place of study."

> **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, §99**.

"The European Court of Human Rights, in its judgment in the case *Religionsgemeinschaft Zeugen Jehovas v. Austria*, considered that if a State confers substantial privileges to religious societies by a specific status it must then establish a legal framework which would give to all religious groups a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner."

> **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 of Hungary, §99.**

"Freedom of thought, conscience and religion comprise part of the essential foundation of a democratic society and pluralism requires that '*a balance must be achieved which ensures the fair and proper treatment of minorities and avoids the abuse of a dominant position*'."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §34.**

"Authorities must proceed from the need to protect fundamental rights including the right to equality and non-discrimination on all grounds. Any kind of limitation of the right to manifest

ones belief in community with others may only be applied for the purposes prescribed in the law (Art. 9 (2) ECHR and 18 (3) ICCPR) and must be directly related and proportionate to the specific need on which it is predicated. Limitations may not be imposed for discriminatory purposes or applied in a discriminatory manner."

> **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, §50.**

"States are obligated to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status. Legislation should be reviewed to assure that any differentiations among religions are justified by genuine objective factors and that the risk of prejudicial treatment is minimized or better, totally eliminated. Legislation that acknowledges historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for ongoing discrimination."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p.6.**

D. Neutrality and impartiality

"A new article 7C.7 […] allows the Office for the Registration of Religious Communities to 'organise various religious-related activities' and to 'consult with representatives of religious communities for the organization of these events'. The Office being a Government body acting within the Ministry of Justice, it is not clear to the Venice Commission how this provision complies with the principle of neutrality of the State, which is enshrined in Article 8 of the Constitution and in the Articles 5.1. and 2 of Law No 02/L-31, providing that there shall be no official religion and that religious communities shall be separated from public authorities. By organising religious-related activities, the Office would become involved in some registered religious communities' internal affairs. Furthermore, it is not clear what sorts of 'activities' are envisaged."

> **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*, §87.**

"The mere fact that a state proclaims that there is a dominant religion is not, in itself, contrary to international standards. However, as pointed out in General Comment No. 22 of the Human Rights Committee on the right to freedom of thought, conscience and religion […] 'the fact that a religion is recognised as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers'. […]

The expression that 'the state is the guardian of (the) religion' is ambiguous. […] [I]t should be modified stipulating that the state protects 'freedom of religion'. The Tunisian authorities have explained that the state being the guardian of religion refers to the task of the state to help maintain the religious infrastructure: the maintenance of religious buildings and places and the remuneration of ministers of religion. Such arrangements, in which the state supports religions and their institutions, are common in many national systems, including in many European countries, and - if non-discriminatory - fall within the state's margin of appreciation. […]

Article 6 [of the draft Constitution] does not guarantee *freedom of religion as such*, but proclaims the role of the state as the protector of religion; it confines itself to guaranteeing the freedom of conscience, belief and worship, without expressly guaranteeing the right to

manifest one's religion or convictions, including non-religious ones. This, considered in the light of the statement in the Preamble that the Constitution is based on the teachings of Islam, the unalterable nature of the principle of Islam as the state religion (Article 141) and the requirement that the President of the Republic be of the Muslim faith (Article 73), could lead to the conclusion that the Constitution protects Islam to the detriment of other religions. […] [T]his conclusion would be ruled out if it were expressly stated that the state is the guardian of the freedom of religion."

CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, §§27, 32, 35.

"As stated by the European Court of Human Rights in Metropolitan Church of Bessarabia v. Moldova, 'in exercising its regulatory power […] in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial'. Among other things this obligation includes an obligation to refrain from taking sides in religious disputes. When faced with religious conflicts, 'the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'. In legislation dealing with the structuring of religious communities, the neutrality requirement 'excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed'. Accordingly, '[s]tate measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, […] constitute an infringement of the freedom of religion'. Similarly, 'where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9'. In general, the neutrality requirement means that registration requirements that call for substantive as opposed to formal review of the statute or charter of a religious organisation are impermissible."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 6.

CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §78.

"In exercising their regulatory power authorities in relations with various religions, denominations and beliefs, have a duty to remain neutral and impartial. The neutrality requirement co-exists with the principle of equality and non-discrimination making it mandatory for authorities not to make the exercise of freedom of religion under domestic law subject to strict criteria which is tantamount to prior authorization. In legislation dealing with the structuring of religious communities, the neutrality requirement "excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed."

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, §54.

V. Restrictions on the exercise of Freedom of Religion and Belief

A. External freedom

"Finally, it is worth emphasizing that Article 14 para. 5 of the current 1998 Law prohibits the wearing of "*religious dress*" in public places by persons other than "*ministers of religion".* In

contrast, the Draft Law does not ban wearing religious attire in public for those who are not in the service of religious organizations, though administrative liability for such activities is still contemplated by Article 1841 of the Code of Administrative Offences. This prohibition also unduly restricts the right to manifest one's religion or belief in public, and have the potential to unduly affect women who wear the hijab or headscarves, as noted by the UN Special Rapporteur on Religion or Belief during its visit to Uzbekistan. […]"

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §60.**

"[…] [I]t is only *manifestations* of freedom of religion or belief – and not freedom of religion as such – that can be justifiably limited. Under international law, inner beliefs (*forum internum*) may not be subject to limitations of any kind, and the freedom of religion or belief may only be restricted in its external manifestations (*forum externum*), strictly in accordance with the limitations clauses prescribed by Articles 9 (2) ECHR and 18 (3) 3 ICCPR13 […]."

> **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, §38.**

"International human rights instruments and State constitutions typically identify not only the right of freedom of religion or belief, they also identify the circumstances where a State legitimately may limit the manifestation of those rights. The internal freedom rights of conscience and belief may never be limited by the State. Thus the European Convention on Human Rights (ECHR), for example, contains a 'limitations clause' that allows for the restriction of religious manifestations that are 'prescribed by law and [that 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' (ECHR, art. 9.2)."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, II G, p. 12.**

B. Restriction conditions

"[…] It should also be emphasized that openness and transparency are not *per se* mentioned as legitimate aims justifying restriction in Article 18 para. 3 of the ICCPR. […]

[…] The OSCE/ODIHR, the Venice Commission and other international bodies have raised concerns pertaining to "*extremism*"/"*extremist*" and "*fundamentalism*" as legal concepts and the vague and imprecise nature of such terms, particularly in the context of criminal legislation. In practice, the vagueness of such terms may allow States to adopt highly intrusive, disproportionate and discriminatory measures, as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called "*extremism*" charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment in the Republic of Uzbekistan. The use of the terms "*extremism*" and "*fundamentalism*" may substantially increase State control over religious or belief communities and criminalize perfectly legitimate activities performed by them. […]."

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§29-30.**

"[…] Freedom of expression and freedom of association may be limited to pursue the legitimate aims provided by Articles 19 para. 2 and 22 para. 2 of the ICCPR, including for

reasons of public order, protection of public health or morals, national security, and the protection of the rights (or reputations for freedom of expression) of others.

In order for a restriction on freedom of association to be legitimate, the activities or aims of a political party would need to constitute a real threat to the state and its institutions or/and involve the use of violence.47 It is difficult to accept that this would automatically apply to all political parties affiliated with or carrying the name of a certain religious denomination, without exception. Rather, such limitations would only be permissible on a case by case basis with regard to political parties, which pose a serious and immediate danger to public order and which seek to pursue their aims in a violent manner.48 Accordingly, a political party should not be prohibited solely because it is a party with religious attributes. It is worth noting that it is normal practice across the Council of Europe and OSCE region for political parties to operate on the basis of or inspired by religious beliefs, or with the participation and support of religious communities.49 Moreover, this provision may not only interfere with freedom of expression protected by Article 19 of the ICCPR by restricting religiously inspired political arguments, but may also limit the expression of members of religious or belief organizations in political debate, which is protected under Article 25 of the ICCPR."

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§34-35.

"[…] In that respect, the OSCE/ODIHR and the Venice Commission have on several occurrences raised some concerns concerning the inclusion of "*state security*" as a ground for limiting freedom of religion or belief. Indeed, both the UN Human Rights Committee and the ECtHR have considered that the grounds justifying exceptions to the right to manifest one's religion or belief must be narrowly interpreted and be exhaustive. The list of limitation grounds laid out in international instruments – which do not refer to "state security" – allows limitations on manifestations of religion or belief only where these involve or may lead to a concrete breach of public order or safety, but not in cases involving generalised or abstract claims of threats to state security. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §89.

"[…] Limiting the right to train religious personnel only to registered and licensed institutions is an interference both with the right of everyone to "manifest his religion or belief [. . .] in practice and teaching" as stated in Article 18 para. 1 of the ICCPR and with the right of religious organization to freely impart this education and Article 6 (e) and (g) of the 1981 UN Declaration. Also, such registration and licensing requirement may de facto disproportionately restricts the right to freedom of religion or belief, especially of minority religious or belief communities, which may be unable to fulfil the registration and licensing requirements, for instance because of lack of property for conducting educational activities, lack of their teachers' religious/belief education, lack of financial resources to pay the registration fee etc.

[…] Forbidding religious organizations from collecting money from their members, even in a more or less compelling manner, is not "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others" and thus does not meet the requirements of Article 18 para. 3 of the ICCPR on limitations to the right to freedom of religion or belief[…]."

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§95, 102.

"[…] The list of limitation grounds laid out in international instruments – which do not refer to "state security" – allows limitations on manifestations of religion or belief only where these involve or may lead to a concrete breach of public order or safety, but not in cases involving generalised claims of threats to state security. […]"

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §38.

"A new article 7C.8 of Law No.02/L-31, added by Article 6 of the Draft Law, requires religious communities '*to inform the Office to participate in various organizations or conferences outside the country where participated as representatives of Kosovo*'*. The meaning of this provision is not clear. Since [Kosovo* is a secular state], religious communities in principle cannot act as 'representatives' of the State.

According to the drafters of the amendment, the only purpose is to impose an obligation on religious communities to inform the Office of their membership of foreign organisations, as representatives of a religious community of Kosovo*. Even if this is the purpose of the legislator, the provision […] still contains a limitation of the freedom of religion […] which needs to be justified in the light of Article 9 […] of the ECHR. The Venice Commission cannot see the grounds on which such an obligation could be deemed to be 'necessary in a democratic society in the interests of public safety, public order, health or morals, or for the protection of the rights and freedoms of others'."

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*, §§90-91.

"One of the basic values underlying international human rights standards of religion or belief is non-coercion. No one should be subject to coercion that would impair his or her freedom of religion or belief. This aspect of freedom of religion protects against practices that use compulsion to go beyond reasonable persuasion using improper methods or means."

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, §39.

"The standard international analysis, which may vary depending on the country and the status of ratification of international instruments, makes three basic inquiries. First, is the limitation prescribed by law, meaning is it sufficiently clear as to give notice of what is and is not prohibited. Second, is the purported basis for the limitation among those that are identified in the limitations clause. (Note that 'national security' is not a permissible limitation under ECHR art 9.2 or ICCPR art. 18.3.). Third, is the limitation proportionate to the public interest that is served? Laws must satisfy all three inquiries. The European Court of Human Rights as well as the U.N. Human Rights Committee in the latter's General Comment 22 state that limitations should be construed strictly.

Article 4(2) of the ICCPR provides that States may make no derogation from the right to freedom of religion or belief, not even in times of public emergency. In this regard, the right to freedom of religion or belief is accorded even higher priority than freedom of expression or freedom of association. This does not mean that other State interests may never override freedom of religion or belief. But it does mean that even during times of public emergency, this fundamental right can be overridden only if this is warranted under the applicable limitations clause."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 12

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 of Hungary, §25.

CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §4.

"The '*prescribed by law*' element of the limitations clause is crucial as it safeguards commitments to the rule of law, including the value of legal certainty. It aims to ensure that only those limitations can be imposed on the freedom to manifest religion or belief, that have a basis in domestic law, and it furthermore requires that the law itself be adequately accessible and foreseeable, and contain sufficient protection against arbitrary application […].

In order to be '*necessary in a democratic society*' the limitation of the freedom must correspond to a pressing social need, be proportionate (i.e. there must be a rational connection between public policy objective and the means employed to achieve it and there must be a fair balance between the demands of the general community and the requirements of the protection of an individual's fundamental rights), and the justification for the limitation must be relevant and sufficient. In *Kokkinakis v Greece*, the European Court of Human rights held that the application of a Greek law criminalising proselytism did pursue the legitimate aim of the protection or the rights and freedoms of others. However, the Court found it not to be necessary in a democratic society because it could not be justified by a '*pressing social need*'."

CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§35-36.

"It is not enough to justify a limitation on a manifestation of religion by stating that the limitation is 'in the interests of the public security, health, morality or the protection of rights and freedoms of others' […]. The limitation must in addition be necessary, in the sense that the particular interest in question is pressing, is proportional in its magnitude to the religious freedom value being limited, and cannot be accomplished in some less burdensome manner. The necessity constraint is very often the most significant factor in assessing whether particular limitations are permissible. In this sense, international standards impose more rigorous 'limitations on the limitations' of manifestations of religion, and thus provide protection for a broader range of religious activities."

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

"While a State is 'entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population', it may not go further and appear to be assessing the comparative legitimacy of different beliefs; further, 'the State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom'. Any interference must thus correspond to a 'pressing social need'."

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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia, §34.

"[…] [L]imitations can only be imposed by law, and in particular, by laws that comport with the rule of law ideal. Many of the constraints on religious association laws described above flow

from this requirement. Thus, limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but are so vague that they do not give fair notice of what is required or they allow arbitrary enforcement. Due process considerations, such as the rights to prompt decisions and to appeals, also reflect this basic rule of law requirements.

[…] [L]imitations must further one of a narrowly circumscribed set of legitimating social interests. Recognizing that too often majority rule can be insensitive to minority religious freedom rights, the limitations clause makes it clear that in addition to mustering sufficient political support to be 'prescribed by law', limitations are only permissible if they additionally further public safety, public order, health or morals, or the rights and freedoms of others. Significantly, as the UN Human Rights Committee's official commentary on the parallel language of Article 18(3) of the ICCPR points out, the language of the limitations clause is to be strictly interpreted.

[…] [E]ven if a particular limitation on freedom of religion or belief passes all the foregoing tests, it is only permissible as a matter of international human rights law if it is genuinely necessary. The decisions of the European Court of Human Rights (hereafter, 'the European Court') in Strasbourg, which has had the most experience adjudicating the meaning of limitation clause language, have made it clear that in most cases analysis turns ultimately on the necessity clause. In the European Court's decisions, public officials defending a certain limitation can often point to legislation supporting it, and the legitimating grounds of Article 9(2) are broad enough that they can be used to cover a broad range of potential limitations. Insistence that limitations be genuinely and strictly necessary puts crucial brakes on state action that would otherwise impose excessive limitations on manifestations of religion.

[…] [A]n interference with religion is necessary only when there is a 'pressing social need' that is 'proportionate to the legitimate aim pursued'."

> **CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §§6-9.**

"Whilst it may in certain circumstances be necessary to restrict freedom of manifestation of religion where several religions co-exist so as to 'ensure that everyone's beliefs are respected', the state must remain neutral and impartial and 'not […] remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'."

> **CDL-AD(2007)005, Opinion on the Draft Law on the Legal Statius of Church, A religious community and a religious group of the "Former Yugoslav Republic of Macedonia", §46.**

"Whether legislation is necessary. It is important to bear in mind that legislation may not be necessary with regard to many of the issues for which a State might be considering enacting laws. Sometimes special legislation dealing with religious issues is proposed because of public reaction to particular incidents that have stirred public emotions, but that might in fact be better addressed by normal criminal or administrative actions. If a religious group is involved in a fraud or assault, for example, it is not necessarily best to respond by enacting new laws on religion. It is worth considering, following this example, whether the laws on fraud and assault may be sufficient without adding a separate offence to cover religion."

> **CDL-AD(2004)28, Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, p. 4.**

"*Religious 'extremism*'. The question of religious 'extremism' and state security has, during the last few years, been increasing in importance. There is no question that some groups and individuals, acting in the name of religion, have been involved in political violence. Regardless

of whether their motivation is sincere and religious, or political and manipulative, it is an issue to which states understandably and appropriately need to respond. The concern, of course, is that States may use 'extremism' as a rationale not only for responding to groups that are genuinely violent and dangerous, but that they may use the rhetoric of 'extremism' to suppress legitimate religious expression or to target groups whose beliefs may simply be different or unusual. With regard to legislation, it is important that laws focus on genuinely dangerous acts or commission of violence, and not unduly grant police powers to the State to suppress groups that are merely disfavoured or unusual."

CDL-AD(2004)28, Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, p. 5.

"Non-coercion. No one shall be subject to coercion that would impair his or her freedom of religion or belief. This aspect of freedom of religion or belief protects against practices that use compulsion to go beyond reasonable persuasion, either by improperly inducing an individual to change a religion or belief, or improperly preventing an individual from changing religions or beliefs. As a historical matter, the adoption of this provision was prompted more by concerns about legal and social pressures that would prevent a person from changing religions than by worries about missionary work, but the norm applies to use of compulsion in either direction. Although it may be permissible for a State to enact a law preventing bribes or other extreme material inducements, legislation should be reviewed to ensure that the proposed measures are designed to protect people from unwarranted pressures on people to change religions rather than unwarranted State pressures on people not to change religions. The non-coercion requirement also extends to legal requirements such as oath taking, flag salute requirements, or other State-mandated activities which force an individual to express or adopt beliefs inconsistent with those held by the individual. Coercive features of legislation should be reviewed with particular care."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 7.

C. Procedural guaranties - Right to effective remedy

"Finally, it is important to regulate the process leading up to such restrictions being imposed, including an indication of the responsible decision-making body, the content and modalities of the communications of the decisions on restriction and the need to motivate them and how the person or organization affected by the restriction can engage in the process and be heard. Moreover, access to an effective legal remedy in cases of unjustified or disproportionate limitations to the right to freedom of religion or belief should be guaranteed, to comply with Article 2 para. 3 of the ICCPR. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §47.

"[…] Non-registered religious or belief communities should also enjoy a similar right. In particular, they should have an effective remedy at the national level against a decision not to recognize, or to withdraw, the legal personality of a religious or belief community that has an arguable claim to such a status. This right derives from Article 2 para. 3 of the ICCPR, which requires that individuals and communities have access to a court that must provide them with an effective remedy. […]"

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

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §100.

"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.**

"The possibility to appeal against refusal is essential. In the OSCE/ODIHR-Venice Commission Guidelines it is clearly stated that 'Parties asserting religious claims have rights to Effective remedies. This is rooted in general rule of law conceptions, but has found specific embodiment in a number of international norms."

> **CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §31.**
>
> **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 of Hungary, §80.**

"The ICCPR requires States to give practical effect to the array of norms spelled out in international human rights law. More specifically, provisions such as Articles 6.1 and 13 ECHR require that effective remedies be made available.

The European Court of Human Rights has sustained the right of a religious community to acquire legal personality on the basis of Article 9 ECHR, construed 'in the light of' Article 6 ECHR. Particularly significant in this area is that religious organisations be assured of prompt decisions on applications and a right to appeal, either in the legislation under consideration or under applicable administrative review provisions spelled out in separate legislative enactments."

> **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 of Hungary, §§ 81-82.**

"[I]t would be necessary to elaborate the process including by indicating who the deciding person or body is […], how a decision is to be communicated and the reasons for it, and how the person or organisation affected can engage in the process and be heard. In the absence of these arrangements being set out it would be possible for arbitrary decision-making to occur in restricting a fundamental freedom. The principal of legality requires that there be a legal basis for the decision, that the rule of law be accessible and precise and that it be not arbitrarily applied. The process should also be open to the public."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §38.**

"One of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 ECHR must be seen not only in the light of Article 11 ECHR, but also in the light of Article 6 ECHR."

> **CDL-AD(2005)037, Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania, §23.**

CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §68.

*"*Parties asserting religious claims have rights to effective remedies. This is rooted in general rule of law conceptions, but has found specific embodiment in a number of international norms. Among other things, as indicated by provisions such as ICCPR article 2, States have a general obligation to give practical effect to the array of norms spelled out in international human rights law. More specifically, provisions such as ECHR articles 6(1) and 13 require the effective remedies be made available. The European Court has sustained the right of a religious community to acquire legal personality on the basis of ECHR article 9, construed 'in light of' article 6. Particularly significant in this area is that religious organisations be assured of prompt decisions on applications and a right to appeal, either in the legislation under consideration or under applicable administrative review provisions spelled out in separate legislative enactments."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 8.

VI. Freedom of Religion and Freedom of expression: Blasphemy, Religious insult and incitement to religious hatred

"Article 9 para. 4 further provides that the state does not allow "*activities that offend the religious feelings of believers*". Such a provision should not be used to prevent or punish criticism directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or critical comments on religious doctrine and tenets of faith. Additionally, it must be noted that the UN Human Rights Committee has expressly recognized that "[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20 para. 2 of the Covenant" i.e., when constituting incitement to discrimination, hostility or violence. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §32.

"[…] At the international level, to avoid undue limitations to freedom of expression, for forms of expression to constitute "*incitement*" that is prohibited, the following three criteria should be met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. As emphasized by the Venice Commission in its Report on the relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred (2008), "in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme" and "[i]t is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited". […]

(…)

[…] Tolerance and respect for equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent certain forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§55,64.

"Article 9 para. 4 further provides that the state does not allow "*activities that offend the religious feelings of believers*". Such a provision should not be used to prevent or punish criticism directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or critical comments on religious doctrine and tenets of faith. Additionally, it must be noted that the UN Human Rights Committee has expressly recognized that "[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20 para. 2 of the Covenant" i.e., when constituting incitement to discrimination, hostility or violence. […]

(…)

[…] Hence, only preaching accompanied by incitement to violence or religious hatred or to commit specific unlawful acts, by coercion or fraud, by offering material or social advantages with a view to gaining new members or exerting improper pressure on people in distress or in need, by the use of violence, by a certain form of harassment or the application of undue pressure in abuse of power, or by other aggressive forms of preaching violating privacy or public order should be prohibited. […]"

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §§32, 38.

"It is proposed to amend §(4) so that all forms, means, acts or actions of religious hatred are forbidden, and not merely in the context of relationships between churches. This more general provision is welcome as a more comprehensive prohibition against religious hatred than the existing provision which only regulates the conduct of religious denominations amongst themselves. Care should, however, be taken that it is not abused to prevent legitimate public debate."

CDL-AD(2014)010, opinion on the draft law on the review of the Constitution of Romania, §70.

"The wording [of the draft Tunisian Constitution] '[the state] is the protector of that which is held sacred' is […] problematic. A state which proclaims itself to be civil (Article 2) should not competent to determine what is sacred and 'protect' that which is held to be so. Furthermore, such wording could legitimise the criminalisation of sacrilege or blasphemy. It would be preferable to delete it."

CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, §33.

"It is not inciting enmity in the abstract that may be restricted, but engaging in advocacy of hatred that constitutes incitement to imminent overt action."

CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §50.

"Freedom of expression as guaranteed by Article 10 ECHR is an essential foundation of a democratic society. It is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend shock

or disturb. This is of particular relevance in the context of religious expression. It would only be legitimate for the law to prohibit 'incitement of religious hatred', and this should be understood to cover only extreme cases such as physical risks to persons and property and not theological disagreements or disputes. Practically all Council of Europe member States provide for an offence of 'incitement to hatred' and religious hatred is treated within this offence as a subset of incitement to hatred generally."

> **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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia, §25.**

"In its Recommendation 1805(2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion, the Parliamentary Assembly of the Council of Europe considers that 'national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence'.

Blasphemy is an offence in only a minority of member States (Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands, San Marino). It must be noted in this context that there is no single definition of 'blasphemy'. In the Merriam-Webster, blasphemy is defined as: 1: the act of insulting or showing contempt or lack of reverence for God b: the act of claiming the attributes of deity; 2: irreverence toward something considered sacred or inviolable. According to the report of the Committee on Culture, Science and Education on Blasphemy, religious insults and hate speech against persons on grounds of their religion, blasphemy can be defined as the offence of insulting or showing contempt or lack of reverence for god and, by extension, toward anything considered sacred. The Irish Law Reform Commission suggested a legal definition of 'blasphemy' as 'Matter the sole effect of which is likely to cause outrage to a substantial number of adherents of any religion by virtue of its insulting content concerning matters held sacred by that religion'."

> **CDL-AD(2008)026, Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, §§ 21, 24.**

"As concerns the question of whether or not there is a need for specific supplementary legislation in the area of blasphemy, religious insult and incitement to religious hatred, the Commission finds:

a) That incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States, […]
b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component.
c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.

As concerns the question of to what extent criminal legislation is adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one's beliefs, the Commission reiterates that, in its view, criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate).

Notwithstanding the difficulties with enforcement of criminal legislation in this area, there is a high symbolic value in the pan-European introduction of criminal sanctions against incitement to hatred. It gives strong signals to all parts of society and to all societies that an effective democracy cannot bear behaviours and acts which undermine its core values: pluralism, tolerance, respect for human rights and non-discrimination. It is essential however that the application of legislation against incitement to hatred be done in a non-discriminatory manner.

In the Commission's view, instead, criminal sanctions are inappropriate in respect of insult to religious feelings and, even more so, in respect of blasphemy."

> **CDL-AD(2008)026, Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, §§89-92.**

"With respect to the limitation of free expression in the media, for example, in the case of Murphy v. Ireland (10 July 1993), the Court recalled that 'freedom of expression constitutes one of the essential foundations of a democratic society. As paragraph 2 of Article 10 expressly recognises, however, the exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane'. The Court clearly affirmed that 'No restriction on freedom of expression, whether in the context of religious beliefs or in any other, can be compatible with Article 10 unless it satisfies, inter alia, the test of necessity as required by the second paragraph of that Article. In examining whether restrictions to the rights and freedoms guaranteed by the Convention can be considered 'necessary in a democratic society' the Court has, however, consistently held that the Contracting States enjoy a certain but not unlimited margin of appreciation."

> **CDL-AD(2007)041, Opinion on the draft law on freedom of religion, religious organisations and mutual relations with the state of Albania, §39.**

VII. Religion and education

"[…],The right of parents to provide moral and religious education to their children in accordance with their own convictions and subject to the evolving capacities of the child, is a core element of the freedom of religion or belief as set out in Article 18 para. 4 of the ICCPR, which implies the possibility of optional religious education in public schools or other avenues for formal religious instruction. In light of the foregoing, parents should in principle have the possibility to send their children to primary and secondary private religious schools, or have other avenues for formal religious instruction. [...]"

> **CDL-AD(2019)010-e, Montenegro - Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities, §45.**
>
> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §54.**

"According to Article 2 of the First Protocol to the Convention, the State has to respect the rights of parents to ensure such education and teaching that is in conformity with their religious and philosophical convictions. On the basis of this provision, there are good arguments that in the name of parents religious communities in principle should have the possibility to establish primary schools. Such schools may be regulated appropriately to ensure educational quality and consistency, including for example by requiring conformity with state-approved curricula, books and materials. The freedom of religious communities to teach and to organise teaching in the setting of a private religious school is not explicitly contained in Article 2 Protocol 1 of the Convention, but is implied in the judgment in *Kjeldsen, Busk Madsen and Pedersen*17 and the Commission report in that case. […]"

> **CDL-AD(2019)010-e, Montenegro - Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities, §45.**

"Consistent with Article 2 which proclaims the civil nature of the state, Article 14 specifies a requirement for the public administration to uphold 'the principles of impartiality [and] equality' and

Article 15 requires 'the neutrality of educational institutions with regard to any use for partisan purposes', which is to be welcomed. Nonetheless, the words 'use for partisan purposes' in Article 15 are imprecise and suggest that only political indoctrination is forbidden in educational establishments. It would be preferable to use a broader and clearer term, such as ideological indoctrination."

> **CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, §24.**

"To be compatible with international human rights standards, public school instructions on religious subjects must be given in a neutral and objective way. States must respect the rights of parents to ensure that school education and teaching is in conformity with their own religious and philosophical convictions, according to Article 2 of Protocol 1 to the ECHR (right to education). The European Court of Human Rights has placed emphasis on the need to give a broad overview of 'other religions and philosophies together' – serving the principle of pluralism and objectivity, embodied in Article 2 of Protocol No. 1. The Court has in this respect also warned against the option of having children exempted from certain parts of the curriculum as this could subject the parents concerned to a heavy burden with a risk of undue exposure of their private life, while the potential of conflict may be likely to deter them from making requests for exemption."

> **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, §58.**
>
> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §26.**

"The OSCE/ODIHR – Venice Commission Guidelines emphasize that it is generally recognized that parents have the right to determine the religious education of their children. Article 18(4) of the ICCPR gives special recognition to the parental bond regarding the freedom of the religious freedom of the child. According to Article 14 (2) of the UN Convention on the Rights of the Child, States must respect the rights and duties of the parents or legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

As the best interests of the child shall be a primary consideration, as stipulated in Article 3 of the UN Convention on the Rights of the Child, the balanced approach in stipulating the religious education of children is to secure a broad and objective religious education in public schools in accordance with the underlying principles of the right to education and the right to freedom of expression and respect for family and private life."

> **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, §§59-60.**

"The requirement of prior consent for the production and dissemination of religious literature is arguably unnecessary in a democratic society and may violate both freedom of expression and freedom of religion norms. The UN Human Rights Committee has stated that 'the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts […]; the practice and teaching of a religion or belief includes […] the freedom to prepare and distribute religious texts or publication'. The UN General Assembly has similarly called upon States to ensure 'the right to all persons to write, issue, and disseminate relevant publications in these areas' (of religion or belief). The OSCE Vienna Concluding Document (1989) likewise provides that OSCE participating States shall 'respect

the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications […] and other articles and materials related to the practice of religion or belief' and 'allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials'. Any restriction of this right must satisfy the criteria of a pressing social need 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, §102.

"Pluralism in education as required in a democracy has been interpreted as a prohibition against indoctrination which would not respect the religious and philosophical convictions of parents. Therefore, information or knowledge included in the curriculum must be conveyed in an 'objective, critical and pluralistic manner'. It is acknowledged that, in view of the power of the modern state, it is above all through state teaching that this aim must be realised and that, where a function has been assumed by the state in relation to education and teaching, it falls within the scope of the second sentence of article 2 Protocol 1. The state must respect the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions.

The necessary pluralism required by the second sentence of Article 2 of Protocol 1 can be achieved where denominational religious classes are provided in a public school by permitting parents of students a choice of whether or not their children should attend such classes. Furthermore, the ECtHR has interpreted the Convention to the effect that a state is not prohibited from requiring a student's attendance, without the possibility of exemption, at a course on 'ethics and/or religion' where the student does not attend a denominational religious course. This in itself is not incompatible with Article 2 of Protocol 1. However, such compulsory attendance at a course on 'ethics and/or religion' is only compatible with ECHR where the 'ethics and/or religion course' is neutral and does not seek to indoctrinate. It must be conveyed in an objective, critical and pluralistic manner. Such arrangements protect on the one hand the religious and philosophical convictions of parents who wish their children to attend denominational religious classes and, on the other, the religious and philosophical convictions of those who do not.

The Venice Commission emphasises that its view that states are allowed to set up a system of religious classes in combination with the possibility of alternative objective comparative courses on religion must not be understood as implying that states are obliged to introduce such a system. Whether or not to allow in public schools religious instruction and objective and neutral alternative courses related to religion is a question of expediency, not of legal obligations flowing from the Convention. Member States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the ECHR with due regard to the needs and resources of the community and of individuals. The setting and planning of the curriculum fall within the competence of the Member States and it is not for the ECtHR to rule on such questions as the solutions may legitimately vary according to the country and the era. The ECtHR has noted the wide variety of approaches taken to this issue. States, therefore, can decide to establish, as an alternative to religious courses, either a course on ethics or a course on a subject related to religion, provided that the course is neutral and does not seek to indoctrinate."

CDL-AD(2012)042-E, Amicus Curiae Brief on the Compatibility with Human Rights Standards of certain articles of the law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina, §§26, 27, 28.

"Under international standards parents have a right to r[a]ise their children in conformity with their own religions and convictions. Nevertheless it also recommended that as from a certain age the consent of the child should be taken into account, The Venice Commission considers that in this case the age limit should be lower than the age of the majority."

<u>CDL-AD(2006)030,</u> Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §27.

"Rights of parents and guardians. States are obliged to respect the liberty of parents, and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child. This protection is spelled out with particular clarity in Article 5 of the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child. Legislation should be reviewed to assure that the appropriate balance of autonomy for the child, respect for parent's rights, and the best interests of the child are reached. Problematic in this regard are provisions that fail to give appropriate weight to decisions of mature minors, or that interfere with parental rights to guide the upbringing of their children. There is no agreed international standard that specifies at what age children should become free to make their own determinations in matters of religion and belief. To the extent that a law specifies an age, it should be compared to other State legislation specifying age of majority (such as marriage, voting, and compulsory school attendance).

1. *Parental rights related to education of their children.* It is generally recognized that parents have the right to determine the religious education of their children.

2. *State financing of religious education (both within State and community schools and religious and other private schools).* There is a wide variety of State practices regarding State financing of religious education both within State schools and private religious schools. The most obvious potential issue is whether the financing, when provided, is offered on a non-discriminatory basis.

3. *Religious, ethical, or humanist education in State and community schools*. There is a wide variety of State practices regarding religious, ethical, and other forms of ideological education in State schools. When considered in conjunction with the rights of the parents, it is presumably the case that children cannot be required to take instruction in denominational or ideological education against their parents' wishes, though general education about religions, beliefs, and ethics generally is permissible. Some States require students to take either religious or ethical (life studies) education, which presumably is a permissible approach, though States should be sensitive to the religious and ideological concerns of parents on behalf of their children and should seriously consider providing opt-out possibilities when the education may interfere with deeply held religious and ideological beliefs. (The State may, however, take positions against extreme ideological positions, such as Fascism and anti-Semitism).

4. *State authorization of private religious or philosophical schools*. It presumably follows from section III.B.6 above that parents should be able to educate their children in private religious schools or in other schools emphasizing ideological values. Certainly the dominant practice among OSCE participating States is to allow for private religious and ideological schools, though the State is permitted to establish neutral criteria for the teaching of standard subjects such as mathematics, history, science, and languages. The State also permissibly may regulate teacher certification. The difficulty may arise when the State discriminates between religious or ideological groups that are permitted to operate schools and those that are not. For example, some States may permit religious schools to be operated only by 'registered religions'. Although it is possible to imagine cases where it would be acceptable to require that religious schools be operated only by registered religions, such a requirement becomes presumptively unacceptable wherever State policy erects discriminatory obstacles to registration for some religious groups. It is important to evaluate whether laws are neutral and non-discriminatory.

5. *Rules pertaining to hiring and firing teachers and other school personnel on grounds of religion or belief*. Cases involving the hiring and firing of teachers and other school personnel at schools (both State and private) when religion or belief is a factor can be very complicated and fact specific. Religious schools, for example, may require that employees must be members of the religion and may wish to terminate those who leave the religion or engage in conduct that officials deem to be contrary to the ethos of the school. There are many State practices in this regard and it is a continually evolving area of the law.

6. *Religious symbols (and attire) in State schools*. There are three principal issues that are likely to arise regarding religious symbols in State schools. First, there is a variety of State practices regarding prohibitions on teachers or other school personnel wearing religious attire while teaching. Second, there is a variety of State practices regarding the placement of religious symbols in classrooms. Third, an issue that has been growing in significance is State prohibition of school children from wearing religious attire -- an issue recently sparked by the Islamic headscarf. International instruments do not speak clearly to these issues, though caution should be offered and general guidelines of promotion of tolerance and non- discrimination should be weighed."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 7-9.

VIII. Proselytizing/missionary activity

"Article 1 of the Draft Law which describes the purpose of the Draft Law refers to the overall objective of "*preserv[ing] inter-confessional and inter-ethnic harmony".* A similar wording is used in Article 17 para. 3 of the Draft Law when describing the role and powers of local state authorities in the religious sphere, and in Article 11 para. 5, where missionary activity and "proselytism" contributing to the violation of that harmony are prohibited. While such an objective may be a legitimate and appreciable goal, the guiding principle should be the respect, protection and promotion of individual and collective freedom of religion or belief. Moreover, such a wording may lend to restrictive interpretations of the law and could lead to limiting or eliminating religious and belief pluralism when it produces tensions between different religious or belief groups instead of removing the causes of tensions by ensuring that every individual and group can fully exercise the right to freedom of religion or belief. […]

(…)

[…] At the same time, the terms "inter-confessional harmony" and "religious tolerance" are vague, overbroad and may be interpreted discretionarily by the authorities. As such, it does not comply with quality of law requirement since one cannot reasonably foresee what type of activities might violate so-called "inter-confessional harmony" and "religious tolerance". Also, they are not in themselves admitted grounds for limitation according to Article 18 para. 3 of the ICCPR. More generally, the term "*proselytism*" is an undefined term internationally and generally carries negative connotations and the wording "*non-coercive persuasion*" should be preferred."

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§27,50.

"[…] Article 9 ECHR does not, however, protect every act motivated or inspired by a religion or belief. It does not, for example, protect improper or abusive proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church. […]"

CDL-AD(2019)010-e, Montenegro - Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities, §28.

"[…] [I]nternational law, which protects non-coercive religious expression (including proselytism, or missionary activity) by 'everyone', regardless of a person's nationality. It should be emphasized that the right to discuss and 'propagate' one's belief is protected not only under Article 9 ECHR and Article 18 ICCPR, but also under the freedom of expression provisions of both international treaties (Article 10 ECHR and Article 19 (2) ICCPR).

The right to freedom of thought, conscience, religion or belief includes the freedom, 'to write, issue and disseminate relevant publications' in the area of religious affairs. This is emphasized in the Commission on Human Rights' Resolution 2005/40 (paragraph 4(d)) and Human Rights Council Resolution 6/37 (paragraph 9(g)) where States are urged '[t]o ensure, in particular, [...] the right of all persons, to write, issue and disseminate relevant publications in these areas'. The Human Rights Committee's General Comment No. 22 emphasizes that 'the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, […] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications'. Hence proselytising or missionary activity is protected as non-coercive religious expression when such activities are conducted without improper means."

Non-coercive religious expression or teaching of religious trends or beliefs furthermore enjoys protection as freedom of expression (Art. 19 ICCPR, Art. 10 ECHR); both on the side of the imparting as well as the receiving end. Moreover the freedom to engage in such 'religious propagation' cannot be restricted on grounds of nationality or citizenship."

> **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, §§40-42.**

"In the view of the Venice Commission, to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. The ECtHR protects proselytism and the freedom of the members of any religious community or church to 'try to convince' other people through 'teachings'. The freedom of conscience and religion is of an intimate nature and is therefore subject to fewer possible limitations in comparison to other human rights: only manifestations of this freedom can be limited, but not the teachings themselves.

[…] [P]eaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife, [should] not [be] seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures."

> **CDL-AD(2012)016 Opinion on the Federal Law on Combatting Extremist Activity of the Russian Federation, §§38,40.**

"In addition, 'religious persecutions' is a vague and unsatisfactory concept when used for the purpose of limiting a fundamental freedom and creating criminal and administrative liability, unless it is defined elsewhere in another law providing for criminal liability."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §3.**

"[…] Historically, socially and politically it is understandable that, where there is concern for the maintenance of traditional/state religion, influx of other beliefs or movements that

proselytize is seen as a threat in the process of rebuilding national identity. Nevertheless, the Human Rights Committee has stated in relation to the fact that a religion is recognized as a state religion, or it is established as official or traditional or its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of other fundamental rights. Article 20.2 of the ICCPR states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. […]

According to the European Court of Human Rights (hereinafter, the "ECtHR"), it is only improper proselytism that is '*not compatible with respect for the freedom of thought, conscience and religion of others*'."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§43-45.**

"Therefore, the provision of '*material or social benefits or taking advantage of* [*the*] *needs of* [*others*] […] *for the purpose of converting them to another religion* […]' should only be prohibited where such coercion is present."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §50.**

"In addition to witnessing and affirming beliefs, missionary work has the additional dimension of inviting others to consider those views and seeking to persuade others of their validity, thereby converting them to their religion or cause. In European Convention jurisprudence traditional non-coercive efforts to persuade others concerning religious beliefs, whether through door-to-door proselytizing or other expressive media is protected religious and expressive activity. However, in engaging in such legitimate conduct, there are limits on what constitutes legitimate expression. But these limits, as in other areas of freedom of expression, must be carefully circumscribed. Thus, missionaries must not encroach upon the rights of others. While the line in this area is not always easy to draw, certain basic principles have emerged. Coercive forms of proselytism do not enjoy protection under Article 9. The concept of 'improper proselytism' was first developed in Kokkinakis v. Greece describing it in terms of 'offering material or social advantages' as an inducement for conversion; 'improper pressure on people in distress or in need', and 'violence or brainwashing', all of which the Court stated are 'incompatible with respect for the freedom of thought, conscience and religion of others'. Significantly, the kind of non-coercive door-to-door proselytism engaged in by Mr. Kokkinakis was held not to encroach on the rights 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, §60.**

"The offence [coercion] ought to be defined in religion-neutral terms to focus on inappropriate coercion, pressure tactics, abuse of position, deception, and so forth. There is a hazard in focusing on proselytism, even if it is restricted to a vague notion such as 'improper proselytism', because of the tendency of any such norm to be applied in discriminatory ways against smaller and less popular religions. […]

Because of the difficulty of drawing the line between legitimate religious persuasion and improper proselytism, and the risk that protected expression will be deterred by such legislation, consideration should be given to find a more neutral way of approaching the issue. Legislation focusing on coercion, undue influence, exploitation of vulnerable individuals, and the like is less likely to result in discriminatory prosecutions against smaller groups. The necessity of prohibiting proselytism must be based on the purpose of protecting victims against coercive tactics of improper proselytism but not to prevent missionary and humanitarian work *per se*."

> **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, §§61,63.**

"Furthermore, the Venice Commission considers it excessive to say that a church etc. should not be permitted to 'influence' people in relation to choice of religion or affiliation. There is a right to express one's view and proclaim or describe one's faith or religion and to share them with others. These rights are covered by the right to freedom to manifest religion or belief and also by the right to freedom of expression."

> **CDL-AD(2007)005, Opinion on the Draft Law on the Legal Statius of Church, A religious community and a religious group of the "Former Yugoslav Republic of Macedonia", §29.**

"The issue of proselytism and missionary work is a sensitive one in many countries. However, it is important to remember that, at its core, the right to express one's views and describe one's faith can be a vital dimension of religion. The right to express one's religious convictions and to attempt to share them with others is covered by the right to freedom of religion or belief. Moreover, it is covered by the right to freedom of expression as well. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved. Thus, it is now well-settled that traditional door-to-door proselytizing is protected (though the right of individuals to refuse to be proselytised also is protected). On the other hand, exploiting a position of authority over someone in the military or in an employment setting has been found to be inappropriate. If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 13.**

IX. Conscientious objection

"While the ICCPR does not explicitly refer to a right of conscientious objection, such right may be derived from Article 18 of the ICCPR on freedom of thought, conscience and religion, since the obligation to be involved in the use of lethal force could seriously conflict with the rights protected under Article 18 of the ICCPR. […] Applicable legislation should be amended to guarantee to all an exception to the compulsory character of military service where such service cannot be reconciled with an individual's religion or belief, irrespective of the registration status of the religious or belief community, and to provide possible alternatives of a non-combatant or civilian nature that are not burdensome, punitive nor discriminatory."

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §70.**

"As recently recalled by the Council of Europe Commissioner of Human Rights, the right to conscientious objection has been endorsed by the Council of Europe ever since 1967 when a first Resolution on the topic was adopted by the Parliamentary Assembly. The recognition of this right later became a requirement for states seeking accession to the organisation.

It must be added, that when this right is recognized by law or practice, there should be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; and no discrimination against conscientious objectors because they have failed to perform military service; also, the alternative service should not be punitive in terms of having a much longer duration."

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, §§45-47.

"As early as in 1987, the Committee of Ministers stated, in principle 10 of Recommendation R(87)8 regarding conscientious objection to compulsory military service, that 'alternative service shall not be of a punitive nature. Its duration shall, in comparison with military service, remain within reasonable limits'.

In 2000, the European Committee of Social Rights stated, in a decision on the complaint brought by the Quaker Council for European Affairs against Greece (complaint No. 8/2000), that 18 additional months for alternative service amounted to a disproportionate restriction on the right of the worker to earn his living in an occupation freely entered upon and was contrary to Article 1(2) of the Social Charter.

In 2008, the European Committee of Social Rights clearly stated that 'Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service' (European Committee of Social Rights, Conclusions 2008, Estonia, Article 1.2)."

CDL-AD(2011)051, Opinion on the draft law on amendments and additions to the law on alternative service of Armenia, §§15-17.

"It has to be recalled that any form of control over alternative service should be of civilian nature and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service. In addition, the authorities should make sure that any byelaw, other regulation or practical application measure is fully in line with the principle of civilian control over alternative service."

CDL-AD(2011)051, Opinion on the draft law on amendments and additions to the law on alternative service of Armenia, §38.

"It should be noted, in this context, that the Human Rights Committee is of the position that a right to conscientious objection 'can be derived from Article 18' ICCPR. Recently the European Court of Human Rights recognised in the case *Bayatyan v. Armenia* that the right to conscientious objection was guaranteed by Article 9 of the European Convention, protecting freedom of thought, conscience and religion. The ECtHR stated that, since 'almost all the member States of the Council of Europe which ever had or still have compulsory military service have introduced alternatives to such service [...] a State which has not done so enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference'. In particular, in a system that failed to allow 'any conscious-based exceptions' to compulsory military service, penalizing those who refused to perform this obligation could not be considered a measure necessary in a democratic society […]. In addition, the Court pointed out the fact that the State concerned had committed itself to adopt a law on alternative service and concluded that this was an indication that the conviction for refusal to perform military service did not serve a pressing social need."

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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §60.

"There are many circumstances where individuals and groups, as a matter of conscience, find it difficult or morally objectionable to comply with laws of general applicability. Some people have religious objections to eating certain types of food and others insist on wearing particular clothing. For some, military service violates deeply held religious beliefs. Certain days of the week, and certain days on the calendar, have a vital religious significance that requires rituals be performed or that work must not be undertaken. Most modern democracies accommodate such practices for popular majorities, and many are respectful towards minority beliefs. The laws governing possible exemption from laws of general applicability are in two basic forms. The first are in the form of general constitutional provisions or human rights instruments that defend generally rights of religion and belief and imply that exemptions should be provided when matters of conscience are implicated. The second form is much more specific and provides exemptions for particular actions, such as a statutory provision that exempts conscientious objectors from military service (usually with a requirement to perform alternative service). […] Of the many issues that are likely to raise questions about exemptions from laws of general applicability, some of the most frequent are:

- *Conscientious objection to military service.* Although there is no controlling international standard on this issue, the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service. In any case, State laws should not be unduly punitive for those who cannot serve in the military for reasons of conscience.
- *Food.* There are several foods that are prohibited by many religious and ethical traditions, including meat generally, pork, meat that is not prepared in accordance with ritual practices, and alcohol. In a spirit of promoting tolerance, the State could encourage institutions that provide food -- particularly schools, hospitals, prisons, and the military -- to offer optional meals for those with religious or moral requirements.
- *Days for religious activities*. The two types of day that raise questions of exemptions are first, days of the week that have religious significance (for example, for Friday prayers and Saturday or Sunday worship), and second, calendar days of religious significance (Christmas, Yom Kippur, Ramadan). To the extent possible, State laws should reflect the spirit of tolerance and respect for religious belief.
- *Medical*. Some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and which States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that they wish.
- *Other.* In addition to issues that have been noted elsewhere, other places in which objections may arise are in regard to refusing to take oaths or to perform jury service. To the extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 15.

X. Clergy/religious leaders

"[…] Some participation of civil servants in the life of their religious (or belief) communities should be possible and incompatibilities should only concern leadership positions or other

positions which could conflict with the public duties and/or jeopardise the neutrality of the public officials concerned. […]"

> **CDL-AD(2014)046-e, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, §144.**
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> **CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §78.**

"While many states have rules that declare certain public offices to be incompatible with specific other activities and while this is usually in line with international commitments, a blanket prohibition of all public offices for clergymen would be incompatible with the principle of proportionality.

There are examples where states appoint citizens to public office such as members of court juries which the citizen cannot reject. It would violate freedom of religion or belief if a state could or would appoint a clergyman against his or her will to public office and this person would then automatically lose his or her religious functions. It is recommended to reconsider and redraft the provision."

> **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, §§55-56.**

"[The] freedom of religion […] excludes state measures seeking to compel religious communities under a single leadership."

> **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, §73.**

"Decisions on the status of residence of clergy, the establishment of requirements for the education of clergy as well as conditions for opening a 'school' for educating clergy may amount to an interference."

> **CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §88.**

"Assessment of the legitimacy of religious beliefs or 'favouring a particular leader or organs of a divided religious community' would constitute an infringement of the freedom of religion."

> **CDL-AD(2007)005, Opinion on the draft law on the legal status of a church, a religious community and a religious group of "The Former Yugoslav Republic of Macedonia, §46.**

"2. *Social security and tax laws relating to clergy*. Laws relating to taxation and retirement benefits may raise specific issues relating to the clergy. Although there are virtually no international standards pertaining to this issue per se, provisions should be reviewed with respect to equality, non-discrimination, and autonomy.

3. *Limitations and disabilities on political activities.* Some States restrict clergy from participating in activities that are open to other citizens, such as holding political or other State offices. Such laws often reflect particular historical developments within countries and should be reviewed with care."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 10-11.

XI. Religious or belief organisations

"[…] 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 -15.

"Whereas the freedom of thought and conscience as well as the freedom to choose a religion or belief are strictly personal freedoms, the right to freedom of religion has not only an individual but also a collective dimension, where the right of the collective body to manifest and practice religion is also protected. The collective right to assemble to practice or manifest religion or beliefs is furthermore protected under Article 11 of the ECHR and Article 21 of the ICCPR. It 'encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention'. The European Court of Human Rights has emphasized that the principle of freedom of religion for the purposes of the ECHR excludes assessment by the State of the "legitimacy of religious beliefs or the ways in which those beliefs are expressed. […]

Confining the right to establish religious communities to citizens is also in conflict with the right to freedom of religion, which belongs to everyone as well as the right to freedom of association in Article 22(1) of the ICCPR and Article 11(1) of the ECHR."

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, §§68-71.

A. Legal status of religious or belief organisations

"[…], any religious or belief group must have access on a non-discriminatory basis to legal personality status if it wishes so, even if it does not have the required number of members/believers for setting up a religious or belief organization, and should therefore be able to acquire such status through procedures and in forms other than those provided for the registration of religious (or belief) organizations (e.g., as public associations, foundations, trusts or any other types of independent legal person). Access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and nondiscriminatory and should not be subject to burdensome requirements."

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §34.

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §41.

"[…] In any case, religious or belief communities or organizations should be subject to the same requirements as any other organizers of peaceful assemblies, providing that they are compliance with international human rights standards."

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §59.

"[…] [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. […]"

"[…] [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, §§17-18.

"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. […]

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.

"[…] [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, §§21,22, 24.

"The lack of a possibility for religious communities to acquire legal personality in itself constitutes an infringement of Article 9 in conjunction with Article 11."

CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §6.

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, §46.

"[A]ny religious group must have access to legal personality status if it wishes to avail of it."

CDL-AD(2011)028, Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §64.

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, §48.

"The Venice Commission understands that, in the light the historical and political context prevailing in Kosovo*, 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.

"International instruments not only guarantee the individual freedom of religion, but also the freedom to adopt a religion 'in community with others'. This latter freedom implies the right to establish a church or a religious community, without having to be recognised previously by a State authority. […]

There is now extensive persuasive authority from the European Court of Human Rights that there is a right to acquire legal entity status, and that the legal entity status thus made available must be sufficient for a religious community to carry out the full range of its affairs."

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 of Hungary, §30-35.

"Moreover, according to the European Court of Human Rights, in order to allow a religious group to obtain the legal personality, the State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition."

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 Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §29.

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 of Hungary, §38.

"The Venice Commission has already stated in another context, that reasonable access to a legal entity status with suitable flexibility to accommodate the differing organisational forms of different communities is a core element of freedom to manifest one's religion."

CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §33.

<u>CDL-AD(2012)004,</u> 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 of Hungary, §39.

"Equally important, is that, if organised as such, an entity must be able 'to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities'."

<u>CDL-AD(2009)036,</u> Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §39.

<u>CDL-AD(2012)004,</u> 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 of Hungary, §40.

"The Venice Commission would like to reiterate that time delays prior to obtaining legal personality should be avoided. There is no reason for introducing such a waiting period. Some of the requirements might be fulfilled in a much shorter period of time."

(…)

OSCE/ODIHR-Venice Commission Guidelines have more specifically stated that high minimum membership requirements should not be allowed with respect to obtaining legal personality, that it is not appropriate to require lengthy existence in the State before registration is permitted, that other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned and that provisions that grant excessive governmental discretion in giving approvals should not be allowed."

<u>CDL-AD(2012)004,</u> 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 of Hungary, §§44, 49.

"The European Court of Human Rights found 'that the imposition of a waiting period before a religious association that has been granted legal personality can obtain a more consolidated status as a public-law body raises delicate questions'.

The Court accepted that a waiting period might be necessary in exceptional circumstances (e.g., in case of newly established and unknown religious groups). However, such a waiting period hardly appears justified in respect of religious groups with a long-standing international existence, that are long established in the country concerned and therefore known to the competent authorities. The possibility should exist for the authorities to verify whether an association fulfils the requirements of the relevant legislation within a considerably shorter period of time. The Court therefore detected a difference in treatment and as a result a violation of Article 14 ECHR taken in conjunction with Article 9 ECHR."

<u>CDL-AD(2012)004,</u> 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 of Hungary, §§61-63.

"The European Court of Human Rights has sustained the right of a religious community to acquire legal personality on the basis of Article 9 ECHR, construed 'in the light of' Article 6 ECHR. Particularly significant in this area is that religious organisations be assured of prompt decisions on applications and a right to appeal, either in the legislation under consideration or

under applicable administrative review provisions spelled out in separate legislative enactments.
It follows from this, that either an independent tribunal must decide on the registration or that there is a subsequent control of the decision by an independent court."

> **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 of Hungary, §§82-83.**

"The law should not require the inclusion of excessively detailed information in the statute of the religious organisation. Refusal of registration on the basis of a failure to provide all information should not be used as a form of arbitrary refusal of registration. This is particularly important where registration is mandatory.

(…)

[…] [W]hile all religious associations should in principle have access to legal personality status, "individuals and groups should be free to practice their religion without registration if they so desire The ECtHR has clearly held that making the practice of religion conditional on formal registration violates Article 9 ECHR. In the Court's view, holding the contrary 'would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe'."

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§66, 69.**

"Burdensome constraints or provisions that grant excessive governmental discretion in giving approvals prior to obtaining legal status should be carefully limited.

(…)

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

> **CDL-AD(2010)054, Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§68, 91.**

"[…] [T]he right to freedom of religion under Article 9 is closely linked to freedom of association under Article 11. The right to manifest one's religion in community with others presupposes the right to meet, to publicly give expression to common religious opinions and values, to associate freely and to have some form of organised community, without arbitrary interference by public authorities[3]. This means that the legal status of religious communities may raise

[3] ECtHR, *Mirolubovs and Others v. Lithuania,* judgment of 15 September 2009, §80.

issues both under Article 9 and under Article 11. As the ECtHR held: 'religious communities traditionally and universally exist in the form of organised structures' while Article 11 'safeguards associative life against unjustified State interference'."

> **CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §50.**

"With respect to Article 11 the Court has consistently held the view that a refusal by the domestic authorities to grant status as a legal entity to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association. The ability 'to establish a legal entity in order to act collectively in a field of mutual interest' is one of the most important aspects of freedom of association, without which – according to the ECtHR – that right 'would be deprived of any meaning'. In particular, the ECtHR found that the refusal by the authorities to recognise or register the organisational structure that a group of persons has chosen, may deprive them of the possibility to individually and collectively pursue their goals and thus to exercise their right to freedom of association. The mere fact that they have been offered some kind of an alternative does not mean that there is no interference, if that alternative does not offer them the same legal status.

The same principle applies to communities with religious purposes. This was confirmed by the ECtHR in its judgment in the case of the Metropolitan Church of Bessarabia and Others […].

The fact that leaders and members of a religious community can use alternative forms of organising their religious life different from establishing an association with legal personality does not change the legal situation. The mere fact that the religious community concerned may have certain alternatives available to compensate for the interference resulting from State measures, while it may be relevant in the assessment of proportionality, cannot lead to the conclusion that there was no State interference with the internal organisation of the community concerned."

> **CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §§55-57**.

"It can be derived from the case law that restrictions on granting legal personality may pursue the legitimate aims of protection of public order and public safety. 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.

However, State authorities may not determine themselves whether the religion concerned is a sincere and appropriate one, and interpret its beliefs and goals; the right to freedom of religion excludes assessment by the State of the legitimacy of religious beliefs. The ECtHR has held that 'but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate'."

> **CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §§63-64.**

"*Right to association*. OSCE commitments have long recognized the importance of the right

to acquire and maintain legal personality. Because some religious groups object in principle to State chartering requirements, a State should not impose sanctions or limitations on religious groups that elect not to register. However, in the contemporary legal setting, most religious communities prefer to obtain legal personality in order to carry out the full range of their activities in a convenient and efficient way. Because of the typical importance of legal personality, a series of decisions of the European Court of Human Rights recognized that access to such a status is one of the most important aspects of the right to association, and that the right to association extends to religious associations. Undue restrictions on the right to legal personality are, accordingly, inconsistent with both the right to association and freedom of religion or belief."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 8.**

B. Autonomy/self-determination of religious or belief organisations

"[…] As expressly noted in the 2014 Joint Legal Personality Guidelines, "the legal prohibition and sanctioning of unregistered activities is incompatible with international standards". From this it follows that the activity of a religious or belief community cannot be qualified as "*illegal*" for the simple fact that the religious or belief community is not registered, as "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, §10.**
>
> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §39.**

"[…], any religious or belief community should be able to acquire legal personality status, as a type of legal entity different from a "*religious organization",* for instance by registering as an association or a foundation, if it so wishes, while ensuring that, regardless of the system used, access to legal personality and the rights that emanate from this status are obtained in a quick and simple, transparent, fair, accessible, inclusive and non-discriminatory manner. […]

It is worth noting that Article 20 of the Draft Law lists the rights of (registered) religious organizations. Under international standards, most of these rights should also be enjoyed by unregistered religious or belief groups, and even individuals, on apar with registered religious (or belief) organizations. While the State may legitimately restrict certain benefits – such as tax exemptions on donations – to registered religious or belief organizations only, there is no reason why an unregistered religious or belief group should not enjoy basic rights as, for instance, creating "*favourable conditions in places of worship or religious rites*" (Article 20 para. 1 first indent), "*conduct[ing] events on issues related to its activities*" (Article 20 para. 1 fourth indent), "*establish[ing] international contacts for the purpose of organizing pilgrimages or participating in other religious events*" (Article 20 para. 1 sixth indent), among others. These are essential expressions of the right to manifest one's religion or belief guaranteed by Article 18 of the ICCPR. It is thus recommended that the Draft Law provides an open-ended list of the rights enjoyed by all religious or belief communities, both registered and unregistered."

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§42-43.**

"[…] Limiting the right to hold religious rites and ceremonies to specific places requires to be justified in accordance with international standards. In that respect, the OSCE/ODIHR and the Venice Commission have acknowledged that the obligation for a religious organization to only operate at the address identified in its registration documents is burdensome and thus disproportionate. [...]"

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

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §58.

"[…] Some religious organizations may draft their documents in a language other than that officially used in the state and sometimes this may happen for religious reasons. The right to make use of a different language falls within the scope of autonomy that the international norms relating to freedom of religion or belief recognize to religious or belief organizations. […]

[…] The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality, including as regards their leadership. As such, the determination of the requirements that a person must meet in order to be appointed or elected head of a religious or belief organization falls outside the competence of the State and is protected by the principle of autonomy, which in turn is an expression of the right to collective religious or belief freedom as well as the principle of "separation of religion from the state". As noted in the 2014 Joint Legal Personality Guidelines, the right to manifest one's religion or belief includes the right to select, appoint and replace their personnel in accordance with their respective requirements and standards.120 It is solely for the religious or belief organization to determine whether an "*appropriate religious education*" is a requirement for becoming its "head" and, if so, to define the level and contents of religious education that are appropriate. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§82,83.

"[…] As among the documents submitted for the registration of a religious organization there are documents concerning the purpose, objectives and main activities of the organization, the requirement of their compliance with legislation could be interpreted as empowering the registering body with the competence to assess whether religious beliefs or the means used to express such beliefs are legitimate, which is not congruent with international human rights standards. […]"

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

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §86.

"[…] The freedom to train religious or belief leaders is of vital importance for any religious or belief community and organization. It is a fundamental element of the freedom to manifest religion or belief through teaching protected by Article 18 of the ICCPR. Article 6 (g) of the 1981 UN Declaration specifically refers to the freedom to train "appropriate leaders called for by the requirements and standards of any religion or belief". The right to select the candidates for professional religious or belief education is part of the process of training religious or belief leaders who are "appropriate" according to the "requirements and standards" of the religious or belief community or organization. This right is protected by the autonomy of religious or belief communities and organizations, which includes the right to refuse the admission to professional religious/belief education of candidates who do not correspond to the standards set by the religious or belief community or organization. […]"

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §94.

"[…] ODIHR and the Venice Commission welcome the authorities' commitment to eliminate the obligation of religious organizations to notify the Committee about planned events when revising the Draft Law. The annual reporting requirement poses similar challenges. It is important to emphasize that where they exist, such reporting requirement should not be burdensome, should be appropriate to the size of the association and the scope of its operations in order not to unduly limit the right to freedom of religion or belief and freedom of association. […]"

CDL-AD(2014)046-e, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, §225.

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §101.

"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.

"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 -71.

"In principle, it is useful that the state should ensure 'the neutrality of mosques and places of worship with regard to any use for partisan purposes' as proclaimed in the last paragraph of Article 6 [of the draft Constitution of Tunisia]. The other places of worship referred to are probably intended to cover those of other religions: but in order to avoid any ambiguity, it would be preferable to say 'and all places of worship of other religions'. The expression 'use for

partisan purposes' is, nevertheless, imprecise and could be interpreted too broadly in order to justify disproportionate interference in the internal affairs of mosques, churches and other places of worship; this would be in violation of Article 18 § 3 ICCPR."

CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, §34.

"Religious communities must enjoy autonomy and self-determination on any matters regarding issues of faith, belief or their internal organization as a group."

(…)

It must be left to the religious organization to decide in which way internal rules are adopted and put into force."

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, §§ 72,76.

"[…] The European Court of Human Rights has reiterated that the autonomy of religious communities is protected against undue interference by the State under Article 9 (freedom of religion) ECHR and Article 11 ECHR (freedom of association). Yet, states also must comply with their positive obligations towards individuals in employment relations. A fair balance must be struck between the right of religious associations to autonomy and the protection of individuals from the potential exploitation of their rights by third parties who are relying on their right to freedom of religion."

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, §111.

"[…] [T]he autonomous existence of religious communities is indispensable for pluralism in a democratic society […]."

CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §29.

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 of Hungary, §31.

"Many religious denominations, by their very nature, proffer guidance and direction to their followers in various aspects of life, which is a recognized and protected form of manifestation of belief through teaching. Moreover, many religions have religious orders in which individuals voluntarily submit to supervision by the authorized leaders of the order. This is the case when members live in monasteries or other orders. Also, in hierarchical churches, it is a standard form of religious governance, for higher-order leaders, to supervise lower orders and the laity. Undue control or interference by the organization leading to unlawful limitation of the rights or freedoms of its members - contrary to Article 17 ECHR - might however legitimately be prohibited and, in particular, any interference with members' freedom to change religion or leave the organisation."

CDL-AD(2011)028, Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §58.

"The right of self-determination of a religious community includes the general right to decide on its organisational structure. This decision may imply the institution of branches or parishes on regional or local level as well as the integration of a national church or religious community into an international church or community or even in a worldwide organisational structure such as the (Roman) Catholic Church. The legal basis of such organisational differentiation will be on the one hand the internal law of the community, such as ecclesiastical statutes, canon law etc. On the other hand there may exist statutes of single states or even international treaties concluded under public international law confirming certain structures, denominations etc.

Whenever a State decides to interfere with these 'internal' aspects of organisation of a religious group, it interferes also with its 'autonomy' and therefore with the rights under Article 9 of the Convention. The ECtHR has noted in a number of cases, that the personality of the religious leaders is of importance to the members of the religious community and that participation in the organisational life of the community is a manifestation of one's religion, protected by Article 9 of the Convention. In the case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria it confirmed once more that under Article 9 of the Convention, interpreted in the light of Article 11, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function 'free from arbitrary State intervention in its organisation'. The autonomous existence of religious communities is 'indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 of the Convention affords'. And: 'Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable'.

[Concerning the] the prohibition of the use of a certain name or parts of a name for a religious group or church. Very often questions of names are linked – legally or sometimes only as a matter of fact – to the acceptance of certain religious groups, to their significance as a group, their tradition and relation to the founders of the religion and its prophets. Sometimes questions of names may be the reason of disputes between competing groups in which state authorities may be involved, thus risking a violation of the rights under Articles 9 and 11 of the Convention if they do not respect the principle of neutrality *vis-à-vis* those religious groups. In such cases, the ECtHR examines whether state regulations or action in that respect constitute an unlawful and unjustified interference with the internal organisation of the community concerned and the applicant's rights under Article 9 of the Convention. However, it is not the Court's task to determine the canonical legitimacy of church leaders."

> **CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §§86-88.**

"The involvement of the State in Church issues may vary from country to country. Nevertheless the relationship between the State and the Churches as well as the margin of appreciation by the State are framed by the requirements and rights ensuing from Article 9 and 14 ECHR."

(…)

The internal organization of a religious group is a matter of autonomy of any religious group."

> **CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §§28,30.**

"Church autonomy implies the faculty for churches and religious organisations to benefit from a specific legal status and hence for instance it entails the right to recruit freely. The possibility for these institutions to recruit only believers should be possible and not be prohibited […].

(…)

As regards financial issues related to the autonomy of Churches, the Venice Commission considers that the right to ask and receive voluntary donations is inherent to religious activities and should not need to be foreseen by law […].”

CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §§32, 34.

“When dealing with the legal status of religious communities, it is of the utmost importance that the State take particular care to respect their autonomous existence. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.”

CDL-AD(2005)037, Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania, §20.

“States have many different practices regarding autonomy (or self-determination) of religious and belief groups. These range from situations where the State formally has authority over the doctrines of established churches to States that are very reluctant to involve themselves in any matter that might be considered ‘internal‘ or ‘doctrinal‘ to a religious organisation. There is a trend towards extricating the State from doctrinal and theological matters, and this trend will likely continue. It is reasonable to suggest that the State should be very reluctant to involve itself in any matters regarding issues of faith, belief, or the internal organisation of a religious group. However, when the interests of religious or belief groups conflict with other societal interests, the State should engage in a careful and nuanced weighing of interests, with a strong deference towards autonomy, except in those cases where autonomy is likely to lead to a clear and identifiable harm.”

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 10.

C. Registration of religious or belief organizations

“At the same time, while a threshold of fifty members minimum may not appear excessive per se if applicable nationwide, the requirement provided by the Draft Law to have fifty citizens permanently residing in the specific district/city – unless there is the alternative of civil law legal personality offering similar protection without the fifty members threshold – may be problematic for smaller religious or belief groups, especially those that organize on a congregational basis, which may thus be foreclosed from acquiring legal entity status. […] Accordingly, the requirement of citizenship and of permanent residence in the specific district/city may be excessive. […]

(…)

[…], in the light of the freedom of religion or belief and the principle of “separation of religion from the state”, it should not be up to the State to determine what is the founding document of a religious organization as religious or belief communities and organizations may have many different types of founding documents. […]”

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§72,74.

“Article 34 para. 2 (c) provides the list of documents required for registering a local religious organization, which shall be submitted electronically. First, while the submission of required documentation electronically may help facilitating the registration, when putting in place such mechanisms, it is essential to ensure that the registration procedure remains accessible to all, inclusive and non-discriminatory. Especially, it is important to avoid the risk of a digital divide

(i.e., the exclusion of certain categories of the population which may not have access to the Internet and new technologies or the capacities to access them). It is thus generally better to retain alternative (non-electronically) registration system to ensure broader accessibility."

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §80.**

"[…] It may be legitimate for the State to refuse registration of certain groups who hold views that do not attain a certain level of "*cogency, seriousness, cohesion and importance*", although it may be challenging in practice to assess such aspects in an objective manner. In any case, the registering body should never assess the truthfulness or legitimacy of the views or system of values of the applicant. Moreover, this provision may also impede the registration of small or newly established religious or belief communities. But as stated in the 2014 Joint Legal Personality Guidelines, "[t]he process of obtaining legal personality status should be open to as many communities as possible, without excluding any community on the grounds 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.**
>
> **CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, §57.**
>
> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §91.**

"At the same time, requiring that every change in the statute be re-registered may appear overly burdensome. Allowing greater flexibility in charter regulations and not requiring re-registration of any amendment would allow religious organizations to keep pace with changing circumstances and evolving perceptions within the group and the society in general and would help ensure respect to the inherent right of the religious or belief community to autonomy in structuring its affairs as well as adequate observance of the right to freedom of association […]"

> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §123.**

"[…] The Venice Commission stresses that the voluntary character of registration does not mean that religious communities may operate outside the legal system. In modern democracies, the constitutional limits to the state power over religious communities cannot be considered as a barrier to the assertion of the authority of the democratic state. Religious communities are not situated above or outside the national legal order: they have their place – although a special one, safeguarded and protected by specific fundamental rights - within that order. […]

(…)

The Commission recalls in the first place that as the freedom of religion or belief is not restricted to citizens, legislation 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 or non-citizens, or that its headquarters are located abroad. […] In any case, the Venice Commission reiterates that religious or belief communities should not be obliged to seek legal personality if they do not wish to do so, and that this is also valid

concerning religious communities with their center outside the territories of the country concerned. […]"

CDL-AD(2019)010-e, Montenegro - Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities, §§ 30, 33.

"[…] By contrast, in the previous joint opinions on Armenia,the threshold of 500 and even 200 members was described as "discriminatory and disproportionate", in the absence of a justification of this figure. According to the 2004 and 2014 Joint Guidelines, obtaining legal personality should not be contingent on a religious or belief community having a high minimum number of members as this may discriminate against small or newly-established 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, §27.

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, § 53.

"[…] It may be legitimate for the State to refuse registration of certain groups who hold views that do not attain a certain level of "cogency, seriousness, cohesion and importance", although it may be challenging in practice to assess such aspects in an objective manner. In any case, the registering body should never assess the truthfulness or legitimacy of the views or system of values of the applicant."

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, § 57.

"[…] 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.

"[…] [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."

"[…] [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, §§29-30.

"[…] 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.

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, §§35-36.

"[…] [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.

"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.

"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.

"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(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 17.

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.

"Furthermore, registration requirements that call for substantive as opposed to formal review of the statute or character of a religious organization are impermissible.

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.

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 […], forcing it to do so […] would appear to raise serious issues under the ECHR."

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, §80-82.

"This […] freedom implies the right to establish a church or a religious community, without having to be recognised previously by a State authority."

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 of Hungary, §30.

"On a number of occasions, the European Court of Human Rights has had to consider rules on the recognition of religions and the effects of non-recognition. Arrangements which favour particular religious communities do not, in principle, contravene the requirements of the Convention 'providing there is an objective and reasonable justification for the difference in treatment and that similar [arrangements] may be entered into by other churches wishing to do so' [Alujer Fernandez And Caballero Garcia v. Spain]."

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 of Hungary, §46.

"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(2005)037, Opinion on the draft law regarding the religious freedom and the general regime of Religions in Romania, §16.

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 of Hungary, §52.

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

CDL-AD(2009)036, Joint opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations and on the law on amending the Criminal Code of the Republic of Armenia, (related to a membership requirement of 500).

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 of Hungary, §54.

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

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

"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(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 11-12.

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

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

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

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

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

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

> **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, §29.**

"The decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on whether a group has sought and acquired legal entity status. The right to manifest religion 'either individually or in community with others and in public or private', ICCPR Article 18(1) does not depend on a grant of entity status from the state. While a group that has not sought legal entity status cannot expect to have all the benefits of that status, a ban on all operation and activity without registration is extremely disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief. As stated in the OSCE/ODIHR-Venice Commission Guidelines for Review of Legislation pertaining to Religion or Belief, 'Registration of religious organizations should not be mandatory per se, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits'. That is, legal systems may impose certain

minimal requirements for groups that desire to obtain legal entity status, but states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity."

CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §26.

"Requiring registration before a religious organization or mission can operate is a violation of core religious freedom […]."

CDL-AD(2008)032, Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §89.

"According to international standards, the guarantees of freedom of religion are not subordinate to any kind of specific system of registration or religious entities; they must benefit any religious entity without any conditions of affiliation or registration."

CDL-AD(2006)030, Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine, §18.

CDL-AD(2007)041, Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania, §15.

"As concerns the refusal to register, or the termination of registration of a religious association, the European Court of Human Rights has clarified that 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 (see Manoussakis and Others, cited above, p.1362, §40, and Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, nos. 29221/95 and 29225/95, §84, ECHR 2001-IX).

In Cârmuirea Spiritual a Musulmanilor din Republica Moldova v. Moldova (judgment of 14 June 2005), the Court has unanimously held that 'the requirement to obtain registration […] served the legitimate aim of allowing the Government to ensure that the religious organisations aspiring to their official recognition by the State were acting in accordance with the law, did not present any danger for a democratic society and did not carry out any activity directed against the interests of public safety, public order, health, morals or the rights and freedoms of others. […] Without such a document the State could not determine the authenticity of the organisation seeking recognition as a religion and whether the denomination in question presented any danger for a democratic society. The Court does not consider that such a requirement is too onerous and thus disproportionate under Article 9 of the Convention'."

CDL-AD(2007)041, Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania, §§22-23.

"[…] [T]he fundamental rights guaranteed under Article 9 ECHR must not be made dependent on the recognition as a 'religious community'. The procedure of recognition should avoid any possibility of discriminating against any religion or belief. It would be appropriate to clarify the rights and prerogatives of religious communities versus religious organizations. It would also seem appropriate to add general statement that religious freedom is guaranteed to every individual and every religious organisations, even nonregistered ones."

CDL-AD(2007)041, Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania, §40.

"The Venice Commission considers that passing a law which refers only to religious entities

which want to acquire legal personality and consequently benefit from the principles and rights enshrined in the law might be understood as aiming to prevent the religious entities which do not want to be registered, from freely exercising their faiths."

CDL-AD(2007)005, Opinion on the Draft Law on the Legal Statius of Church, A religious community and a religious group of the "Former Yugoslav Republic of Macedonia", §§35-36.

"Religions can split: it has happened several times in the past and might happen in the future. A religion which is considered the same religion can split into different schisms, each part of the same religion should be entitled to register and to acquire legal personality, quite apart from other rights. If registering would not be possible, it would be serious a breach of the international requirements regarding freedom of religion."

CDL-AD(2007)005, Opinion on the Draft Law on the Legal Statius of Church, A religious community and a religious group of the "Former Yugoslav Republic of Macedonia", §59.

"1. 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, p. 11.

D. Privileges and benefits of religious or belief organisations

"[…], arrangements which favour particular religious communities do not, in principle, contravene the requirements of the ECHR provided that the State complies with its duty of neutrality, that there is an objective and reasonable justification for the difference in treatment, and that religious communities have a fair opportunity to apply for any privileged status if they wish so. In this case, the criteria established should be reasonable in light of the public interest pursued, objective and non-discriminatory. When examining whether there may be an objective and reasonable justification for a difference in treatment between religious

communities, the ECtHR takes into account the historical context and the particular features of the religion in question but may also have other legitimate reasons for restricting eligibility for a specific system to certain religious denominations."

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, § 27.

"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.

"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.

"The Venice Commission understands that, in the light the historical and political context prevailing in Kosovo*, 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.

"[…] [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*, §§60-62.**

"In general, the mere making any of the foregoing benefits or privileges available does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated.

The European Court of Human Rights, in its judgment in the case *Religionsgemeinschaft Zeugen Jehovas v. Austria*, considered that if a State confers substantial privileges to religious societies by a specific status it must then establish a legal framework which would give to all religious groups a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner."

> **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 of Hungary, §§98-99.**

"2. In general, out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief; at a minimum, access to the basic rights associated with legal personality -- for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued should be available without excessive difficulty. In many legal systems, there are a variety of additional legal issues that have substantial impact on religious life that are often linked to acquiring legal personality - for example, obtaining land use or other governmental permits, inviting foreign religious leaders, workers and volunteers into a country, arranging visits and ministries in hospitals, prisons and the military, eligibility to establish educational institutions (whether for educating children or for training clergy), eligibility to establish separate religiously motivated charitable organisations, and so forth. In many countries, a variety of financial benefits, ranging from tax exempt status to direct subsidies may be available for certain types of religious entity. In general, the mere making any of the foregoing benefits or privileges available does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated."

> **CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 11- 12.**

> **CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §76.**

E. Political activities of religious or belief organisations

"States have a variety of approaches towards the permissible role of religious and belief organisations in political activities. These can range from the prohibition of religious political parties, to preventing religious groups from engaging in political activities, to eliminating tax exemptions for religious groups engaging in political activities. While such issues may be quite complicated, and although a variety of differing but permissible laws is possible, such laws should not be drafted in way either to prohibit legitimate religious activities or to impose unfair limitations on religious believer."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 17.

F. Financing of religious or belief groups; general economic activity

"[…] The Venice Commission took the stance that the legislation "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*,§71.

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §75.

"Article 25 of the Draft Law provides that *"[t]he state assists and supports religious organizations in carrying out charitable activities, as well as in implementing socially significant cultural and educational programs and events".* In order not to interfere with the exercise of the activities of religious organizations, such assistance and support should be contingent upon a request made by a religious or belief community and not imposed on a religious organization which is unwilling to receive it and should be provided in a non-discriminatory manner."

CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §121.

"[…] Where associations are required to provide documents, the type and number of documents should be defined and reasonable and associations should be given sufficient time to prepare them. Moreover, the legislation should specifically define in an exhaustive list the grounds for possible inquiries involving requests for documents, which should not take place unless upon suspicion of a serious contravention of the legislation and should only serve the purpose of confirming or discarding the suspicion. […]"

CDL-AD(2014)046-e, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, §§ 209, 231.

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, § 72.

"[…], while imposing some reporting or disclosure obligations related to foreign funding may be based on legitimate aims such as combatting money-laundering and financing of terrorist

organisations, a *blanket* ban on funding of and on being funded by spiritual centres located abroad would not appear to be necessary or proportionate to achieve this aim. […]"

CDL-AD(2018)002-e, Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations, § 75.

"[…] Everyone has the right to support a religious association as a form of guaranteed manifestation and practice of her/his belief. Foreign contribution may be subject to proportionate regulation, though."

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, §98.

"*1. The permissibility of accepting gifts and the ability to solicit funds.* There is a variety of State practices with regard to permission to accept gifts and solicit funds. Some States give wide latitude for raising funds while others carefully limit amounts that can be received and how funds can be raised. The principal international guidelines would suggest that although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 14.

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, §106.

"[…] [R]eligious associations […] may also carry out other activities as long as they do not violate the law. In this regard, it is important to remember that religious communities have the right to exercise the full range of religious activities, as well as those normally exercised by registered nongovernmental legal entities."

"[A] blanket prohibition on all foreign funding (especially also by foreign natural persons) is arguably unreasonable, and not "necessary in a democratic society […]."

CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§74-76.

"States have a variety of legitimate reasons for regulating fund transfers of various types. However, provisions that discriminate against religious groups on religious grounds should not be permitted.

State financing. Many States provide both direct and indirect financing for religious and belief organisations. In addition to the indirect (but very real) benefits that come from tax exemptions and tax deductions, a variety of funding systems operate, including: paying salaries (or providing social benefits) for clergy; subsidizing religious schools; allowing organisations to use publicly owned buildings for meetings; and donating property to religious organisations. In many cases, State-financing schemes are directly tied to historical events, (such as returning property previously seized unilaterally by the State), and any evaluations must be very sensitive to these complicated fact issues.

Tax exemption. It is very common, though not universal, for the State to provide tax benefits to non-profit associations. The benefits typically are of two types: first, direct benefits such as exemption from income and property taxes, and second, indirect benefits that allow

contributors to receive a reduction in taxes for the contribution. There is little international law regarding these issues, though non-discrimination norms apply.

Tax system for raising funds. Some States allow religions to raise funds through the State tax system. For example, a (religious) public law corporation may have an agreement with the State whereby the latter taxes members of the religion and then transfers the proceeds to the religion. The two difficulties that frequently arise in such systems are first, whether such arrangements are discriminatory among religion and belief groups, and second, whether individuals who do not wish to have taxes taken from them for the religion to which they belong may opt-out. While international law does not prohibit such taxing systems per se, individuals presumably should be able to opt-out of the taxing system (though the opt-out might entail loss of membership in the religion)."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 13-14.

G. Religious Property Disputes

"The lack of legal personality also appears to create various kinds of problems for the property ownership rights of the religious communities, which is only partially addressed through the foundation system. Some of these problems may fall outside of the rights guaranteed by Article 1 of Protocol No. 1.44 Others, however, clearly fall within the scope of the provision. The most problematic issue appears to be that religious communities have been losing properties that have historically belonged to them. One of the reasons for this is that under the foundation system the property is held by the foundation and not be the religious community itself, although in practice and from ancient times in reality it is clearly the property of the community (the church, rabbinate, etcetera). The problem is that in situations where the foundation falls away (the members die and the requirements for upholding the foundation is no longer met), the properties have been transferred to the state. This may be seen as confiscation, which is a matter under Article 1 of Protocol No. 1, and has been seen as an infringement by the ECtHR."

CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §69.

"There are two classic religious-property disputes. The first is where the ownership of religious property is disputed as a result of a prior State action that seized the property and transferred it to another group or to individuals. This has been particularly problematic in many cases in formerly communist countries. The second case is where a dispute within a religious community leads to one or more groups contesting ownership rights. Both types of disputes, as well as other related issues, often involve historical and theological questions. Such disputes can be very complicated and demand expertise not only on strictly legal issues involving property, but also on technical questions of fact and doctrine. To the extent that laws deal with such issues, it is important that they be drafted and applied as neutrally as possible and without giving undue preferential treatment to favoured groups."

CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p. 17.

H. Liability and dissolution of religious or belief organisations

"[…] In principle, the decisions of courts or tribunals that review an administrative act should, at least in important cases, be subject to appeal to a higher court or tribunal, unless the case is directly referred in the first place to a higher tribunal in accordance with the national legislation. Accordingly, where denial of legal personality or de-registration has been authorized, the procedure should be subject to an effective process of appeal and/or review

by the courts, which should be quick, transparent and non-discriminatory. Moreover, given the serious impact on the right to freedom of religion or belief, the actual termination and liquidation/deregistration of religious or belief communities should be suspended until all avenues of appeal have been exhausted, meaning that the decision should not be enforced until the appeal or challenge is decided[…]."

> **CDL-AD(2014)046-e, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, §120.**
>
> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§108-109.**

"[…] Considering the wide-ranging and significant consequences that suspending or withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, any decision to do so should be a matter of last resort, only in case of grave and repeated violations endangering public order or where the breach gives rise to a serious threat to fundamental democratic principles or when there is a clear and imminent danger deriving from a particularly serious violation of the State law. Moreover, the decision to terminate the activities of a religious organization must be "proportionate to the legitimate aim pursued" as required by Article 18 para. 3 of the ICCPR and should be taken only when less intrusive measures are insufficient.
Pursuant to Article 43 para. 2 of the Draft Law, the violation of the religious organization's statutory objectives is also mentioned as a ground for suspension. As underlined in the 2015 Joint Guidelines on Freedom of Association, "under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful". […]"

> **CDL-AD(2014)046-e, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, §178.**
>
> **CDL-AD(2020)002-e, Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations", §§108-109.**

"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.**

"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.**

"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.

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, §§93-94.**

"Providing for the liquidation of a religious organization if it teaches its members to refuse medical aid to its members in life threatening circumstances must be carefully construed. Mature individuals have a right to refuse medical treatment. On the other hand, it is objectionable for the State to turn a blind eye to such practices in the case of children, notwithstanding that the ban is based on genuine religious motives.

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

> **CDL-AD(2010)054, Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§97-98.**

"It would be appropriate that dissolution should only be possible in case of grave and repeated violations endangering the public order and only as a last means, if no other sanctions can be applied. Otherwise the principle of proportionality would be violated."

> **CDL-AD(2007)041, Opinion on the draft law on freedom of Religion, religious organisations and mutual relations with the state of Albania, §48.**

"Dissolution provisions. Religious organisations should be encouraged to provide adequately for what happens in the event of either voluntary or involuntary dissolution of a legal entity of the organisation. Voluntary dissolution should be allowed. Dissolution provisions should be

consistent with registration provisions, in that the standards for access to and retention of legal personality should be broadly similar. Care should be taken to avoid vague provisions that allow discriminatory treatment of unpopular groups."

CDL-AD(2004)028, Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, p. 12.

XII. Reference Documents

CDL-AD(2020)002-e – Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations"

CDL-AD(2019)010-e – Montenegro - Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities

CDL-AD(2018)002-e – Armenia - Joint Opinion on the Draft Law amending the Law on Freedom of Conscience and on Religious Organisations

CDL-AD(2014)046-e – Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association

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

CDL-AD(2013)032 - Opinion on the final draft constitution of the Republic of Tunisia

CDL-AD(2012)042-e - Amicus Curiae Brief on the Compatibility with Human Rights Standards of certain articles of the law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina

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

CDL-AD(2012)016 - Opinion on the Federal Law on Combatting Extremist Activity of the Russian Federation

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 of Hungary

CDL-AD(2011)051 - Opinion on the draft law on amendments and additions to the law on alternative service of Armenia

CDL-AD(2011)028 - Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR

CDL-AD(2010)005 - Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical"

CDL-AD(2010)054 - Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the

laws on amending the criminal code, the administrative offences code and the law on charity of the Republic of Armenia by the Venice commission and OSCE/ODIHR

CDL-AD(2009)036 - Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief

CDL-AD(2008)032 - Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief

CDL-AD(2008)026 - Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred
CDL-AD(2007)005 - Opinion on the Draft Law on the Legal Status of Church, A religious community and a religious group of “the Former Yugoslav Republic of Macedonia”

CDL-AD(2007)041 - Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania

CDL-AD(2006)030-e - Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine

CDL-AD(2005)037-e - Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania

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