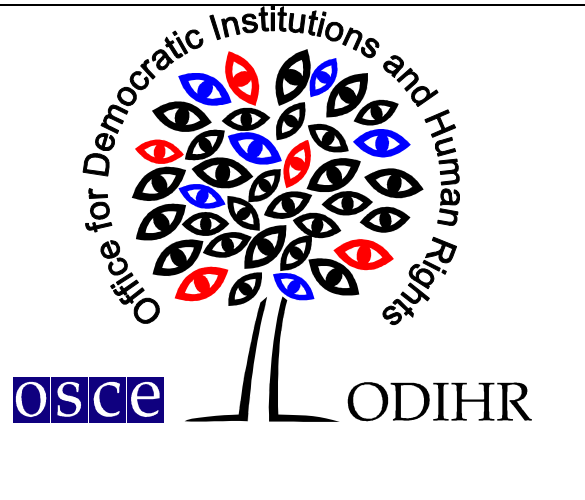


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Comments

On the Draft Law of the Republic of Tajikistan

“THE LAW OF THE REPUBLIC OF TAJIKISTAN ABOUT FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS”

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

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Introduction

- 1 In January 2008, the OSCE/ODIHR has been requested by the Government of the Republic of Tajikistan to provide comments on a proposed draft law of the Republic of Tajikistan “The Law of the Republic of Tajikistan About Freedom of Conscience and Religious Organizations” (hereinafter referred to as the draft law) that has been prepared and revised as of January 2008.¹
- 2 These comments are provided by the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the “Advisory Council”). The Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE’s participating States. In revising the draft law the members of the Advisory Council who drafted these comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.
- 3 The comments are based on an unofficial translation of the draft law completed as of January 2008. Furthermore, these comments go on from previous comments reviewing a previous draft law of the Republic of Tajikistan as of March 2006 “On Freedom of Conscience and on Religious Associations” prepared by the OSCE/ODIHR Advisory Council issued 28 April 2006 [Opinion-Nr.: REL – TAJ/063/2006 (Adv Council on FoRB) – available online: www.legislationline.org.] A number of issues highlighted in the previous comments of 28 April 2006 remain issues also in the current draft law as of January 2008, and further issues have come up in the new draft law. The present comments review the current draft law in its entirety and do not depend on references to the previous comments.
- 4 On 19 – 22 November 2007, several meetings concerning the draft law took place in Dushanbe between authorities of the Republic of Tajikistan, representatives of the Advisory Council, and officials from the OSCE Center in Dushanbe. These meetings included a roundtable on the draft law bringing together authorities of the Republic of Tajikistan, representatives of civil society, religious groups, and

¹ The formulation “conscious” used in the English text of the draft law submitted to ODIHR is being replaced by “conscience” for the purpose of this legislative opinion. Conscience is the correct formulation in English.

political parties Tajikistan as well as delegates of OSCE. These comments take into account the information gathered during these meetings. The Advisory Council wishes to express its deep gratitude to the authorities of the Republic of Tajikistan for the openness of the discussions and for the warm, positive, and constructive atmosphere in which these discussions took place. The ODIHR stands ready to continue this co-operation whenever requested.

- 5 The draft law contains many provisions that do meet the international standards of human rights in the field of freedom of religion or belief. It is particularly noteworthy that the draft law in its preamble outlines: "Acknowledging and confirming the right of every person of the society for freedom of conscience and the equal responsibility of all before the law regardless of religion and faith, basing on the fact that the Republic of Tajikistan shall be a secular state, acknowledging that Islam shall be an important aspect of history and culture of people of Tajikistan and with respect to other religions existing in the territory of the Republic, this Law shall be adopted."

The major findings are:

- 6 Many provisions of the draft law do meet the requirements and high standards of international commitments relating to freedom of religion or belief.
- 7 Several provisions of the draft law are unduly vague.
- 8 Several limitations to freedom of religion or belief in the draft law do not seem to be necessary in terms of the international commitments even when taking into due account the margin of appreciation left to national authorities.
- 9 Several provisions concerning non-citizens of the Republic of Tajikistan are unduly burdensome and violate religious freedom of those persons.
- 10 While it is the right of states to make adequate distinctions between different types of religious entities and grant them different levels of appropriate privileges, the distinctions between various religious entities such as religious organizations, religious communities, and others are confusing. The draft law seems to unclearly and inconsistently link various consequences to those distinctions.

Reference points of review

- 11 The comments are based on OSCE commitments that require the effective protection of freedom of religion or belief as an obligation on all OSCE States.² The Republic of Tajikistan is one of the OSCE participating States.
- 12 The comments are likewise based on the relevant provisions of international treaties, most notably the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights,⁴ the Convention on the Rights of the Child⁵. They are further based on United Nation declarations, most notably the Universal Declaration of Human Rights⁶ and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.⁷
- 13 The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.⁸
- 14 The OSCE general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act reads:

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

² For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf; last visited on 12 April 2006].

³ International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976 (hereinafter "ICCPR"). The Republic of Tajikistan has acceded to the ICCPR on 04 April 1999.

⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). The Republic of Tajikistan has acceded to the ICESCR on 04 April 1999.

⁵ Convention on the Rights of the Child, adopted and opened for signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, entered into force 2 September 1990 (hereinafter "CRC"). The Republic of Tajikistan has acceded to the CRC on 26 October 1993.

⁶ Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

⁷ Declaration on the Elimination of All Forms of Intolerance and of Discrimination adopted and proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981.

⁸ The Guidelines were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN. 4/2005/61 para. 57. The major international instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 12 April 2006].

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

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

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

- 15 This fundamental commitment has been repeatedly reaffirmed.
- 16 Principle 16.4 of the Vienna Concluding Document also has important implications for the law of religious associations. It provides that participating States will

respect the right of these religious communities to

establish and maintain freely accessible places of worship or assembly,

organize themselves according to their own hierarchical and institutional structure,

select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

solicit and receive voluntary financial and other contributions.

- 17 Principle 17 of the Vienna Concluding Document states that

participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief [as detailed in Principles 16.1 through 16.11] may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments.

- 18 One of the predominant and most relevant provisions of international law protecting the right of freedom of religion or belief is ICCPR (article 18). ICCPR (article 18) reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt

a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief 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 the 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.

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

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or adherence to a religion or belief.

- 21 Similarly,

[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted.

22 This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in article 18(2).

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

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

24 It is important to note that thus any limitations to the right to manifest one's religion or belief must be prescribed by law, serve one of the purposes listed in ICCPR (article 18(3)), and be necessary for attaining this purpose. This means that interference with this right must be set down in formal legislation or an equivalent norm in a manner adequately specified for the enforcement organs. There must be adequate certainty of the scope of the limitations.

25 Furthermore, the interference must be necessary to attain one of the purposes listed in the ICCPR (article 18(3)). The restrictions must thus be proportional in severity and intensity to the purpose being sought and may not become the rule. This also means that the restriction must be proportionate in the given case.⁹

26 The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR makes it very clear that State parties are obligated

to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present

⁹ For these rules on the permissible restrictions cf. Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd revised edition, 2005, pp. 425-426; Sarah Joseph, Jenny Schultz, and Melissa Castan, The International Covenant on Civil and Political Rights, 2nd edition, 2004, pp. 507-508.

Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR article 2(1)).

- 27 Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties

to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant (ICCPR article 2(2))

and

to make certain that persons whose rights or freedoms are violated shall have effective remedies (ICCPR article 2(3)).

- 28 Further, ICCPR (article 26) provides:

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

- 29 The U.N. Human Rights Committee has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view,

[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.

- 30 While the Covenant itself does not define discrimination, the Human Rights Committee States, consistent with the general usage of this term in international law, that

“discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

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

While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2, but it provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for in the Covenant.

- 32 ICCPR (article 27) affords particular protection against discrimination where "ethnic, religious or linguistic minorities exist." It provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." The U.N. Human Rights Committee's General Comment No. 23 (50) on article 27 indicates that "the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party." The General Comment goes on to note that

Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents.

33 1.4 The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, though not formally binding as a treaty obligation, distils many of the principles articulated in the ICCPR.

34 Article 2(2) of the 1981 Declaration defines “intolerance and discrimination based on religion or belief” as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

35 Article 3 of the 1981 Declaration underscores the significance of the anti-discrimination norm established by article 2, noting that

“Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights...”

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

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

- (a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;

- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

37 The rights of minors related to freedom of religion or belief are specifically outlined in the Convention of the Rights of the Child. This convention provides binding commitments to its State parties. Article 14 of the Convention of the Rights of the Child reads:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, 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.
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 the fundamental rights and freedoms of others.

Comments on the Legislation under Consideration

38 **Article 4** of the draft law provides: “The following main terms shall be used in this Law:

1. *freedom of conscience – the right of every person and citizen in determining his (her) relation to a religion freely and independently, separately or collectively following any religion or not following any religion, changing religious faith and also expressing and spreading faith concerning the relation to a religion as well as an atheistic belief;*

2. *freedom of religion – the right of every person and citizen for independent choosing of any religion and following it, participating in religious ceremonies, completing religious customs and religious education;*”

39 It is not clear why the provision does not relate the right to changing religious faith, expressing it or spreading a faith with the freedom of religion but with the freedom of conscience. As far as limitations to freedom of religion or belief could result from such definitions it is important to note that such limitations must be provided by law according to Principle 17 of the Vienna Concluding Document and to ICCPR (article 18 section 3). This entails that the law providing for such limitations must give adequate certainty of the scope of the limitations.

40 *Article 6 sect. 3 of the draft law provides: “The interference of state agencies and officials to the activity of religious unions and also the interference of the religious unions to the activity of state agencies and officials shall be prohibited, except the cases provided in the law.”*

41 The provision is unduly vague. The term “interference” is not defined. It can mean any reference to state activity and thus exclude any positive or negative reaction to state activities by religious unions. They then would not be allowed to make any statement on such state action. The same would apply for statements by state authorities. However, ICCPR (article 18 section 1) clearly states that there must be freedom to manifest one’s religion or belief in practice and teaching. This entails also freedom to make statements and suggestions related to state politics. Such rights are also protected by ICCPR (article 19 section 1), according to which everyone shall have the right to freedom of expression; this right shall include freedom to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of these rights does indeed carry with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others, for the protection of national security or of public order (ordre public), or of public health or morals. It is not clear whether or to what extent such objectives could be reached by the limitations set out in Article 6 sect. 3 of the draft law.

42 *Article 6 sect. 5 of the draft law provides: “In implementing the freedom of faith and propaganda and agitation activities, the religious unions shall be responsible to take into consideration the interests of the State, national values, independence and state security.”*

43 The provision is unduly vague. It is not clear what consequences should arise if the religious union does not take into account national values, independence and state security. It is also not defined what these values, independence and security are. It is important to note that according to ICCPR (article 18 section 3) freedom to manifest one’s religion or belief may be subject only to such limitations as are necessary to protect specific interests enumerated in that provisions. These objectives are public safety, order, health, morals or the fundamental rights and freedoms of others. Security does not figure among these objectives, however, public safety does. National values seem to broad a notion to meet the strict requirements of adequate certainty of the scope of the limitation. The same holds true for the interest of national independence. It is important to note that national values, independence and state security are highly legitimate interests. However, the means of their necessary protection must meet the requirements of certainty and proportionality as laid out in the ICCPR. Moreover, it is not clear what ‘to take into consideration’ could mean in practice. This term is too broad a notion to be adequately specified for the enforcement organs. It would be more appropriate to mention public safety, order, health, morals and the fundamentals rights and freedoms of others as legitimate limitations to freedom of religion or belief.

44 *Article 7 sect. 2 of the draft law provides: “The religious unions cannot fulfill the tasks of the state authority. During their activity in the religious unions the religious, the workers shall have not right to be elected or appointed to agencies of the state authority.*

45 This provision seems to establish an incompatibility of all employees of religious unions with e.g. being a representative in parliament. This would apparently apply also to personnel in hospitals or schools run by a religious union. It is not clear why that should be necessary to protect any of the objectives enumerated in ICCPR (article 18 section 3). It is important to note ICCPR (article 25 in conjunction with article 2) according to which every citizen shall have the right and the opportunity

without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country. Each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as religion. Thus, participation in elections and the right to be elected and to hold offices must not be unreasonably restricted because of the religious affiliation of an individual. It is not clear why such far reaching limitations in the draft provision should be necessary to achieve any of the legitimate objectives under international law. Furthermore, the limitations set out in the draft provision seem to become the rule instead of remaining an exception from the generally guaranteed right.

46 *Article 7 sect. 3 of the draft law provides: “The religious unions shall not participate in the activity of political parties and shall not assist them materially or morally.”*

47 ICCPR (article 18 section 1) clearly states that everyone has the right to manifest his or her religion in public. Religious ideas very often refer to issues and developments in practical and everyday life.

48 This provision could be read as excluding each and every reference to political activities connected with political parties by a religious union. This could exclude any of their statements about what actions should be taken to improve society. It is not clear why that should be necessary to protect any of the objectives enumerated in ICCPR (article 18 section 3). It may be noteworthy in this respect that in several States around the world there are examples of democratic involvement of religion and religions in politics. There, religion is seen as a positive factor of public life. Religions are regarded as contributing to stability of the country and to the good development of public life. They are regarded as partners of politics while separation of state authorities and religion is strictly maintained. Thus, e.g., there are political parties the ideological basis of which is rooted in religious ideas: In Italy, there are the Christian Democrats (UCD), in Germany there are the Christian Democratic Union (CDU) and the Christian Social Union (CSU), both of which

belong to politically leading forces (the current German Chancellor is the leader of the CDU). These political parties are quite open to members of other religious affiliation such as Muslims, Jews, and others, also to non-believers. In Turkey, the Muslim rooted Justice and Development Party (AKP) is a leading political party, and its leader is Prime Minister of Turkey. Many other examples can be found. In such countries, political parties of religious affiliation form part of the working process of political development.

49 Also, the provision does not state exactly, what moral assistance could mean. The provision is vague and does not meet the requirement of adequate certainty for the enforcement organs in the meaning of ‘prescribed by law’ in the sense of ICCPR (article 18 section 3).

50 *Article 7 sect. 4 of the draft law provides: “Religious ideology, religious agitation and learning cannot be the mean of struggle of public and political movements.”*

51 This provision could be read as excluding any reference in the political process to religious ideas. It is not clear why that should be necessary in view of legitimate objectives under international law such as ICCPR (article 18 section 3) and Principle 17 of the Vienna Concluding Document. The comments given to Art. 7 sect. 3 of the draft law also apply to this provision.

52 *Article 9 sect. 3 of the draft law provides: “Giving children religious education shall be allowed when they reach age 7, with the written agreement of their parents or the persons changing them and only in free from the study at a comprehensive school time and in special buildings.” By the term “special building” a building is meant that shall have a license from the relevant state authorities for conducting classes in it.*

53 It must be possible for parents to raise their children in their own religious beliefs. Therefore, with the consent of the parents it must be possible to give religious education also to minors below 7 years of age. The provision does not comply with the requirements made by the Conventions on the Rights of the Child (Article 14) according to which States Parties shall respect the right of the child to freedom of thought, conscience and religion. The Convention on the Rights of the Child (article 14) does not make any specification relating to a specific age of the child. Therefore, any child also younger than 7 years of age must have the right to be in contact with and follow the teaching of a religion. State Parties must respect the rights and duties

of the parents and, when applicable, 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. Also in respect to the religious rights of the child – and its parents or legal guardians - freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. It is not clear why the limitations laid out in Article 9 sect. 3 of the draft law should be necessary to achieve any of such objectives.

54 In addition to that, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proclaimed by the United Nations General Assembly (Resolution 36/55 of 25 November 1981) states in its Article 5 that the parents or the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up. Furthermore, according to that Declaration, every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his or her parents or legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his or her parents or legal guardians, the best interests of the child being the guiding principle. Limitations to those rights concern practices of a religion or belief in which a child is brought up that could be injurious to his or her physical or mental health or to his or her full development. Such limitations are not envisaged by the draft provision. The mere age of the child cannot be a legitimate ground for limiting the rights of the child or his or her parents or legal guardians.

55 The provision is unclear in its scope of application. It is unclear whether the draft law refers only to state schools or whether it does not allow any possibility of studying religion during ‘comprehensive school time’ in all schools, including non-state schools. It is also not clear whether the draft law recognizes in principle the freedom of choice to study religion in state schools during the ‘comprehensive school time’ or on an extra-curriculum basis. It further must be possible that parents give religious education to their children in their homes. None of the legitimate objectives on the basis of which freedom of religion or belief may be limited could

support a prohibition to teach one's own children in religious ideas at one's own home. Furthermore it is not clear what is meant by 'special buildings' in which religious lessons are allowed. If those are not state school buildings this could mean that religious studies are not allowed to take place in those schools even on extra-curriculum basis. This would be over-restrictive.

56 *Article 9 sect. 4 of the draft law provides: "Involving adolescents in religious education against their will shall not be allowed."*

57 The draft law does not provide a definition of "adolescents". The term adolescent must be defined by an adequate age somewhere in the legislature of the Republic of Tajikistan. Otherwise the provision could be read as requiring the consent of any minor to his or her religious education. This would, however, collide with the right of the parents to raise their child in their own religion or belief. The right of parents – or legal guardians – to educate their child in the religion of their choice must be exercised in a manner consistent with the evolving capacities of the child as is stated in the Convention on the Rights of the Child (article 14 section 2). In order to meet the requirement that limitations must be adequately specified for the enforcement organs it is important that specific ages should be mentioned in the law from which onwards the will of the child is of relevance. In several States around the world the age for the preference of the will of the minor is 12, 14 or 18 years. It also has to be taken into account that children below a certain young age will not be able to have or to express a will in the matter.

58 The draft provision also does not adequately take into account Article 5 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. According to that norm the parents or the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

59 *Article 9 sect. 5 of the draft law provides: "The persons involved in giving religious education, must have special religious education and a license for this kind of activity."*

60 The provision is unduly vague. It is not clear under what circumstances such a license should be given. It also cannot be the state authorities which should unilaterally make decisions on what religious education should be needed. Principle

16.4 of the Vienna Concluding documents provides that religious communities shall have the right to select and appoint their personnel in accordance with their respective requirements and standards. This entails also the personnel providing religious education. In a number of States around the world there are treaties between the State and religious communities concerning also the requirements made in respect of teaching personnel. This is especially the case where religious instruction is provided in state schools.

61 *Article 11 sect. 2 of the draft law provides: “The religious organizations shall be established in a form of religious centers, religious institution, church, synagogue and other forms not contradicting with legislature.”*

62 The provision is unduly vague. It is not clear what “other forms” should entail.

63 *Article 11 sect. 3 of the draft law provides: “The religious communities shall be established in a form of mosques, agitating societies, worship and pilgrimage places and other forms not contradicting with legislature.”*

64 The provision is unduly vague. It is not clear, what “other forms” should entail. It is also not clear how “places” could be a “community”.

65 *Article 11 sect. 4 of the draft law provides: “According to the order provided by the Civil Code of the Republic of Tajikistan, not least than 3 religious organizations can establish an association.”*

66 It is not clear why religious communities should not be able to form associations. This especially applies to mosques. The distinction could lead to discriminatory measures in practice.

67 *Article 12 sect. 1 of the draft law provides: “The religious organizations shall be legal person and shall act based on the Regulations in the order provided by the present Law.”*

68 It is not clear whether and why religious communities should not be legal persons. This in practice could lead to discriminatory measures.

69 Also, according to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the regulations may

entail. The provisions in such regulations must not violate the rights of the religious associations to organize according to their own structures.

70 *Article 12 sect. 2 of the draft law provides: “The religious unions without legal person status shall be registered in the authorized state agency on religion and shall work based on a sample regulations that prepared and approved by the authorized state agency on religion.”*

71 It is not clear whether or why religious organizations cannot exist without the status of a legal person. The provision could be read as implying that all religious groups must be registered regardless of their legal status. It is not clear why that should be necessary in a democratic society.

72 It is not clear whether non registered religious groups can at all deploy religious activity. Such activity of non registered groups must, however, be possible.

73 Also, as stated above, according to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the sample regulations may entail. The provisions in such sample regulations must not violate the rights of the religious associations to organize according to their own structures.

74 *Article 14 of the draft law provides: “The church and synagogue shall be types of the religious organizations working on the basis of their regulations in the order provided by the present Law. The regulations of the church and synagogue shall be prepared according to the requirements of this Law and the sample Regulations approved by the authorized state agency on religion.”*

75 Again, as stated above, according to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the sample regulations may entail. The provisions in such sample regulations must not violate the rights of the religious associations to organize according to their own structures.

- 76 *Article 15 sect. 2 of the draft law provides: “The condition and order of the studies in the religious educational institutions shall be defined by the Ministry of Education of the Republic of Tajikistan.”*
- 77 Religions must be free to educate their own personnel according to their own rules and requirements. This follows from Principle 16.4 of the Vienna Concluding Document which provides that participating States will respect the rights of religious communities to organize themselves according to their own hierarchical and institutional structure and to select, appoint and replace their personnel in accordance with their respective requirements and standards. They can do so also in accordance with any freely accepted arrangement between them and their State. Religions must also be free to arrange their own types of activities such as Sunday schools or madrassahs.
- 78 Article 6 of United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief should also be taken into due account. It provides that the right to freedom of religion or belief includes the right to train appropriate leaders called for by the requirements and standards of any religion or belief.
- 79 *Article 16 sect. 2 of the draft law provides: “The mosque as a kind of religious community shall work on the basis of the sample Regulations approved by the authorized state agency on religion.”*
- 80 Religions must be free to organize themselves according to their own rules. Again, as stated above, according to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the sample regulations may entail. The provisions in such sample regulations must not violate the rights of the religious associations to organize according to their own structures.
- 81 *Article 16 sect. 5 of the draft law provides: “The imams of the five-time mosques and imam-khatibs of the public mosques shall be appointed with the suggestion of the Public Council of Ulamo of the respective district, town and region by the authorized state agency on religion together with local administration of the state*

authority. The imams of the five-time and public mosques shall be selected from the persons possessing high religious education.”

82 Religions must be free to select and appoint their own personnel freely. Any provisions relating to that right must comply with Principle 16.4 of the Vienna Concluding Document according to which religious communities have the right to select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State. Limitations must be proportionate, adequately specified and directed to a legitimate aim under international commitments such as public safety public safety, order, health, or morals or the fundamental rights and freedoms of others. It is not clear whether these requirements are met by this draft provision.

83 *Article 16 sect. 6 of the draft law provides: The order of registration of the five-time and public mosques shall be conducted according to sample Regulations approved by the authorized state agency on religion.*

84 Religions must be free to organize themselves according to their own hierarchical and institutional structure. Again, as stated above, according to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the sample regulations may entail. The provisions in such sample regulations must not violate the rights of the religious associations to organize according to their own structures.

85 *Article 16 sect. 7 of the draft law provides: The requirements of the sample Regulations concerning the registration of the mosques shall be applied to the five-time and public mosques, which shall be established after enactment of the law.*

86 According to Principle 16.4 of the Vienna Concluding Document participating States must respect the right of religious associations to organize themselves according to their own hierarchical and institutional structures. Religions thus must be free to organize themselves according to their own rules and regulations. It is not sufficiently specified in the draft law what kind of provisions the sample regulations may entail. The provisions in such sample regulations must not violate the rights of the religious associations to organize according to their own structures.

- 87 It also is not clear why the sample regulations should apply only to those mosques which have been established after enactment of the draft law. This could be discriminatory in practice.
- 88 **Article 17 sect. 1** of the draft law provides: *“The agitating societies, worship and pilgrimage places shall be other types of the religious communities. For establishment of these types of the religious communities, their founders (not least than 10 citizens of the Republic of Tajikistan) shall apply with not least than 50 signatures of citizens of the Republic of Tajikistan belonging to a certain religion.”*
- 89 While appropriate differences can be made concerning the requirement of numbers of signatures relating to differing types of entities, it is not clear why more signatures are needed to establish an agitating society, a worship place or a pilgrimage place than for establishing other religious unions. This distinction could violate ICCPR (article 26) which provides that all persons are equal before the law.
- 90 The provision (perhaps in its translation) is also unduly vague in requiring signatures of citizens belonging to “a” certain religion. Whereas it is likely that the provision requires the signatures of citizens belonging to the specific religion forming that agitating society, worship or pilgrimage place this is not clear.
- 91 It is also not clear what the term ‘religion’ means in this context. While the term could mean a religion in general such as Islam, Judaism or Christianity it could also refer to a specific form, branch or teaching within one of such general faiths. This ambiguity could violate ICCPR (article 18 section 3) according to which all limitations to freedom of religion or belief must be prescribed by law, i.e. must be adequately specified for the enforcement organs.
- 92 **Chapter 4** of the draft law is entitled: *“The Establishment and Registration of the Religious Organizations”*.
- 93 This chapter is headed by “Religious Organizations”. However, it contains also provisions about religious unions in general (Art. 18 sect. 4 and 5). While this may be a matter of translation it is not clear whether or why the law should not contain provisions about the establishment and registration of other religious unions than religious organizations. If in fact the following draft provisions which in its wording refer to religious organizations only and not to religious communities should really mean that restriction, this could lead to undue discriminations against either of these institutions.

- 94 *Article 18 sect. 3 of the draft law provides: “The leaders, the members of political parties, officials and state workers cannot be the founders of the religious organizations.”*
- 95 It is not clear why members of political parties, officials and state workers should not be allowed to be founders of religious organizations, but apparently could be founders of religious communities. This, in practice and law, could lead to discriminations according to the religious affiliation of the affected persons. This restriction could violate Principle VII of the Helsinki Final Act according to which the participating States will respect human rights and fundamental freedoms for all without distinction as to religion. This restriction could also violate ICCPR (article 26) according to which all persons are equal before the law.
- 96 It is also not clear why it should be necessary to protect any of the legitimate aims enumerated in ICCPR (article 18 section 3) to restrict freedom of religion in such a far reaching way for all members of political parties, officials and state workers. Such restriction could also violate Principle VII of the Helsinki Final Act according to which the participating States will promote and encourage the effective exercise of civil, political, economic, cultural and other rights and freedoms.
- 97 It may be noteworthy also in this respect that – as said above - in several States around the world there are examples of democratic involvement of religion and religions in politics. In those countries, religion is seen as a positive factor of public life. Religions are regarded as contributing to stability of the country and to the good development of public life. They are regarded as partners of politics while separation of state authorities and religion is strictly maintained. Thus, e.g., there are political parties the ideological basis of which is rooted in religious ideas: In Italy, there are the Christian Democrats (UCD), in Germany there are the Christian Democratic Union (CDU) and the Christian Social Union (CSU), both of which belong to politically leading forces (the current German Chancellor is the leader of the CDU). These political parties are quite open to members of other religious affiliation such as Muslims, Jews, and others, including non-believers. In Turkey, the Muslim rooted Justice and Development Party (AKP) is a leading political party, and its leader is Prime Minister of Turkey. Many other examples can be found. In such countries, political parties of religious affiliation form part of the working process of political development.

- 98 *Article 18 sect. 4 of the draft law provides: “Only full competent person shall be considered the member or the participant of the religious union.*
- 99 It is not clear what a participant of a religious union is. If this term should mean any participating in religious activities of a religious union such as prayer, ceremonies, etc. this would clearly violate freedom of religion of minors. Freedom of religion is a human right for all, not only for adults. The provision does not comply with the requirements made by the Conventions on the Rights of the Child (article 14) according to which States Parties shall respect the right of the child to freedom of thought, conscience and religion. According to ICCPR (article 18 section 1) everyone, regardless of age, has the right to freedom of religion or belief. This right includes freedom to manifest his or her religion or belief in community with others.
- 100 *Article 18 sect. 5 of the draft law provides: “If the foreign citizens and stateless persons shall have permanent residence or a certificate of residence in the Republic of Tajikistan, they can be a member or a participant of the religious union.”*
- 101 It is not clear what the term participant of a religious union means. If this term should mean any participating in religious activities of a religious union such as prayer, ceremonies, etc. it would clearly violate religious freedom of foreign citizens and stateless persons who have no permanent certificate of residence in the Republic of Tajikistan. Freedom of religion is a human right for all people regardless of their citizenship.
- 102 The same holds true for the limitation in respect of being a member of a religious union. ICCPR (article 18 section 1) guarantees to every individual regardless of citizenship or residence requirements the right to manifest his or her religion in community with others. Also, Principle VII of the Helsinki Final Act provides that the participating States will recognize and respect the freedom of the individuals to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his or her own conscience. It is not clear why such far reaching restrictions of freedom of religion as provided for in the draft provision should be necessary to achieve any of the objectives permissible under international law, especially ICCPR (article 18 section 3).
- 103 *Article 18 sect. 7 of the draft law provides: “The establishment and activity of the religious organizations, the aims and actions of which shall contradict the legislature of the Republic of Tajikistan shall be banned.”*

- 104 This provision could be read as allowing the banning of religious organizations even for minor contradictions of the legislature of the Republic of Tajikistan. That would be disproportionate. It is an accepted rule in international law that restrictions to ICCPR (article 18 section 1 and 2) must be proportional in severity and intensity to the purpose being sought and that the restriction also must be proportionate in the given case. The legitimate objective to keep up the legislature of the Republic of Tajikistan can – in cases of minor impact – be well achieved by other means than banning all activity of a religious organization and even the religious organization itself.
- 105 The provision could also be read as allowing the banning only of religious organizations, but not of religious communities. This can be discriminatory.
- 106 *Article 19 sect. 4 of the draft law provides: “In necessary cases for conducting religion analysis, getting the conclusions of the religious specialists and other inspection and analytic actions the state registration of the religious organizations shall be delayed.”*
- 107 The provision is unduly vague. It does not indicate a time limit for delaying registration. That could lead to indefinite and disproportionate delays of registration.
- 108 *Article 19 sect. 5 of the draft law provides: “The following documents shall be presented to the authorized state agency for the state registration:*
- (a) ...;*
 - (b) information about the founders of the organizations;”*
- 109 The provision is unduly vague. It does not make any statement about the quality nor quantity of information needed. The draft provision does not adequately specify the information needed neither for the enforcement organs nor for the religious organizations themselves. The enforcement organs could repeatedly and indefinitely require more and more
- 110 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.
- 111 *Article 19 sect. 5 of the draft law provides: “The following documents shall be presented to the authorized state agency for the state registration:*

(a) ...;

(b) *A positive conclusion of the authorized state agency on religion about the fact that the aims and tasks of the religious organization shall not contradict culture, national and religious values;*

112 The provision is unduly vague. It does not indicate what culture is or what national and religious values entail. The draft provision does not adequately specify the standards according to which the authorized state agency should make its conclusions. It therefore is not adequately specified for the enforcement organs or for the religious organizations themselves.

113 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.

114 **Article 19 sect. 6** of the draft law provides: *“In the case of introducing amendments to the Regulations of the religious organization, the religious organization shall go through anew registration in the order stated in this article.”*

115 This provision opens a new complete registration process for the entire religious organization even when only minor amendments to the statutes of the religious organizations are being made. Thus, amendments of the regulations of the religious organization would become extremely difficult if not impossible. The right of religious organizations to organize themselves according to their own – perhaps changing and developing hierarchical and institutional structure could be violated. This provision could lead to a disproportionate burden for any religious organizations (or other religious union).

116 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.

117 **Article 20** of the draft law provides: *“The state registration of the religious organizations shall be refused on the following basis:*

(a) if it shall prove out that there was false information in the presented documents;”

118 This provision could be read as meaning that any, even minor, false information must lead to a refusal of registration and that the mistake cannot be healed. That would be disproportional.

119 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.

120 *Article 20 of the draft law provides: “The state registration of the religious organizations shall be refused on the following basis:*

1. ...;

2. If the name of the religious organization shall insult the ethic, national and religion feeling of citizens;

121 This provision is unduly vague. It is not clear how intensive the insult must be or what numbers of citizens need to be insulted. In this provision an insult of the ethic, national or religious feeling of any one citizen could be a reason for not refusing registration. Even minor insults could lead to non registration. Such a far reaching consequence would clearly violate the requirement that any restrictions of the freedom of religion or belief must be proportional in severity and intensity to the purpose being sought and may not become the rule.

122 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.

123 *Article 22 of the draft law provides: “The state list of the religious organizations shall be bank of information about the religious organization. The authorized state agency shall regulate the type of the list.*

1. The following shall be included to the state list of the religious organizations:

2. ...;

3. information about annual activity of the religious organization”

124 This provision is unduly vague. It is not clear what information is required.

125 The draft provision does not seem to apply to religious communities, but only to religious organizations. That could lead to illegitimate discriminations between religions.

- 126 *Article 23 of the draft law is entitled: “The rights of the religious organizations.”*
- 127 The title of the provision refers to religious organizations only whereas the provision as such also contains rules about other religious unions. While this - as in the heading of chapter 4 of the draft law - may be a matter of translation it is not clear whether or why the law should not contain provisions about the rights of other religious unions than religious organizations. If in fact the following draft provisions which in its wording refer to religious organizations only and not to religious communities should really mean that restriction, this could lead to undue discriminations against either of these institutions.
- 128 *Article 24 of the draft law provides: “The religious unions shall be responsible:*
1. ...;
 2. *by request of the authorized state agency on religion to present information;”*
- 129 The provision is unduly vague. It is not clear which kind of information the state agency can request. The draft provision does not adequately specify the information needed neither for the enforcement organs nor for the religious organizations themselves. The enforcement organs could repeatedly and indefinitely require more and more information. The draft provision could thus lead to indefinite delay of registration. It could also lead to disproportionate requirements of information.
- 130 *Chapter 6 of the draft law is entitled: “The Rights of the Citizens and Religious Organizations Connected with Freedom of Religion”*
- 131 The title of the chapter refers to religious organizations, but the chapter also contains rules about religious unions in general. While this - as in the heading of chapter 4 of the draft law - may be a matter of translation it is not clear whether or why the law should not contain provisions about the rights of other religious unions than religious organizations. If in fact the following draft provisions which in its wording refer to religious organizations only and not to religious communities should really mean that restriction, this could lead to undue discriminations against either of these institutions.
- 132 *Article 27 sect. 2 of the draft law provides: “The religious unions shall have right to produce, export, import and spread the religious objects, religious literature and other information objects of religious content according to the legislature of the Republic of Tajikistan.”*

- 133 It is not clear why individuals should not be allowed to produce and spread and also import or export religious objects. It is not clear why that should be necessary in a democratic society. It is noteworthy that Article 6 of the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that everyone has the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.
- 134 *Article 27 sect. 3 of the draft law provides: “The religious literature and religious objects shall be spread in the places, where shall live the followers of that religion.”*
- 135 This provision could be read as implying that religious literature and objects could not be spread in other places than those where followers of that religion live. That could exclude distribution of such items in general bookshops, in worshipping places and pilgrimage places if those are apart from places where followers of that religion live. It is not clear why that should be necessary in a democratic society. It is noteworthy that Article 6 of the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that everyone has the right to write, issue and disseminate relevant publications in these areas.
- 136 *Article 27 sect. 4 of the draft law provides: “The export and import of the large number of the religious literature and as well as other religious objects shall be conducted only after getting the conclusion (agreement) of the authorized state agency on religion.”*
- 137 The provision is unduly vague. It is not clear what “large number” means. That could be ten or a hundred or a thousand or more items. Production, import and export of religious items must be free. It is noteworthy that Article 6 of the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that everyone has the right to write, issue and disseminate relevant publications in these areas and the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief. The United Nations 1981 Declaration speaks of ‘adequate’ extent. This implies that also large numbers can be adequate.

- 138 The provision is also unduly vague in that it does not indicate under what conditions the agreement of the authorized state agency must be given. This in practice could lead to decisions which could be not foreseeable or even arbitrary.
- 139 *Article 27 sect. 5 of the draft law provides: “Without prior agreement with the authorized state agency, the international organizations working in the Republic of Tajikistan cannot be involved in agitating activity, religious or non-religious worship, importing literature and papers of religious content.”*
- 140 The provision is unduly vague. While it is legitimate under international law to restrict activities as far as this is prescribed by law and necessary to protect national safety, order, health, morals or the fundamental rights and freedoms of others the draft provision, does not say in any way, under what conditions the prior agreement has to be granted. Again, it is noteworthy that Article 6 of the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that everyone has the right to write, issue and disseminate relevant publications in these areas and the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief. It does not make any distinction as to national or international organizations.
- 141 The provision is also unduly vague in that it does not indicate under what conditions the agreement of the authorized state agency must be given. This in practice could lead to decisions which could be not foreseeable or even arbitrary.
- 142 The provision also is highly problematic in view of ICCPR (article 18 section 1) noting that freedom of religion or belief is a human right and not a right limited to nationals or equivalent persons. Everybody must be free to worship in community with others in public or private. Also spreading one’s faith is not limited to nationals or equivalent persons. Likewise, it does not seem necessary to achieve any of the legitimate objectives under ICCPR (article 18 section 3) to restrict agitating activity, religious or non-religious worship, importing literature and papers of religious content in the way the provision does.
- 143 Furthermore, Principle 16.4 of the Vienna Concluding Document explicitly states that participating States will respect the right of religious communities to establish and maintain freely accessible places of worship or assembly. The Principle does not make any distinction as to national or international religious organizations.

- 144 *Article 27 sect. 6 of the draft law provides: “The state agency shall give agreement for (religious) agitating activity only if the followers of that religion shall be citizens of the Republic of Tajikistan or the persons equaled with them living in the Republic of Tajikistan for last 10 years.”*
- 145 ICCPR (article 18 section 1) gives the right to manifest one’s religion through teaching in public regardless of time periods of residence.
- 146 It is no clear why such a restriction should be necessary to achieve any one of the legitimate objectives that could justify limitations to the right of freedom of religion or belief.
- 147 Principle 16.4 of the Vienna Concluding Document does not make any statement as to the time period that any follower of a religious community is resident in a given country. From this it seems clear that such a time period of residence is not permissible under OSCE commitments.
- 148 *Article 28 sect. 2 of the draft law provides: “All kinds of charity and agitating activities directed to involving the citizens to religion, possessing mental and other stressing character shall be banned.*
- 149 The provision could be read as prohibiting all missionary activity linked to charitable and speech activity. The provision is unduly vague and disproportionate. It belongs to the difficult questions of international human rights commitments relating to religion or belief to define means of proselytizing that can be banned by State authorities. Although not binding for the Republic of Tajikistan in terms of international public law the decisions of the European Court of Human Rights can give useful examples for the legitimate scope of such actions. The European Court of Human Rights has distinguished between proper and improper proselytizing. One example of improper proselytizing that can be banned by State authorities is exploiting a leading position in a captive audience. That would apply e. g. to proselytizing soldiers in the armed forces by a superior. However, the term ‘stressing character’ seems much too vague to define improper charity or agitating activity.
- 150 *Article 29 of the draft law provides: “In agreement with authorized state agency, the religious unions shall have right for international relations.”*

- 151 Religious unions must be free in their international relations. It is noteworthy that Article 6 of the United Nations 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief explicitly states the right to establish and maintain communication with individuals and communities of religion and belief at the national and international levels. Any limitations to this right – being an expression of the general right to freedom of religion or belief, must be proportional in severity and intensity to the purpose being sought and must not become the rule. In other words any limitation must be an exception to the rule of freedom and must not become the rule itself. While the limitation may legitimately have the objective to establish and maintain public safety in times of insecurity or international terrorism the limitation itself may not become the rule.
- 152 *Article 30 of the draft law is entitled: “The property of the religious organizations”*
- 153 The title refers only to religious organizations, but the provision as such refers also to religious unions in general. If this is not a question of translation it could result in discriminatory action.
- 154 *Article 36 sect. 1 of the draft law provides: “According to the present Law and other laws of the Republic of Tajikistan, the religious unions shall be responsible for the violation of the legislature of the Republic of Tajikistan.”*
- 155 It is not clear how this provision should be read. Probably the religious unions are held responsible only for those violations that the religious union as such has committed. It would be quite disproportionate if religious unions should be held responsible for violations of Tajik law by any person or even only by any of its members or followers.
- 156 *Article 36 sect. 2 of the draft law reads: “In a case of taking actions going out the framework of goals and tasks mentioned in the regulations or violating the laws and the legal interests of legal and natural persons by the religious organizations, a written instruction shall be issued to the administration of the religious union by the authorized state agency or prosecutor.”*
- 157 The provision is unduly vague. It is not clear what legal interests entail. This term is too broad a notion to be adequately specified for the enforcement organs.
- 158 *Article 39 sect. 2 of the draft law provides: “The regulations of the religious unions, which were established before taking effect of the present Law, should be brought to*

accordance with the requirements of the present Law from the moment of taking effect of the present Law. Only those parts of the regulations of the religious unions not contradicting with the present Law shall be effective. The anew registration of the religious unions that were established before the moment of taking effect of the present Law shall be conducted not later than December 31, 2008 with exemption from paying the state fee.”

- 159 This provision could have the effect that smaller religious unions or entities cannot be reregistered even if they are very traditional in the Republic of Tajikistan. This could be a small mosque or synagogue or a small monastery with only very few monks or nuns. Those unions could thus be forced to cease to exist. This would be disproportional and would clearly violate the right to manifest one’s religion or belief in community with others.

The status of non-citizens

- 160 The legal position of foreign citizens and stateless persons in respect to freedom of religion or belief remains is ambiguous throughout the draft law. The preamble of the draft law acknowledges and confirms “the right of every person of the society for freedom of religion” and equality of all. However, Art. 2 of the draft law establishes as the task of the draft law to protect rights and interests of the citizens only. Also, Art. 2 of the draft law can be read as “securing human rights for freedom of conscience, religion” only of citizens.
- 161 It remains uncertain what status the draft law attributes to foreign citizens and stateless persons. Art. 5 sec. 6 of the draft law states that “The foreign citizens and stateless persons being in the Republic of Tajikistan shall use the right for freedom of conscience and religion in the order provided by the present Law”.
- 162 It is important to note that freedom of religion or belief as a human right is a right of everybody, regardless of their citizenship. The draft law does not adequately meet this commitment.
- 163 Although Art. 2 of the draft law excludes non-citizens from its task it does contain provisions concerning those people.
- 164 Art. 5 sect. 3 of the draft law seems to allow to indicate the relation of a non-citizen to a religion in an official document against his or her will, whereas this is prohibited in relation to citizens. This could discriminate against non-citizens.

- 165 Art. 9 sect. 1 of the draft law thus excludes non-citizens from the right to “get religious education” as well as to be “engaged in religious education”. That discriminates against non-citizens.
- 166 Religious organizations in the sense of Art. 18 sect. 1 of the draft law have the purpose of satisfying religious needs of “the citizens” of the Republic of Tajikistan only. This could discriminate against the right to freedom of religion or belief of non-citizens.
- 167 Chapter 6 of the draft law refers only to “The Rights of the Citizens and Religious Organizations Connected with Freedom of Religion”. The provisions thus exclude non-citizens from the right to freely conduct “religious customs, traditions and ceremonies” (Art. 25 sect. 1), from worshiping freely in their own houses, having offered worshiping facilities in “hospitals, invalid houses, places of preliminary arrest and prisons” (Art. 25 sect. 4 and 5). This discriminates against non-citizens.
- 168 The right “to complete Hajj and Umra” is guaranteed only to citizens of the Republic of Tajikistan (Art. 26). This could discriminate against non-citizens.
- 169 Only citizens (and religious unions) shall have the right to “get and use religious literature and objects” (Art. 27 sect. 1). This discriminates against non-citizens.
- 170 Without prior agreement by the authorities “International” organizations working in the Republic of Tajikistan “cannot be involved in agitating activity, religious or non-religious worship, importing literature and papers of religious content” (Art.27 sect. 5). This could discriminate against non-citizens.
- 171 Religious “agitating activity” performed by religions, of which the followers are non-citizens shall be allowed only if the followers of that religion have lived in the Republic of Tajikistan for a minimum of the last ten years. It is not clear whether all or only part and how many of the followers of that religion must have had their residence in the Republic of Tajikistan for the last ten years (Art. 27 sect. 6).
- 172 Religious unions do not have the right to use buildings and property given by non-citizens on the basis of a contract (Art. 31 sect. 1). This could discriminate against non-citizens.
- 173 Religious unions do not have the right to employ non-citizens (Art. 34 sect 1). This could discriminate against non-citizens.

174 In the case that non-citizens should be employed in religious unions it is not clear whether the legislature of the Republic of Tajikistan about labour, social security, tax and insurance shall be applied to them, since Art. 43 sect. 2 of the draft law refers for the applications of that legislature only to citizens.

APPENDIX

DECREE

OF THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN

on the bill of the Law of the Republic of Tajikistan “ABOUT FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS”

According to article 58 of the Constitution of the Republic of Tajikistan the Government of the Republic of Tajikistan takes decision:

To find the bill of the Law of the Republic of Tajikistan “About Freedom of Conscience and Religious Unions” approved and to present it for consideration of Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan.

**Head of the Government
of the Republic of Tajikistan**

Bill

THE LAW

OF THE REPUBLIC OF TAJIKISTAN

ABOUT FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS

Acknowledging and confirming the right of every person of the society for freedom of conscience and the equal responsibility of all before the law regardless of religion and faith, basing on the fact that the Republic of Tajikistan shall be a secular state, acknowledging that Islam shall be an important aspect of history and culture of people of Tajikistan and with respect to other religions existing in the territory of the Republic, this Law shall be adopted.

CHAPTER 1. THE GENERAL REGULATIONS

Article 1. The theme of regulation of the present Law

The present Law shall regulate social relations concerning freedom of conscience and religion, and shall define the order of implementation of the right of establishing religious unions.

Article 2. The tasks of the present Law

The tasks of this Law shall be securing human right for freedom of conscience, religion, and protecting rights and interests of the citizens.

Article 3. The legislature of the Republic of Tajikistan about freedom of conscience and religious unions

The legislature of the Republic of Tajikistan about freedom of conscience and religious unions shall be based on Constitution of the Republic of Tajikistan, the present Law, other legal regulative acts of the Republic of Tajikistan, as well as international legal pacts ratified by the Republic of Tajikistan.

Article 4. The main terms that shall be used in the present Law.

The following main terms shall be used in this Law:

freedom of conscience – the right of every person and citizen in determining his (her) relation to a religion freely and independently, separately or collectively following any religion or not following any religion, changing religious faith and also expressing and spreading faith concerning the relation to a religion as well as an atheistic belief;

freedom of religion – the right of every person and citizen for independent choosing of any religion and following it, participating in religious ceremonies, completing religious customs and religious education;

religious unions – any kind of voluntary and non-commercial unions of the citizens of the Republic of Tajikistan, foreign citizens and stateless persons, which shall be established in the forms provided by the present Law;

Article 5. The right for freedom of conscience and religion

No compulsion shall be allowed in expressing the right for freedom of conscience and religion in the Republic of Tajikistan.

Restricting the rights for freedom of following a religion or belief shall be possible only for protecting the rights and freedoms of others, ensuring security, order, health and public ethics by the law.

Indicating the relation of a citizen to a religion in official documents shall be not allowed, except the cases when the person shall have such wish himself.

Nobody can release himself from the responsibilities provided by law because of religious faith. The change of responsibility bearing to another one because of the faith shall be possible only in the cases provided by the legislature of the Republic of Tajikistan.

With the agreement of sides, the parent or the persons changing them shall have the right to bring up their children according to their own relation to a religion.

The foreign citizens and stateless persons being in the Republic of Tajikistan shall use the right for freedom of conscience and religion in the order provided by the present Law.

CHAPTER 2. THE STATE AND RELIGIOUS UNIONS

Article 6. The relation of the State to the religious unions.

The State shall provide favorable opportunity for securing the freedom of faith and freedom of religion, observance of legal rights and interest of the religious citizens and religious unions.

Not any religion shall be acknowledged as a state and universally obliged religion in Tajikistan.

The interference of state agencies and officials to the activity of religious unions and also the interference of the religious unions to the activity of state agencies and officials shall be prohibited, except the cases provided in the law.

In the framework of its authority the State shall regulate the tax relations of the religious organizations, presenting tax exemptions, assisting financially to religious unions in repairing the historic and cultural monuments being in their possession, supporting religious educational institutions.

In implementing the freedom of faith and propaganda and agitation activities, the religious unions shall be responsible to take into consideration the interests of the State, national values, independence and state security.

The authorized state agency on religion shall coordinate the relations of the State and religious unions in the Republic of Tajikistan. The authorized state agency on religion shall provide the organizational issues, general control, observance of the requirements of the regulations of the religious organizations, organization of religious ceremonies in coordination with other authorized state agencies.

Article 7. The separation of the religion and religious unions from the state authority

All religions and religious unions shall be separated from the state authority and shall be equal before the law.

The religious unions cannot fulfill the tasks of the state authority. During their activity in the religious unions the religious, the workers shall have not right to be elected or appointed to agencies of the state authority.

The religious unions shall not participate in the activity of political parties and shall not assist them materially or morally.

Religious ideology, religious agitation and learning cannot be the mean of struggle of public and political movements.

Article 8. The state system of education and religious unions

The state system of education in the Republic of Tajikistan shall be separated from the religion and religious unions.

The State shall provide the secular education in all educational institutions, as well as the accessibility of types and different levels of education regardless of the relation to religion.

It shall be possible to include subjects about religion to academic programmes of the system of education of the Republic of Tajikistan, but including religious subjects shall not be possible, except the special educational institutions preparing specialists for the field of religion.

Article 9. The religious education

The citizens shall have right to be engaged in religious education, they can get religious education individually or together with others.

According to the order provided by the present Law and the regulations of the organization, the religious unions, which have been established as a legal person shall be authorized to establish the provided types of religious educational institution for religious education of children and adults.

Giving children religious education shall be allowed when they reach age 7, with the written agreement of their parents or the persons changing them and only in free from the study at a comprehensive school time and in special¹⁰ buildings.

Involving adolescents in religious education against their will shall not be allowed.

The persons involved in giving religious education, must have special religious education and a license for this kind of activity.

Article 10. The control and inspection of the religious unions.

The control and inspection of the religious unions shall be conducted by the authorized state controlling and financial agencies in the order provided in the legislature of the Republic of Tajikistan.

CHAPTER 3. THE TYPES OF RELIGIOUS UNIONS.

¹⁰ Note – by special building is meant a building, that shall have a license for conducting classes in it from respective agencies

Article 11. The types of the religious unions

The religious unions shall be established in the form of religious communities and religious organizations.

The religious organizations shall be established in a form of religious centers, religious institution, church, synagogue and other forms not contradicting with legislature.

The religious communities shall be established in a form of mosques, agitating societies, worship and pilgrimage places and other forms not contradicting with legislature.

According to the order provided by the Civil Code of the Republic of Tajikistan, not least than 3 religious organizations can establish an association.

Article 12. The legal status of the religious unions.

The religious organizations shall be legal person and shall act based on the Regulations in the order provided by the present Law.

The religious unions without legal person status shall be registered in the authorized state agency on religion and shall work based on a sample regulations that prepared and approved by the authorized state agency on religion.

Article 13. The religious centers

The religious centers shall be voluntary and independently religious organization established at least by 10 founders, citizens of the Republic of Tajikistan for organizing and completing non-worship religious activity.

The religious centers shall have right to be the founder of the religious organizations and religious communities.

Article 14. The church and synagogue

The church and synagogue shall be types of the religious organizations working on the basis of their regulations in the order provided by the present Law. The regulations of the church and synagogue shall be prepared according to the requirements of this Law and the sample Regulations approved by the authorized state agency on religion.

Article 15. The religious educational institutions

The religious educational institutions shall be a special type of the religious organizations engaged in teaching and providing religious knowledge. The religious centers and associations of the religious unions can establish religious educational institutions, as well as high institutions for preparing religious workers.

The condition and order of the studies in the religious educational institutions shall be defined by the Ministry of Education of the Republic of Tajikistan.

The educational activity of the religious educational institutions shall be allowed on the basis of a license. Issuing licenses for educational activity of

the religious educational institutions shall be conducted according to the order provided by the Law of the Republic of Tajikistan “About Issuing License for Some Kinds of Activities”.

Article 16. The mosque

The mosque shall be the place for public praying.

The mosque as a kind of religious community shall work on the basis of the sample Regulations approved by the authorized state agency on religion.

The registration of the mosques shall be conducted by local administration of the state authority together with authorized state agency on religion of Gorno-Badakhshon Autonomous Region (GBAR), regions and Dushanbe city. The registration of the mosques of the Districts and Towns of the Republican Subordination shall be conducted by local administration of the state authority together with central authorized state agency on religion.

According to its activity scale and location the mosques may be divided to five-time and public mosques. The founders of the five-time mosques can be the religious centers or at least 10 citizens of the Republic of Tajikistan, and the founders of the public mosques can be the religious centers or at least 30 citizens of the Republic of Tajikistan.

The imams of the five-time mosques and imam-khatibs of the public mosques shall be appointed with the suggestion of the Public Council of Ulamo of the respective district, town and region by the authorized state agency on religion together with local administration of the state authority. The imams of the five-time and public mosques shall be selected from the persons possessing high religious education.

The order of registration of the five-time and public mosques shall be conducted according to sample Regulations approved by the authorized state agency on religion.

The requirements of the sample Regulations concerning the registration of the mosques shall be applied to the five-time and public mosques, which shall be established after enactment of the law.

Article 17. The agitating societies, worship and pilgrimage places

The agitating societies, worship and pilgrimage places shall be other types of the religious communities. For establishment of these types of the religious communities, their founders (not least than 10 citizens of the Republic of Tajikistan) shall apply with not least than 50 signatures of citizens of the Republic of Tajikistan belonging to a certain religion.

For registration the agitating societies, worship and pilgrimage places it must be necessary to apply to the authorized state agency on religion of GBAR, regions, Dushanbe city and respective central state agency on religion.

CHAPTER 4. THE ESTABLISHMENT AND REGISTRATION OF THE RELIGIOUS ORGANIZATIONS

Article 18. The establishment of the religious organizations

The religious organizations shall be established voluntarily and openly with the purpose of satisfying religious needs of the citizens in the Republic of Tajikistan.

The founders of the religious organizations, except religious educational institutions in the Republic of Tajikistan can be only the citizens of the Republic of Tajikistan possessing full work competency.

The leaders, the members of political parties, officials and state workers cannot be the founders of the religious organizations.

Only full competent person shall be considered the member or the participant of the religious union.

If the foreign citizens and stateless persons shall have permanent residence or a certificate of residence in the Republic of Tajikistan, they can be a member or a participant of the religious union.

The name of the religious organization must include the information about that religion. The religious organization shall be responsible to indicate its full name in a course of its activity.

The establishment and activity of the religious organizations, the aims and actions of which shall contradict the legislature of the Republic of Tajikistan shall be banned.

Article 19. The registration of the religious organizations

In order to get the status of the legal person, the religious organizations must be on the state registrar.

The state registration of the religious unions shall be conducted by the Ministry of Justice and its agencies in local areas.

The state registration and anew registration of the religious organizations, as well as refusal for registration shall be conducted according to the order and term provided by the legislature of the Republic of Tajikistan.

In necessary cases for conducting religion analysis, getting the conclusions of the religious specialists and other inspection and analytic actions the state registration of the religious organizations shall be delayed.

The following documents shall be presented to the authorized state agency for the state registration:

an application for registration;

the regulations of the organization;

a protocol of the foundation session or general meeting of the founders;

information about the founders of the organizations;

a reference from regional administration of the state authority about the residence of the followers of that religion for last 10 years;

a positive conclusion of the authorized state agency on religion about the fact that the aims and tasks of the religious organization shall not contradict culture, national and religious values;

a document about payment of state fee;

a document about the legal address of the religious organization;

In the case of introducing amendments to the Regulations of the religious organization, the religious organization shall go through anew registration in the order stated in this article.

For the state registration and also for introducing amendments to the regulations, the religious organizations must pay state fees in the order and amount provided by the Law of the Republic of Tajikistan “About State Fee”.

The state registration of the religious organizations shall be finished in one month from the day of presenting documents indicated in this article. The religious organization registered as a legal person shall be issued an appropriate certificate about the state registration.

The religious organizations shall acquire a legal status from the moment of getting state registration.

Article 20. The refusal for registration of the religious organizations

The state registration of the religious organizations shall be refused on the following basis:

if the regulations of the religious organizations shall contradict with Constitution of the Republic of Tajikistan and the laws of the Republic of Tajikistan;

if all the required documents for the state registration indicated in the present Law shall not be presented;

if it shall prove out that there was false information in the presented documents;

if the name of the religious organization shall insult the ethic, national and religion feeling of citizens;

in other cases provided by the legislature of the Republic of Tajikistan.

Article 21. The regulations of the religious organization

The regulations of the religious organization shall provide the following:

the name, aim of the religious organization, type and its religious belonging;

the structure of the religious organization, managing and controlling body of the religious organization, the territory, where this organization shall work;

the power and the order of renewing the managing body of the religious organization, its term, the location of the permanent managing body;

the order of introducing amendments and additions to the regulations of the religious organization;

the sources of the financial resources and other property of the religious organization, the rights of the religious organization and its structural branches concerning the management of the property;
the order of anew establishment or liquidation of the religious organization.

Article 22. The state list of the religious organizations

The state list of the religious organizations shall be bank of information about the religious organization. The authorized state agency shall regulate the type of the list.

The following shall be included to the state list of the religious organizations:

the name of the religious organization, its religious belonging;
its legal address and its location;
the type of the religious organization;
the information about the type of licensed activity;
the number and date of the certificate about the state registration of the religious organization
information about anew registration of the religious organization;
information about annual activity of the religious organization
information about the process of anew registration or liquidation of the religious organization.

CHAPTER 5. THE RIGHTS AND RESPONSIBILITIES OF THE RELIGIOUS UNIONS

Article 23. The rights of the religious organizations.

For implementing the goals of its regulations, the religious unions shall have right:

to spread freely information about its activity;
to represent and protect its own rights, the legal rights and interests of its member and participant, as well as of other citizens in the court and other agencies of the state authority;
to apply with initiatives about different issues of religious life, to present proposals to the administration of the state authority;
to engage in production and economic activity according to the legislature of the Republic of Tajikistan;
to implement the other rights provided in the present Law and other laws of the Republic of Tajikistan.

Article 24. The responsibilities of the religious unions

The religious unions shall be responsible:

to observe the Constitution of the Republic of Tajikistan, other legal regulative acts, international legal acts ratified by the Republic of Tajikistan

concerning its activity, as well as rules provided in the regulations and other founding documents;

by request of the authorized state agency on religion to present information; to allow the representatives of the authorized state agency on religion, controlling and investigating agencies to attend the events organized by the religious organization.

CHAPTER 6. THE RIGHTS OF THE CITIZENS AND RELIGIOUS ORGANIZATIONS CONNECTED WITH FREEDOM OF RELIGION

Article 25. The religious customs, traditions and ceremonies

Religious customs, traditions and ceremonies of the citizens shall be conducted freely in the framework of the Law of the Republic of Tajikistan “About Regulating Customs and Ceremonies in the Republic of Tajikistan”. The worship, customs and traditions connected with worship in pilgrimage and worshipping places, buildings of the religious unions, houses of the citizens and cemeteries shall be completed relative to the peculiarities of the religions.

The commanding staff of the military units shall not stop the soldiers to participate and complete religious customs in their free time.

For completing worship the religious unions shall have right to apply with offers to the citizens being in the hospitals, invalid houses, places of the preliminary arrest and prisons.

By a request of the citizens being in the hospitals, invalid houses, places of the preliminary arrest and prisons, the worship and religious traditions and customs shall be completed in those places. The administration of these institutions shall assist to the invitations of the religious workers; participate in defining time and other conditions of conducting worship, religious customs and traditions or ceremonies.

In other cases, the public worship, religious customs and traditions shall be conducted in order of conducting peaceful meetings, demonstrations and marches provided by legislative acts of the Republic of Tajikistan.

Article 26. The rights of the citizens for completing Hajj and Umra

The citizens of the Republic of Tajikistan shall have right to complete Hajj and Umra. The order of the trip of citizens shall be regulated by the Government of the Republic of Tajikistan.

Article 27. The religious literature and objects

The citizens and religious unions shall have right to get and use religious literature and objects.

The religious unions shall have right to produce, export, import and spread the religious objects, religious literature and other information objects of religious content according to the legislature of the Republic of Tajikistan. The religious literature and religious objects shall be spread in the places, where shall live the followers of that religion.

The export and import of the large number of the religious literature and as well as other religious objects shall be conducted only after getting the conclusion (agreement) of the authorized state agency on religion.

Without prior agreement with the authorized state agency, the international organizations working in the Republic of Tajikistan cannot be involved in agitating activity, religious or non-religious worship, importing literature and papers of religious content.

The state agency shall give agreement for (religious) agitating activity only if the followers of that religion shall be citizens of the Republic of Tajikistan or the persons equaled with them living in the Republic of Tajikistan for last 10 years.

Article 28. The charity activity of the religious unions

The religious unions shall have the right for charity activity according to the legislature of the Republic of Tajikistan.

Donations and financial means allocated for these purposes shall be tax-deductible.

All kinds of charity and agitating activities directed to involving the citizens to religion, possessing mental and other stressing character shall be banned.

Article 29. The international relation and connections of the religious unions

In agreement with authorized state agency, the religious unions shall have right for international relations.

In agreement with authorized state agency on religion, the religious unions shall have right to send the citizens of the Republic of Tajikistan for study to educational institutions of foreign countries and also to invite foreign citizens for this purpose.

CHAPTER 7. THE PROPERTY OF THE RELIGIOUS UNIONS

Article 30. The property of the religious organizations

According to the Civil Code of the Republic of Tajikistan, the religious unions shall have public property. They shall use the right of possession, enjoyment and disposal of property, and other objects necessary for their activity according to the legislature and property earmarking.

The building and property of the mosque, church, synagogue shall be the public property of the religious unions.

The religious unions shall pay tax from financial and commodity charities presented to them according to Tax Code of the Republic of Tajikistan.

Article 31. The enjoyment of property of the state, public associations and citizens

For their needs the religious unions shall have right to use the building and property given by the state agency, public associations and citizens on the basis of a contract.

Local and central administration of the state power can give the worship and pilgrimage places or other properties of the state to the religious unions for enjoyment.

Assignment of historic and cultural building and objects to the religious unions shall be conducted according to the legislature of the Republic of Tajikistan.

The religious unions shall use land according to the Code of Land of the Republic of Tajikistan.

Article 32. The productive and economic activity of the religious unions.

According to the legislature of the Republic of Tajikistan, the religious unions can be involved in productive and economic activity.

The income and benefit from economic activity and other incomes of the religious unions shall be subject to taxation according to Tax Code of the Republic of Tajikistan.

Article 33. The management of property of the religious unions, which stopped their activity

In the case of stopping activity of the religious unions, the management of property being in their possession shall be finished according to the legislature and its regulations.

The property connected with worship being the property of the religious unions shall not be taken by the claims of creditors.

In the absence of the legal heritors, the property of the religious unions shall be the state property.

CHAPTER 8. THE LABOUR RELATIONS IN THE RELIGIOUS UNIONS

Article 34. The labour relations and labour rights of the citizens in the religious unions

The religious unions shall have right to accept the citizens to work. The conditions of the work shall be defined in a work contract between the religious union and an employee in written form according to the labour legislature of the Republic of Tajikistan.

The legislature of the Republic of Tajikistan about labour, social security, tax and insurance shall be applied to the **citizens** working in the religious unions.

CHAPTER 9. THE RESPONSIBILITY FOR VIOLATING THE LAW ABOUT THE FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS

Article 35. The responsibility for violating the Law about the Freedom of Conscience and Religious Unions

The natural, legal persons and religious communities violating the legislature about the freedom of conscience and religious unions shall be called to account in an order provided by the legislature of the Republic of Tajikistan.

Article 36. The responsibility of the religious unions for violating the legislature of the Republic of Tajikistan

According to the present Law and other laws of the Republic of Tajikistan, the religious unions shall be responsible for the violation of the legislature of the Republic of Tajikistan.

In a case of taking actions going out the framework of goals and tasks mentioned in the regulations or violating the laws and the legal interests of legal and natural persons by the religious organizations, a written instruction shall be issued to the administration of the religious union by the authorized state agency or prosecutor.

The religious union shall be responsible to eliminate the committed violations during a month from the day of receiving the written instruction and to report to the agency that issued the written instruction. In a case of not eliminating the violations in a defined period, the authorized state agency on religion with its own initiative or with order of the prosecutor shall issue a decree about the activity suspension of the religious union up to three months.

Article 37. The reasons for activity suspension of the religious unions

The activity of the religious unions shall be suspended by the decision of the court up to three months in the following cases:

in the case of violating the legislature of the Republic of Tajikistan;

in the case, when the actions of the religious organizations shall contradict with its Regulations or the Sample Regulations of the authorized state agency on religion;

the violation of legal rights and interests of the legal and natural persons by the religious union;

If in the defined period, the religious union shall eliminate the violations and shortcomings defined in the instruction of the authorized state agency about the activity suspension, the activity of the religious union shall be reactivated from the moment of eliminating violations.

In a case of not eliminating these violations by the religious union, the court can stop the activity of the religious union by the suggestion of the authorized state agency (the Ministry of Culture, the Ministry of Justice) or prosecutor.

The appeal over the decision about the suspension and stopping activity of the religious union shall be submitted in the order provided by the legislature of the Republic of Tajikistan.

Article 38. The activity stopping of the religious union.

The activity of the religious union as a legal person shall be stopped by liquidation or anew establishment.

The liquidation or anew establishment of the activity of the religious union shall be conducted according to the Civil Code of the Republic of Tajikistan.

CHAPTER 10. THE FINAL REGULATIONS

Article 39. The registration of the religious unions, which were established before taking effect of the present Law

The regulations of the present Law about the state registration of the religious unions shall be also applied to the religious unions, which were established before taking effect of the present Law.

The regulations of the religious unions, which were established before taking effect of the present Law, should be brought to accordance with the requirements of the present Law from the moment of taking effect of the present Law. Only those parts of the regulations of the religious unions not contradicting with the present Law shall be effective. The anew registration of the religious unions that were established before the moment of taking effect of the present Law shall be conducted not later than December 31, 2008 with exemption from paying the state fee.

The religious organizations that did not go through the regulations of this article in the defined period shall lose the status of the legal person and their certificate about the state registration shall be recognized invalid by the decision of the registering agency. Such case shall release them from their responsibilities.

Article 40. About recognizing the Law of the Republic of Tajikistan “About Religion and Religious Unions” ineffective

The Law of the Republic of Tajikistan “About Religion and Religious Unions” of December 1, 1994 (The Information of the Supreme Soviet of the Republic of Tajikistan of 1994 year, # 23-24, article 452; The Information of Majlisi Oli of the Republic of Tajikistan of 1997 year, # 9, article 117, part XXIV; # 23-24, article 333, part VI; 1999 year, # 9, article 232; 2001 year, # 4, article 155) shall be recognized ineffective.

Article 41. The order of taking effect of the present Law

The present Law shall take effect from the moment of its official publication.