

I. INTRODUCTION

1. *The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the “Advisory Council”) has been asked to review a proposed draft Law of Serbia on Freedom of Worship, Churches, Religious Communities and Religious Associations (hereinafter referred to as the Draft Law) that had been prepared and revised as of February 5, 2005. These comments are based on an official translation completed as of February 10, 2005. These comments have been written in preparation for a round-table discussion sponsored by the Council of Europe and the OSCE scheduled to take place on March 17, 2005.*

II. EXECUTIVE SUMMARY

2. The major findings and concerns of the Comments are summarized here, with notes indicating where these major points are more fully addressed in the Comments.

1. The Draft Law suffers from major flaws that demand comprehensive revisions in order to bring it into compliance with Serbia’s commitments under the European Convention for Human Rights, the Organization for Security and Cooperation in Europe, and other international standards. Small changes in language and phrasing can not bring it into compliance with these standards.
2. The Draft Law ideally should include an introductory statement that its provisions should be understood consistently with Serbian’s international commitments as provided under the Serbian Constitution, that any by-laws or rules promulgated under the new law should be drafted consistently with Serbia’s commitments, and that judicial or administrative authorities who have responsibility for interpreting the law should also do so consistently with Serbia’s commitments.
3. New legislation is needed that actualizes the right of all religious communities, large and small, to obtain juridical personality and the related rights that apply to other religious entities.

4. At numerous points, the Draft Law exhibits an unduly narrow conception of the proper scope of freedom of religion or belief.
5. The Draft Law is pervaded by provisions that permit arbitrary and discriminatory exercise of discretion by public officials dealing with religious organizations. Such provisions may prove to be very damaging to the autonomy of all religious communities in Serbia (despite the guarantees of autonomy stated in portions of the Draft Law). The Draft Law should include a provision stating that government officials are not provided broad discretion when applying provisions of this law but that they should instead be required to act in a ministerial capacity that treats all religion and belief groups in a neutral manner.
6. The Draft Law would perpetuate a hierarchy of classes of religious organizations and would privilege prevailing religions in numerous impermissible ways.
 - a) The Serbian Orthodox Church would be granted “honorary precedence” over other groups, and would be granted a favored position in many other respects.
 - b) Provisions assuring ostensible equality lack adequate safeguards to prevent additional privileging of religious groups that may be favored from time-to-time by government officials.
 - c) Allowing impermissible delegation of state authority to dominant religious groups.
 - d) The Draft Law suffers from the use of non-neutral terminology. Language used should be selected that avoids undue preference for or discrimination against any of the religious or belief communities in Serbia.
7. In particular, the Draft Law would allow extensive financial support of religious groups that goes beyond permissible state cooperation and funding because of its coercive and discriminatory features as well as by requiring non-members of a religion to finance core religious and spiritual practices of that religion.
8. The Draft Law’s proposed registration system violates international religious

- freedom norms and is flawed in numerous respects.
- a) The requirement of 700 adult signatures as a precondition for registration cannot withstand scrutiny under international religious freedom norms
 - b) Vague and standardless provisions would permit discriminatory administration of the registration system.
 - c) The Draft Law provides insufficient assurance that barriers would not prevent smaller groups previously registered under communism from re-registering.
 - d) The Draft Law could operate to revoke retroactively juridical personality or registration status of existing religious communities.
 - e) The Draft Law's registration procedures impermissibly allow state officials to intervene in religious affairs by permitting substantive review of submissions (as opposed to performing neutral, ministerial acts) from groups seeking registration
 - f) The registration procedures require a variety of technical revisions.
9. While broadly supportive of the right to religious autonomy, the Draft Law compromises this principle in several of its provisions.
10. The Draft Law's grant of immunity to the clergy may be excessive and the language pertaining to immunity should be carefully and narrowly tailored.
11. It should always be remembered that religious and belief activity is a type of activity connected to the core of human dignity. The purpose of a law on religion should be to recognize and facilitate this as one of many legitimate forms of human activity and not act as a means of obstructing some forms of belief and practice to the benefit of others.

III. COMMENTS ON THE LEGISLATION UNDER CONSIDERATION

1. SCOPE OF REVIEW

3. This is not a comprehensive review, but rather a comment on the draft Law of Serbia on Freedom of Worship, Churches, Religious Communities and Religious Associations.

4. The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief¹ that were prepared last year by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission).² These Guidelines are based on the relevant provisions of international treaties,³ UN Declarations,⁴ case law of the European Court of Human Rights, and OSCE commitments⁵ that codify the fundamental right to freedom of religion or belief in international law.⁶

¹ Available at http://www.osce.org/odihr/?page=publications&div=intro&subdiv=religion_belief [last visited on 4 March 2005].

² The Guidelines were adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), and 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 the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57. The Advisory Panel has been restructured and expanded over the past year, and the Advisory Council that has prepared this document is a subunit of the larger Advisory Panel that has been tasked with undertaking the kinds of reviews contemplated by the Guidelines. Because of the shortness of time in preparing for a roundtable to be held in Belgrade on March 17, 2005, it has been necessary to compress the process of preparing this analysis.

³ See, e.g., 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"); 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"); 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"); European Convention for the Protection of Human Rights and Fundamental Freedoms and its First Protocol, opened for signature by the Council of Europe on 4 November 1950, entered into force 3 September 1953 (hereinafter "ECHR").

⁴ Most notably, the Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

⁵ For a list of relevant OSCE commitments which the Union of Serbia and Montenegro has accepted as a participating State in the OSCE, see OSCE Human Dimension Commitments: A Reference Guide, [available in English or Russian at http://www.osce.org/odihr/?page=publications&div=intro&subdiv=osce_hdc, last visited on 4 March 2005.]

⁶ The major international instruments relied upon are excerpted in Appendix I of the *Guidelines*. *Guidelines*, Appendix I, pp. 31-51.

2. ANALYSIS AND RECOMMENDATIONS

2.1 Preliminary Issues.

2.1.1 *Whether the legislation is necessary.*

5. The Guidelines note as a preliminary matter that not all proposed legislation is genuinely necessary. That is not a question here. Serbia has not had a religious associations law since 1993. It also lacks a general associations law. Moreover, as noted above, even if such a general associations law was available, a 1995 decision of the Supreme Court of Serbia held that religious communities may not register as associations of citizens.⁷ This legal situation creates serious problems for religious organizations. But it is now clear under the case law of the European Court of Human Rights that the right to freedom of religion or belief as well as the right to association includes the right to acquire legal entity status (including juridical personality) adequate for a religious or belief organization to carry out the full range of its legitimate activities.⁸ Thus, Serbia has a clear obligation to adopt appropriate legislation to fulfill this fundamental requirement.

2.1.2 *Definition of Religion and Related Terms.*

6. The Guidelines note the difficulty of defining “religion” and related terms, and stress the importance of avoiding definitions and terminology “*to ensure that they are not discriminatory and that they do not prejudice some religions or fundamental beliefs at the expense of others.*” As international standards emphasize, it is vital that the concept of religion be understood broadly.⁹ The key international standard involved in such

⁷ Case of *Meshichat of Islamic Community “Sandzak” from Novi Pazar*, No. 3719/94 (01.02.1995); see Sima Avromovic, CHURCH AND STATE IN SERBIA, in Silvio Ferrari & W. Cole Durham, Jr., eds., LAW AND RELIGION IN POST-COMMUNIST EUROPE (Belgium: Peeters, 2003), p. 301. See also U.S. Bureau of Democracy, Human Rights, and Labor, 2004 INTERNATIONAL RELIGIOUS FREEDOM REPORT (Serbia and Montenegro), [available at <http://belgrade.usembassy.gov/current/040921.html>, last visited on 4 March 2005.]

⁸ *Freedom and Democracy Party (ÖZDEP) v. Turkey* (ECtHR, App. No. 23885/94, 8 December 1999); *United Communist Party of Turkey v. Turkey* (ECtHR, App. No. 19392/92, 30 January 1998); *Sidiropoulos & Others v. Greece* (ECtHR, 10 July 1998). *Canea Catholic Church v. Greece*, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997) (legal personality of the Roman Catholic Church protected); *Hasan and Chaush v. Bulgaria* (ECtHR, App. No. 30985/96, 26 October 2000); *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, App. No. 45701/99, 13 December 2001).

⁹ The U.N. Human Rights Committee, in providing its official interpretation of article 18 of the International Covenant on Civil and Political Rights (the provision of the covenant codifying the right to

definition problems is the ban on religious discrimination, which is discussed at greater length below.¹⁰ The definitional issues concern not only the term “religion” itself, but also a variety of terms (such as “priest,” “church,” and the like) which may be associated with specific traditions. Moreover, it is important to remember that freedom of religion or belief extends to non-belief as well as to belief.

2.1.3 Definition of Scope of Freedom of Religion or Belief.

7. The scope of religious freedom itself is too narrowly defined. Thus, the opening paragraph of Article 1 states that “This Law sets forth and describes the content of the right to freedom of religion, guaranteed by the Constitution to the citizens of Serbia, which includes” various specified features of religious freedom. The Draft Law in fact focuses primarily on organizational issues; it does not set out the full range of religious freedom. It would be helpful if the Draft Law could explicitly reaffirm the broader notion enunciated in the international instruments to the effect that “*everyone (and not just organized groups) has the right to freedom of thought, conscience and religion; this includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*” ECHR, Art. 9(1).

2.2 Basic Values Underlying International Standards for Freedom of Religion or Belief

8. International standards affirm that “*[e]veryone has the right to freedom of thought, conscience and religion*”¹¹ and the “*freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice*

freedom of religion or belief), noted that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.” United Nations Human Rights Committee, General Comment No. 22 (48), para. 2, adopted on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

¹⁰ See Section IV.B.3 below.

¹¹ Emphasis added.

and observance.”¹² The protection extends to everyone within a jurisdiction—not just to citizens, or even foreign citizens (as opposed to stateless persons) as Articles 1, 2, 6; 17, 23, 27, 32, 38, 60 and 61 of the Draft Law seem to suggest. The right to freedom of religion or belief is a fundamental human right, that must be protected for all human beings in Serbia. The international instruments define this right in terms of internal freedom, external freedom and its “*manifestations*,” and in terms of the permissible limitations on the latter. These will be addressed in turn.

2.2.1 Internal Freedom (*forum internum*).

9. As the Guidelines note, the “*key international instruments confirm that . . . the right to freedom of thought, conscience and religion within the forum internum is absolute and may not be subjected to limitations or burdens of any kind. Thus, for example, legal requirements mandating disclosure of religious beliefs are impermissible.*”¹³ The requirement set forth in Article 61 of the Draft Law that 700 citizens must provide their personal data in support of a registration application appears to conflict with this requirement. Recent experience in Macedonia suggests one of the practical reasons why the right of individuals not to disclose religious preferences should be respected. In Macedonia, thirty individuals who signed documents in support of registration of the Serbian Orthodox Church were subjected to significant harassment and intimidation as a result of complying with the registration requirement.¹⁴ (One can imagine the additional difficulties if 700 or 1000 Serbian Orthodox believers were required to disclose personal information.) While the state has a legitimate interest in knowing who the legal representatives of a legal entity are, the state does not have a legitimate and non-discriminatory interest in requiring simple members to disclose such information. It can be readily imaged that traditional religions would strongly object to such a requirement by a state that was not sympathetic to their religious beliefs.

10. The Guidelines also emphasize that the right to “*change*” or “*to have or adopt*” a religion or belief appears to fall within the domain of the absolute internal-freedom right,

¹² ECHR, art. 9(1); ICCPR, art. 18(1); UDHR, art. 18 (emphasis added).

¹³ *Guidelines*, p. 10.

¹⁴ Drasko Djenovic, MACEDONIA: PRIESTS AND POLICE RAID AND THREATEN SERBIAN ORTHODOX BELIEVERS, Forum 18 News Service, [available at http://www.forum18.org/Archive.php?article_id=506, last visited on 4 March 2005.]

and legislative provisions that impose limitations in this domain are inconsistent with internal-freedom requirements. Articles 19 and 20 could be construed to impose such burdens.

2.2.2 External Freedom (forum externum)

2.2.2.1 Protections Extend Beyond Worship

11. The OSCE/Venice Commission Guidelines clearly state that “*legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate.*”¹⁵ There are several places where the Draft Law wrongly appears to assume that religious freedom is adequately protected if individuals can worship in a particular facility or engage in particular ritual acts. For example, Article 19 specifies that “*Religious organizations freely perform liturgies, religious services, spiritual missions and other activities in their own temples and other premises in their ownership.*” (Emphasis added.) In rented premises, however, the next sentence of Article 19 provides only that “[l]iturgy, religious service and activities may be held” The reason for the differentiation is not clear, but it appears to imply that the “spiritual missions” of a religious group cannot be carried out in rented space. The third sentence of Article 19 suggests that there may be further restrictions in other indoor and outdoor public places, where only “*religious services*” may be held. The precise reason why some types of religious observance are specified for some locations and not others is not clear. The Draft Law appears to adopt assumptions about how dominant churches operate without regard to religious practice for other groups. Smaller groups that are more likely to have rented facilities and that are less likely to be able to celebrate nationally significant historical events appear to receive more restricted treatment. Even if this were not the case, however, the provision focuses primarily on “*worship*” type events and fails to extend to broader questions of “*teaching, practice and observance,*” which is the standard for European and international agreements. For example, by suggesting that religious groups are free to practice their religion only within fixed settings, no credence is given to needs to wear particular clothing or to engage in religious activities such as missionary

¹⁵ *Guidelines*, p. 10.

work that are not limited to particular settings. Similar concerns arise in connection with Article 20 (Liturgy in public institutions).

2.2.2.2 Limitation Clauses

12. Whereas the internal forum right is absolute and is not subject to limitations by the state, limitations legitimately may be imposed on “*manifestations*” of religion, if the state satisfies several requirements prior to imposing the limitations. These are spelled out by the limitations clauses of the key international instruments.¹⁶

13. For our purposes, Article 9(2) of the European Convention (later followed in all essential respects by Article 18(3) of the ICCPR) contains the governing limitations clause language:

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

Several points need to be stressed about this clause, and the parallel Article 18(3) of the ICCPR.

14. First, limitations on manifestations can only be imposed by law, and in particular, by laws that comport with the rule of law ideal.¹⁷ That is, limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but are so vague as to allow arbitrary enforcement.¹⁸

¹⁶ ECHR, Article 9(2); ICCPR, Article 18(3).

¹⁷ See, e.g., *Sunday Times v. the United Kingdom*, 30 Eur. Ct. H.R. (ser. A) at 30 (1979); *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) at 15 (1993); Carolyn Evans, *Freedom of Religion under the European Convention of Human Rights* (Oxford: Oxford University Press, 2001), pp. 138-142; Malcolm Evans, *supra* note 25, pp. 319-320.

¹⁸ *Hasan and Chaush v. Bulgaria*, Eur. Ct. H.R., App. No. 30985/96 (Oct. 26, 2000), paras. 84-87; Carolyn Evans, *supra* note 26, pp. 139-42.

15. Second, limitations on manifestations must advance at least one of the specifically identified public interests. The limitations clause makes it clear that in addition to obtaining sufficient political support to be “prescribed by law,” limitations are only permissible if they promote public safety, public order, health or morals, or the rights and freedoms of others. Significantly, as the UN Human Rights Committee’s official commentary points out, the language of a limitations clause 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.*¹⁹

Similarly, the reference to “public order” as a legitimating ground must be understood narrowly as referring to prevention of public disturbances.²⁰

16. Third, even if a particular limitation on freedom of religion or belief passes all the foregoing tests, it is only permissible as a matter of international human rights law if it is genuinely necessary. The European Convention adds the phrase “necessary in a democratic society.” In countries that are committed to democratic values, the reference is an additional reminder that limitations need to be construed narrowly in part because freedom of religion and belief is a crucial dimension of democratic order.

17. According to the European Court, governments may interfere with religion or belief activity only when there is a “*pressing social need*” that is “*proportionate to the*

¹⁹ United Nations Human Rights Committee, General Comment No. 22 (48) on Article 18, adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), para. 8.

²⁰ Significantly, the term for “public order” in the French version of the ICCPR is not “*ordre public*” in the sense often used in French public and administrative law to refer to the general policies of the community, but rather “*la protection de l’ordre*,” terminology suggesting concrete public disturbance and disorder.

*legitimate aim pursued.*²¹ Therefore, “necessity” must be assessed on a case-by-case basis. However, certain general conclusions have emerged. First, in assessing which limitations are “proportionate,” it is vital to remember that “*freedom of thought, conscience and religion is one of the foundations of a “democratic society.”*²² That is, the value of the fundamental right to freedom of religion or belief constitutes a very heavy weight in the proportionality balance. Second, limitations cannot pass the necessity test if they reflect state conduct that is not neutral,²³ or that imposes arbitrary constraints on the right to manifest religion.²⁴ Discriminatory and arbitrary government cannot be considered to be “necessary,” particularly in a democratic society. State regulations that impose excessive and arbitrary burdens on the right to associate and worship in community with others—such as burdensome registration requirements—are impermissible.²⁵ Third, as the European Court has recognized, “*in democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership.*”²⁶ Similarly, there is no necessity (in fact it is inappropriate) to permit ecclesiastical authorities from one denomination to participate in state licensing or approval procedures that involve other religious groups to manifest their religion.²⁷

2.2.2.3 Implications of Limitations Clauses

2.2.2.3.1 Provisions that Allow Excessive Discretion are Impermissible.

18. One of the pervasive problems of the Draft Law is that it gives excessive discretion to those charged with administering and applying the law. As noted above, this is inconsistent with both the “prescribed by law” constraint, which forbids vague laws or laws that otherwise permit arbitrary exercise of discretion, and with the “necessity”

²¹ See, e.g., *Kokkinakis v. Greece*, 17 E.H.R.R. 397 (1994)(ECtHR, May 25, 1993), para. 49; *Wingrove v. United Kingdom*, 23 Eur. Ct. H.R. (ser.A) 1937 (1996), para. 53; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), paras. 43-53; *Serif v. Greece* (ECtHR, Dec. 14, 1999, para. 49; *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 119.

²² *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 114.

²³ *Ibid.*, para. 116.

²⁴ *Ibid.*, para. 118; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), paras. 43-53.

²⁵ *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 118.

²⁶ *Ibid.*, para. 117; *Serif v. Greece*, (ECtHR, Dec. 14, 1999), para. 52.

²⁷ *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 117.

constraint, because rules that allow arbitrary exercise of discretion cannot be said to be necessary, particularly in a democratic society.

19. Sanctions for Propagating “Falsehoods, Prejudices and Intolerance.” For example, Article 6 reinforces the rights of both individuals and religious organizations to “*publicly express critical comments on the teachings or practice of others,*” but qualifies this by saying that “*no one may challenge the guaranteed freedoms and rights of others, nor may he propagate falsehoods, prejudices and intolerance toward religious organizations [or nonbelievers].*” This provision is vague at one level because it creates no enforcement mechanism. It is not clear whether the inappropriate speech referred to constitutes a crime, an administrative infraction, or some other legally cognizable offense. Even if sanctions were clearly provided, it is extremely difficult to draw the line between “critical comments” (such as rejecting another religion’s interpretation of a sacred text) and “*falsehood, prejudices and intolerance.*” One group’s truth may be another’s falsehood. The Draft Law provides no adequate guidance and could give broad discretion to officials to impose sanctions by those speaking critically of dominant religions, but not when dominant religions disparage unpopular groups.

20. Sanctions for challenging the guaranteed rights and freedoms of others. Article 6 also declares that “*no one may challenge the guaranteed freedoms and rights of others.*” This provision should be revised to make it clear that it applies only to “*guaranteed liberties and rights*” under the constitutional law of Serbia and under international human rights standards, and not to special state-granted privileges. Otherwise, this clause would impermissibly bar challenges by religious organizations to discriminatory privileges granted by the state.

21. Formation of Religious Associations. Article 18 of the Draft Law is unclear about whether administrators will have discretion to approve formation of religious associations, or whether religious associations will have autonomy to create such associations as they will. Any doubt should be removed by adding a provision making it clear that administrative or registry officials do not have the right to interfere with the formation of such associations except where non-vague legal provisions (i.e., provisions which would set a clear, narrowly framed, and legitimate grounds for

dissolution, unlike those in Article 65) would authorize dissolution of the resulting entity.

22. Religious Exercises in Public Space. The Draft Law is vague in that it might allow public officials to deny authorization for performance of certain activities (e.g., “*spiritual mission*”) in facilities rented by religious organizations (Article 19), and leaves uncharted discretion to govern decisions about how much freedom of action various religious organizations would have to exercise their beliefs in various restricted public institutions and other public settings (Articles 19(3) and 20).

23. Media. Article 22 affirms that broadcasting service “*shall be open and accessible to all religious organizations . . . under equal conditions,*” but no specification is provided as to how allocation of limited frequency ranges and limited time slots can be allocated. Ultimately, how this is handled must be assessed in light of how the governing media law will work. But from experience elsewhere, this is often a highly contested issue, and the Draft Law provides no effective guidance.

24. Education. The provisions in the Draft Law governing education are extremely vague, and would allow arbitrary and discriminatory implementation in favor of prevailing groups and against smaller groups.²⁸ No standards are specified for accreditation, which means that officials have arbitrary discretion to approve or deny various religious education programs. Discretion regarding what should be funded is also uncharted. Parallel problems exist in accrediting and financing cultural activities of religious organizations.

25. Agreements. The Draft Law contemplates the creation of numerous agreements between the state and various religious communities.²⁹ In addition to inequality problems that may occur when the state fails or refuses to enter into agreements with smaller groups, the various provisions contemplating Agreements provide little or no guidance as to the nature of the agreements that should be entered into.

²⁸ See Articles 21, 33-37.

²⁹ See, e.g., Article 20 (agreements regarding religious services in public institutions); Articles 27-31 (governing rights of clergy to social security; salary support; health, pension and disability insurance, and benefits for students at denominational schools); Article 46 (agreements regarding building sites in urban plans); Article 66 (general authorization for the state to enter into agreements with religious communities).

26. Social Rights of Clergy. Articles 27 and 28 grant state authorities largely uncharted discretion to determine which members of the clergy get which levels of social benefits, and which clergy will be paid by the state. For example, Article 28(2) provides that the “*criterion and procedure for exercising this right [to receive compensation for work in distressed areas] is determined by the Government by separate decree, issued on the basis of [a] harmonized recommendation between the relevant ministry and the competent bodies of the religious organizations.*” In one sense, this is simply another example of a vague agreement provision, but it clearly exemplifies the problem: “harmonized recommendation” sounds nice, but provides no guidance.

27. Taxation. Art. 46 provides that “*local public authorities may exempt religious organizations.*” from taxes (emphasis added). If the English translation is correct here, this appears to make the grant of tax exemption from utility taxes entirely discretionary.³⁰

28. Humanitarian Activities. Before religious organizations and separate humanitarian institutions they are allowed to found may engage in humanitarian activity, they must obtain a work permit.³¹ To its credit, Article 50 provides that such institutions (presumably both religious organizations and the humanitarian institutions) are to operate “*pursuant to the same regulations and standards as similar institutions founded by the state, private individuals, or secular associations.*” There are no requirements governing the administrative procedures involved, at least not in the Draft Law, opening up substantial risks of excessive discretion.

29. Registration. The registration procedures set forth in the Draft Law also suffer from vagueness and risks of excessive discretion. This will be discussed in the section dealing with registration below.³²

30. The risks of arbitrary exercise of discretion obviously carry with them substantial risks of unequal and discriminatory treatment that independently violate the equality and non-discrimination norms addressed below.

³⁰ Cf. Articles 51 and 53, where various activities simply are exempt.

³¹ Article 50.

³² See Section 2.3.4 below.

2.2.2.3.1 Exemptions from Laws of General Application

31. The Guidelines note that there are some areas where exemptions from laws of general applicability may be appropriate.³³ Indeed, laws that fail to allow such exemptions would fail to show adequate sensitivity to religious needs. Examples include conscientious objection to the military, accommodation of dietary requirements, accommodation of religious holidays and days of rest, conscientious objection to various types of medical procedures, and so forth. The Guidelines fail to address such issues. In a law that purports to be describing “*the content of the right to freedom of religion*,” the absence of provisions addressing such issues is a significant oversight.

2.2.3 Equality and Non-Discrimination

32. One of the most fundamental aspects of the right to freedom of religion or belief is that individuals (either directly or through the groups to which they belong) should be free from discrimination on religious grounds.³⁴ The Guidelines note that “*Legislation that acknowledges historical differences in the role that different religions have played in a particular country’s history are permissible so long as they are not used as a justification for discrimination.*”³⁵

33. In this regard, the Draft Law fails “to assure that any differentiations among religions are justified by genuinely objective [non-religious] factors and that the risk of prejudicial treatment is minimized or totally eliminated.”³⁶ In particular, it fails to comport with international instruments which have addressed discrimination issues very carefully.³⁷

³³ Guidelines, pp. 22-23.

³⁴ *Id.*, p. 10.

³⁵ *Id.* (emphasis added).

³⁶ Guidelines, p. 10.

³⁷ Thus, for example, Article 26 of the ICCPR 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. (Emphasis added.)

Further, Article 2 of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief provides:

34. Article 1 of the Draft Law affirms that “A citizen may neither be discriminated against or favored in public life due to his religious convictions, affiliation or non-affiliation with a *religious* organization, nor due to participation or non-participation in religious services or the practicing or non-practicing of all guaranteed religious freedoms and rights.”³⁸ But as more fully detailed in the paragraphs that follow, this stated commitment to religious freedom is undermined by provisions throughout the remainder of the text of the Draft Law. Careful and comprehensive reworking of its provisions is accordingly required.

2.2.3.1 Privileging Belief over Non-Belief.

35. Though there is a formal statement of non-discrimination against non-believers in Article 1, both that article and many others emphasize protection and support of religion with little attention to the corresponding rights and interests of non-believers.³⁹ Since we are dealing with a Draft Law on Religious Organizations, it is not surprising that there is no focus on the rights of other associations. However, we are not aware of any other provision of Serbian law which equalizes this imbalance. An appropriate law on civil associations could solve this problem.

2.2.3.2 Privileging of the Serbian Orthodox Church.

36. The clearest example of privileging is contained in Article 8, which gives “honorary precedence” to the Serbian Orthodox Church. This appears to be an improvement over comparable text in earlier versions of the Draft Law, which declared the Serbian Orthodox Church “*primus inter pares.*” But this provision still goes too far in overtly privileging the Serbian Orthodox Church rather than making the declaratory statement that the church has played a significant role in Serbian history and culture. Article 8

No one shall be subject to discrimination by any State, institution, group of persons or persons on the grounds of religion or other beliefs. . . . [T]he expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

³⁸ Draft Law, Article 1, para. 2 (emphasis in original).

³⁹ See, e.g., Articles 38-44, 46, and 51.

further asserts that this “honorary precedence . . . reflects the historic and natural right as well as the self-assumed obligation [of the Serbian Orthodox Church] to represent, before domestic and foreign public authorities, the joint rights and harmonized viewpoints and interests of all religious organizations in Serbia.” This claim is simply untenable under international law. While each religious community has the right to autonomy in its own affairs, none has the “natural” or any other right to represent the rights and interests of other religious organizations. We assume that the Serbian Orthodox Church would vehemently oppose a comparable authority being given to another religion in any other country in which it operates.

2.2.3.3 De Facto Discrimination.

37. The privileging of certain types of institutions may result in de facto discrimination in favor of prevailing or traditional groups. For example, Article 43 appears to define monasteries as cultural institutions that are entitled to state financial support under Articles 40-42. This will obviously provide financial benefits exclusively to the Orthodox and Catholic religions, which have monastic traditions, and not to many other groups. Furthermore, Article 41 provides that “the state may undertake to fully finance particular institutions” belonging to religious organizations following “an evaluation” with respect to which no criteria are provided. This opens the possibility of significant discretion to favor some religious communities over others. More generally, the numerous provisions of the Draft Law which give significant benefits to religious associations (*see, e.g.*, Articles 20, 21, 22, 34, etc.) and to clergy (*see, e.g.*, Articles 25, 27, 28, 29, etc.) pose grave risks that the some churches will receive disproportionate benefits and consideration. There is no provision in the Draft Law designed to forestall such risks by requiring that benefits be allocated to all religious communities on a proportionate basis, and no remedies are provided to assure appropriate allocations. While some religions might favor such aid from a government favorable to their interests, they would likely oppose this arrangement if a government were to change and decide to shift financial benefits to other religions.

2.2.3.4 Discriminatory Funding.

38. While many European systems allow various types of state funding and

other forms of cooperation between the state and religious communities, such funding must be structured in a way that is non-discriminatory. This is particularly difficult to do when core religious activities are funded. There is a substantial risk that many of the provisions of the Draft Law which authorize funding of religious facilities and activities and support for the clergy will now result in impermissible discrimination in favor of the Serbian Orthodox Church, all of this could change with a new government having different interests.⁴⁰ .” Appropriate constraints must be provided to assure that such allocations occur in a non-discriminatory fashion

2.2.3.5 Hierarchy of Legal Entities.

39. The Draft Law uses seven different terms to refer to different categories of religious institutions.⁴¹ Article 2 of the Draft Law indicates that “[r]eligious organizations are public organisations” without giving any satisfactory clarification of why they are so designated or what this “public” designation implies.

40. The current version of the Draft Law marks some improvement over earlier versions in that previous drafts withheld many of the rights accorded to traditional religions, historical religious communities, and confessional communities from religious groups.

⁴⁰ See, e.g., Articles 27-31 (state support for clergy); Articles 40-42 (authorizing state payment for “cultural institutions” linked to religious entities); and Article 44 (relating to activities, maintenance, and upkeep of monasteries). Article 60 provides that “The state shall annually allocate in the budget funds for the support of various activities of religious organizations.

⁴¹ (1) **Traditional churches**(Articles 2, 7), which include “the Serbian Orthodox Church and other Orthodox churches canonically established on the territory of Serbia; the Catholic Church (Roman Catholic and Greek Catholic), the Slovak Evangelical Church a.v., the Christian Reform Church and the Evangelical Christian Church a.v.,” (2) **historical religious communities** (Articles 2, 11), which include two communities, namely the Islamic and Jewish communities, “which have significantly contributed to the establishment of pluralist religious and cultural models in Serbia;” (3) **confessional communities** (Articles 2, 15, 16), which include “Churches, religious movements and religious communities which have contributed to the confessional differentiation in the 19th and 20th centuries to affirming contemporary ideas on religious freedom, and have been registered pursuant to laws in force in the period from 1953 to 1993;” (4) **religious groups** (Articles 2, 17), which include “religiously-based association[s] of citizens which [have] not been registered to date through any law related to religious organisations;” (5) **religious organisations** (Article 2), which is a general category including traditional churches, historical religious communities, confessional communities, and religious groups; (6) **religious associations** (Article 18), which are composed of associations of two or more religious associations; and (7) **new religious organisations** (Articles 61-64), which appears to be the designation for a religious group that becomes registered under the draft law.

41. The question remains: what legitimate state purpose is there in creating categories of religious associations? One risk is that these different categories may become reference points for subsequent legislation (such as tax or labour laws) that might discriminate (either intentionally or unintentionally) based on type of religious entity. If the legislator nevertheless wishes to keep the distinct categories, the Draft Law should include a provision explicitly stating that the various categories are provided for descriptive purposes only, and to acknowledge the distinctive role that different groups have played in the history of Serbia, and that no legal differentiation should be based on these discrete categories in this or in any other law, including the laws which are the original source of the legal subjectivity of the traditional churches and the historical religious communities. The problem with this is that subsequent legislation that did in fact make differentiations based on these categories, precisely because it was subsequent, would override the earlier legislation providing that no such differentiations should be made.

2.2.3.6 Discriminatory Transition Provisions.

42. One potentially discriminatory feature of the Draft Law is that traditional churches and historical religious communities “*are not subject to re-registration but shall be automatically recorded in the Register of religious organisations.*”⁴² In contrast, Article 16 provides that “[*c*]onfessional Communities whose legal continuity and attributes of a legal entity have been recognised by aforementioned laws shall be automatically recorded in the Register of religious organisations.” However, Article 16 also provides that “Becoming recorded in the Register is accomplished by submitting a properly completed registration form.” Thus, it appears that while Confessional Communities will be able to be re-registered, they must affirmatively submit a form, which the traditional and historical religious communities are not required to do.

2.2.3.7 Problems Concerning Evidence of Prior Registration.

43. The more significant problem is that the Draft Law is vague about what will constitute adequate evidence that a particular confessional community was in fact

⁴² Article 14.

“registered pursuant to laws in force in the period from 1953 to 1993.”⁴³ For several practical reasons, what at first appears to be only a minor burden of “submitting a properly completed registration form” could ultimately become a substantial obstacle to re-registration for some groups. With this in mind, it would be much better that if any religious group has any credible evidence that it had officially recognized status in Yugoslavia in the period from 1953 to 1993, whether in the form of individual testimony, published accounts, or legal documents, registration officials should facilitate re-registration and protection of the existing ownership and contractual rights of the organisation.

2.2.3.8 Associations as Religious Organisations.

44. Providing for the creation of religious associations is an important feature of the law, since there are a variety of contexts in which religious organisations may wish to create associations with independent legal status. As a technical matter, the law ought to be revised to recognize that religious associations can be a species of religious organisation. Once an association of religious organisations has been formed, it becomes a religious organisation in its own right, and should be entitled to all the rights and subject to all the obligations of other religious organisations. This appears to be a technical oversight in the Draft Law. It could be cured by adding “religious associations” to the list of entities in the first sentence of Article 2.

2.2.3.9 Perpetuation of Unequal Status.

45. Unlike laws governing multi-tiered systems that exist in some other states, the Draft Law has no provisions for “promotion” from one status to another. For example, the Austrian law clearly contemplates that confessional communities can graduate to the status of “recognized church”—the Austrian analogue to traditional churches. In the Serbian social context, the multi-tiered structure is likely to perpetuate discriminatory social perceptions and to reinforce social prestige structures.

⁴³ It must be remembered that this was a historical era often extremely hostile to religion. Different groups responded to the times in different ways. Some survived quietly, and may not have advertised their presence to public authorities. Others received certificates that they could operate on particular premises. Others may have obtained a measure of recognition in other ways. Some may have been registered in parts of Yugoslavia other than Serbia, but may have legitimately operated in Serbia on that basis. Many religious communities were small and may have lost documentation over the years.

2.2.3.10 Agreement System.

46. Another source of potential discrimination is the agreement system proposed for specifying various types of benefits. For example, Article 66 provides that “[*after this Law comes into force, every religious organisation acquires the right to conclude separate and individual agreements with the state to concretize its guaranteed rights.*” Various other provisions in the draft law contemplate such agreements.⁴⁴ Agreement systems are, of course, sometimes used in European countries. They carry the risk of favouring predominant groups at the expense of smaller groups with whom the state is unwilling to negotiate. Long experience has shown that state officials seldom work out individualized religious agreements with smaller religious groups. While such arrangements are not inconsistent with the practice in some European states, it is a minority practice and has obvious disadvantages. A safeguard in this area would be to provide that smaller groups may be entitled, on a pro rata basis based on membership, to receive treatment at least as favourable as that provided under agreements to the most favoured group or an equivalent satisfactory to the group.

2.2.4 Neutrality and Impartiality

47. Closely connected with the idea of equality and non-discrimination is the requirement that a state must be neutral and impartial in matters of religion. In this regard, the Guidelines emphasize the following pronouncement of the European Court of Human Rights in *Metropolitan Church of Bessarabia v. Moldova*:⁴⁵ “in exercising its regulatory power . . . in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.”

2.2.4.1 Terminological Bias.

48. At certain points, the Draft Law fails to use religiously neutral language. The most obvious example of this is the use of the term “priests” at various points in the Draft Law. (Articles 3, 23 (title), 25). Similar criticism may apply to use of the term “cleric.”

⁴⁴ See, e.g., Article 20 (agreements regarding religious services in public institutions); Articles 27-31 (governing rights of clergy to social security; salary support; health, pension and disability insurance, and benefits for students at denominational schools); Article 46 (agreements regarding building sites in urban plans).

⁴⁵ ECtHR, App. No. 45701/99 (13 December 2001), para. 116.

(Articles 3, 25, 26, 30). By using such terms, officials and judges might assume that the protections and benefits apply preferentially to the Serbian Orthodox Church. But even if the terminology is construed to apply to analogous positions in other traditions, the use of more neutral terminology would be more consistent with the State's obligation to be neutral and impartial.

2.2.4.2 Impermissible Delegation of State Authority to Religious Groups.

49. Another point stressed by the Guidelines is that states can also violate the neutrality and impartiality obligation when they delegate state powers to particular religious communities.⁴⁶ As noted earlier, such delegation of public power to religious groups is inconsistent with the limitations clauses of international instruments, in that this form of limitation is not “necessary in a democratic society.”⁴⁷

50. For example, several provisions in the Draft Law appear to have this impermissible effect. Article 5(5), provides that “public authorities are *obliged* to extend relevant administrative and executive assistance” at the request of religious organisations that call for “the enforcement of decisions and judgements passed by the competent bodies of religious organisations” goes too far.

2.2.4.3 Arranging Religious Service in Public Institutions.

51. The provisions of Article 20 which grants religious organisations considerable power to determine how religious services are to be provided in public institutions may be problematic, particularly if prevailing religions are granted undue sway or privileged access to the detriment or exclusion of smaller groups.

2.2.4.4 Public Servant Status of Clergy.

52. Potentially problematic is the statement that “[t]he clergy are public servants.” Article 23. Like the statement that religious organisations or “public organisations,” Articles 2(2) and 5(1), it is not clear what the “public servant” status means as a

⁴⁶ The European Court of Human Rights has held that “where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognized ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9.” *Metropolitan Church of Bessarabia v. Moldova*, (ECtHR, App. No. 45701/99 13 December 2001), para. 117.

⁴⁷ See p. 12 above

functional matter. It certainly can be read to suggest that the clergy are state officials and subject to orders from the government. If it means they have obligations emanating from the state inconsistent with their religious beliefs, this is a violation of religious autonomy; if they have authority to make decisions vested with public power, it may reflect impermissible delegation of public authority. If it is intended only to be declaratory and acknowledge the role of religion in society, then it should perhaps be removed to avoid the potentially damaging interpretations that might be added.

2.2.4.5 Automatic Subsidies in Distressed Areas.

53. Still another problematic provision is Article 28. This provision discriminates in many ways, including its obligation for all taxpayers to subsidize core activities of religions whose beliefs they do not share. It also substantially risks discriminating among favoured and disfavoured religious groups.

2.2.4.6 Influence of a Prevailing Religion on Land Use Rights of Other Religious Organisations.

54. Article 46 of the Draft Law holds the possibility of this type of violation.⁴⁸ No religious groups should be granted authority to block the ability of some other churches to find locations in a community. Article 46 of the Draft Law opens the possibility of this type of violation. Similarly, if the “competent body of a religious organisation” could veto erection of religious edifices by other communities pursuant to Article 47, this would be problematic. The more plausible reading of Article 47, fortunately, is that a local congregation cannot proceed with a structure without getting approval from a hierarchically superior body, but the provision is somewhat ambiguous.

⁴⁸ Article 46 (in English) is ambiguous on an important point regarding inclusion of religious sites in urban plans and the granting of construction permits. According to Article 46, state officials negotiate these permits with religious officials. However, it is not clear whether the religious officials are *only* those from the religion seeking the permit, or whether negotiations are with religious officials of the community. If the latter is the case, particularly at the stage of granting construction permits for particular buildings, this would give some religious officials power over other religious institutions' buildings. The provision should be clarified to say that the negotiations take place only with the officials of the religion seeking the permit. With regard to the more general contents of an urban plan, it is of course appropriate for the officials to take input from all religious groups, as well as from other citizens. But it would be troubling if particular religious groups had influence on the plan in ways that could exclude other religious groups from the community altogether, or from reasonably attractive and accessible sites.

2.2.5 Coercion

55. A key facet of freedom of religion or belief is the right to be free from coercion. As the Guidelines note, a major focus of the non-coercion provisions of major international instruments was originally to prevent use of legal and social pressures that would prevent a person from changing his religion or belief.⁴⁹ It is now understood that compulsion either to convert or not to convert is inappropriate.

2.2.5.1 Coercion and Public Funding.

56. Coercion may occur in the context of public funding of religious activities.⁵⁰ The Draft Law fails to avoid coercion in this area. Article 60 provides that “[t]he state shall annually allocate in the budget funds for the support of various activities of religious organisations.” No effort is made to channel contributions from individuals to the religious organizations of their choice, and no safeguards are in place to prevent discriminatory allocation of funds. More generally, the numerous provisions of the Draft Law that contemplate various forms of aid to religious organisations, religious educational institutions, monasteries, and to the clergy make no effort to insulate adherents of minority faiths (or non-believers) from obligations to support predominant religions.

2.2.5.2 Voluntary Specified Purpose Taxes Should be Religion-Specific.

57. One particular sign of insensitivity in this area has to do with the provision in Article 48 which allows the holding of a referendum pursuant to which a “*voluntary specified-purpose tax*” can be levied to fund the erection of religious edifices. The provision contains no protections for individuals who are not adherents of the religious community seeking to construct a religious edifice under this provision.

⁴⁹ Guidelines, p. 11.

⁵⁰ It is true that many European systems allow substantial state cooperation (including funding) of religious facilities and activities. Significantly, however, better practice insists on assuring that adherents of one belief community are not forced via the tax system to support the religious activities or institutions of another belief community. For example, the so-called church tax (*Kirchensteuer*) in Germany is structured to channel church tax contributions to flow to the church to which the taxpayer belongs. Even then, German constitutional law assures individuals the right to avoid coerced payment of contributions even to their own church if they object. Other states have “check off” systems that allow individual tax payers to steer funding to the organization of their choice.

2.2.5.3 General Considerations Regarding Public Funding of Religion.

58. In general, great care should be taken to avoid both discrimination and coercion when public funding of religious institutions and activities is considered. Although many European countries permit public funding of religious education, religious schools, and various other religion-based activities and institutions, better practice strives to assure that such support may be provided only on a non-discriminatory and non-coercive basis. To provide public funding for core religious activities is particularly problematic and should be avoided unless it is part of a neutral law that provides for equivalent funding (or indirect support as through granting tax exempt status) for all similar groups (such as non-profit associations). It is inappropriate to focus the use of state funds on the subsidy of a dominant or established church, particularly when this is done to the exclusion of support for other groups. The provisions of the Draft Law have not been crafted with sufficient attention to these considerations. Provisions at various points that suggest that support is to be granted “*in proportion to the number of congregants*”⁵¹ or “*in proportion to the number of members of a particular religious organization*”⁵² are clearly steps in the right direction, but need to be refined to assure that the standards of what counts as proportionate funding are not skewed in discriminatory ways or through the abuse of discretion.

2.2.6 Rights of Parents and Guardians.

59. As the Guidelines rightly note, “[s]tates are obliged to respect the liberty of parents and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child.”⁵³ It is difficult to assess the extent to which this principle is respected, because the Draft Law simply provides that “[t]he right to organise religious study in state schools is regulated by the Education System Act” and that the “*manner of organising religious study in state schools, curricula and programs . . . shall be specified by separate regulations issued by the relevant ministry, taking into*

⁵¹ Article 27(2).

⁵² Article 34(3).

⁵³ Guidelines, p. 12.

account the proposals of the Commission for Realising the Program of Religious Education.” It would be helpful, however, if the Draft Law could include a provision assuring the protection of parental and children’s’ rights as described in the Guidelines.

2.2.7 Right to Effective Remedies.

60. In addition to insisting on protection of freedom of religion or belief, international norms require that effective remedies be made available to ensure that the underlying right will be protected in practice. Significantly, the Draft Law fails to outline relevant procedural remedies. Most notably, there are no provisions for appeal of adverse determinations of registration decisions. It is possible that these procedures are in fact covered in an independent code governing administrative and judicial appeals, but there ought to be an explicit reference to such appeal procedures. There are also no provisions that could help assure that discriminatory practices are avoided or corrected.

2.2.8 Tolerance and Respect.

61. Principle 16(b) of the OSCE’s Vienna Concluding Document provides that participating States will “*foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers.*” By systematically privileging dominant religious groups, the Draft Law in its current form seems more likely to polarize and to undermine the climate of mutual tolerance and respect.

2.3 Analysis of Specific Problem Areas.

2.3.1 Religion and Education (including financing).

62. As noted in connection with parental rights, the educational provisions are sketchy, essentially pointing to other laws governing education. Without conducting a full analysis of pertinent legislation in this area, it is not possible to assess whether the religious education system meets international standards. The most that can be done here is to reemphasize some basic principles from the Guidelines that need to be implemented.

63. First, to the extent that state funding is provided, every effort should be made to provide assistance on a non-discriminatory basis. The provision calling for funding of

religious schools and/or pupils to be “in proportion to the number of members of a particular religious organisation” is promising, but there are likely to be significant difficulties in working this out in practice. Technically, “*religious organisation*” refers to legal entities. Particularly since traditional and historical churches will not be re-registering, it may be difficult to compute with precision which individuals belong to which legal entity. Greater clarity is no doubt needed about how proportions are to be computed. The methodology needs to be designed in ways that minimize charges of discrimination. Smaller religious groups are almost always inadequately provided for in such schemes.

64. Second, children must be given appropriate opportunities to opt out or to take alternative courses if they do not wish to take religion courses that are provided, particularly if the courses are designed to inculcate religious beliefs of a particular denomination.⁵⁴

65. Third, the autonomy of religious communities in structuring religious education to fit their beliefs should be respected. This needs to be balanced against state interests in assuring quality of teaching and, with respect to private religious schools, over quality of the educational curriculum. However, accreditation requirements should respect the needs of different religious groups to structure educational methods and content to comply with their religious beliefs.

2.3.2 The Right to Religious Autonomy.

66. The Draft Law provides extensive protections for religious autonomy,⁵⁵ in conformity with key international commitments.⁵⁶ The protections of religious autonomy are very

⁵⁴ In this regard, see the recent pronouncement of the UN Human Rights Committee, holding that a system of Christian education designed to introduce all members of society to Christian heritage violated Article 18 of the ICCPR because of failure to provide an adequate opt out mechanism for non-believers. *Leirvag and Others v. Norway*, Decision of 3 November 2004, made public by Norwegian Foreign Ministry <http://odin.dep.no/ufd/norsk/aktuelt/pressesenter/pressem/045071-070195/dok-bn.html> and <http://odin.dep.no/ufd/norsk/aktuelt/pressesenter/pressem/045071-990398/dok-bn.html> .

⁵⁵ Articles 3-5 of the Draft Law expressly address key religious autonomy issues, and other provisions of the Draft Law allow broad flexibility in structuring liturgy and worship, religious education, religious personnel, and numerous other fields of religious activity.

⁵⁶ See OSCE Vienna Concluding Document, Principle 16(d).

strong and may even create a higher standard than is required by the international instruments, which is of course permissible.

67. Despite the broad protections of religious autonomy in the Draft Law, however, there are certain respects in which this principle is compromised. First, the requirement of 700 adult members in order to create a religious organisation (Article 61) obviously impairs the autonomy of smaller religious groups. Many religious organisations organize themselves on a congregational basis in accordance with the number of members in reasonable proximity to each other in a particular locality. This would be true of many well-known Protestant communities. The local congregation may be quite small, with only a few families and only a handful of adults. Imposing a high minimum member requirement violates the autonomy of such groups in determining how they wish to associate and to structure their religious community.

68. Second, some provisions of the Draft Law appear to define the objectives of the organization in ways that may be inconsistent with the view of the groups themselves. For example, Article 2 states that “*Religious organizations are public organizations of particular importance for the determination and development of universal human values,*” and then, moving from universal to particular, affirms their role in “*the advancement of spiritual dignity and the affirmation of the cultural identity of nations and ethnic groups ..*” Different religious communities may have very different views on human values and it is not appropriate for state legislation to define which religious values are and are not acceptable. (Examples of this type of provision are evident at various points throughout the Draft Law (see, e.g., Article 2(3) and 38) and should be revised or deleted in the interest of framing a law that is more neutral on its face.)

2.3.3 Religious Freedom and the Clergy

2.3.3.1 Types of Conduct Covered by Immunity.

69. The draft should be clarified to make it clear that Article 24(2) is not intended to provide immunity that extends beyond protecting the rights to freedom of expression in sermons. This right should not be construed to allow greater protection for hate speech than normal freedom of speech protections would provide.

2.3.3.2 Testimonial Privilege.

70. With respect to the testimonial privilege itself, Article 26 could be improved by using more religion-neutral language and by making the provision apply to situations that are the functional equivalent of “*the confessional*.” For example, the first sentence might be revised to read, “*The secrecy of religiously-motivated confidential communications shall remain inviolate.*” In a similar vein, the second sentence of Article 26 could be revised to read, “A member of the clergy may not be summoned to bear witness on events about which he has learned through confidential communications received as a result of his or her religious calling.” This approach would extend the protection to clergy in other religious traditions who receive confidential communications from their congregants, but do not necessarily refer to our conceptualizing the practice as “*confession*” or the “*confessional*.”

2.3.4 Registration of Religious Organisations

71. As the Guidelines note, “[r]eligious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organizations.”⁵⁷ While there is no objection to religious association laws that facilitate religious life by making legal entity status available and addressing other needs of religious and belief communities, restrictive features of these laws are impermissible unless they can withstand scrutiny under the limitation clauses of the pertinent international instruments such as Article 9(2) of the ECHR.⁵⁸ There are numerous reasons in modern legal systems that religious communities cannot operate fully and effectively if they do not have legal entity status, such as opening a bank account, renting or acquiring property for a place of worship, entering into contracts with key religious personnel, publishers, utility companies, and instituting legal actions to protect the community’s rights..⁵⁹ In light of these considerations, it is now well settled that both freedom of association and freedom of religion or belief include a right to

⁵⁷ *Guidelines*, p. 16.

⁵⁸ See Section

⁵⁹ For a full description of the types of practical problems involved, see W. Cole Durham, Jr., “Facilitating Freedom of Religion or Belief Through Religious Association Laws,” in Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie, *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff Publishers, 2004) pp. 321-25.

acquire legal entity status that carries with it the ability to carry out the full range of a group's protected activities.⁶⁰ Recognizing this, Serbia's OSCE commitments obligate it to make legal entity status available to "*communities of believers, practising or prepared to practise their faith within the constitutional framework of their states . . .*"⁶¹

72. The Guidelines identify several features that a registration statute such as the Draft Law should incorporate. These will be considered in the order these are raised in the Guidelines. As a general matter, they emphasize that "*out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of religion or belief.*"⁶²

2.3.4.1 Registration Not Mandatory.

73. The Guidelines' first major point made in connection with registration laws is that "[r]egistration of religious organizations should not be mandatory per se, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."⁶³ A corollary of this is that "[i]ndividuals and groups should be free to practice their religion without registration if they so desire."⁶⁴ The important point here is that freedom of religion or belief is not a right given to individuals and groups by the State; it is a right human beings have simply because they are human. The Draft Law's provisions appear to be consistent with this requirement. It imposes no sanctions for individuals or groups who engage in religious activities without registration. Adding a provision that stresses this fact would be helpful. An easy way to do this would be to reserve the term "religious groups" to apply to unregistered associations. To make this more clear, the first paragraph of Article 2 could be revised to read as follows: "*Freedom of religion is actualized in traditional Churches, historical Religious Communities, Confessional Communities, and new religious organisations.* (Hereinafter these are all

⁶⁰ Freedom and Democracy Party (ÖZDEP) v. Turkey (ECtHR, App. No. 23885/94, 8 December 1999); United Communist Party of Turkey v. Turkey (ECtHR, App. No. 19392/92, 30 January 1998); Sidiropoulos & Others v. Greece (ECtHR, 10 July 1998). Canea Catholic Church v. Greece, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997) (legal personality of the Roman Catholic Church protected); Hasan and Chaush v. Bulgaria (ECtHR, App. No. 30985/96, 26 October 2000); Metropolitan Church of Bessarabia v. Moldova (ECtHR, App. No. 45701/99, 13 December 2001).

⁶¹ OSCE Vienna Concluding Document, Principle 16c.

⁶² *Guidelines*, p. 17.

⁶³ *Id.*

⁶⁴ *Id.*

referred to as “religious organisations”). It is also actualized in religious groups which have elected not to exercise their right to acquire legal entity status by becoming a religious organisation. Similarly, the second sentence of Article 17 could be revised to read, “*Religious groups need not register in order to be protected in their right to freedom of religion or belief, but have the right to do so as provided in Articles 61-64 of this law.*”

2.3.4.2 High Minimum Membership Requirements Should Not Be Allowed with Respect to Obtaining Legal Personality.

74. This raises one of the fundamental problems of the Draft Law: Article 61’s requirement that “*signatures of 700 adult members with personal ID number and home address*” be submitted with the application for registration. This provision is profoundly troubling. It presents grave problems for smaller religious communities, depriving them of the right to legal entity status simply because they are small. It is important to remember that unlike some of the traditional religions in Serbia, there are many groups that as a matter of religious belief organize at the congregational level. For them, it is the congregation that rents facilities, owns property, etc. Many of these congregations are relatively small; in some cities, congregations might have only a few families. For smaller religious communities, membership requirements that exceed 10-15 adult members would make it very difficult to acquire entity status. And yet, once a religious group exceeds 10-15 adults, it becomes difficult to manage its legal affairs without a legal entity. It should come as no surprise, then, that the overwhelming majority of the participating States in the OSCE have minimum member requirements of 10 or less. In the former socialist region, only five states have minimum member requirements above 30,⁶⁵ and a strong case can be made that those who do are violating the rights of smaller groups that are unable to acquire legal entity status as a result. Constitutional courts in Kazakhstan and the Former Yugoslav Republic of Macedonia have both recently struck

⁶⁵ Armenia, 200, Law on the Freedom of Conscience and Religious Organizations (1991) (amended 1997, 2001) [Armenia], art. 5(e); Croatia, 500, Law on Legal Position of Religious Communities (2002) [Croatia], para. 1, art. 21; Czech Republic, 300, Law on Churches and Religious Societies (2002) [Czech Republic], tit. III, sec. 10, para. 2; Hungary, 100, Law on Freedom of Conscience and Religions and the Churches, Act No. IV (1990) [Hungary], ch. 2, sec. 9, para. 1(a); Slovak Republic, 20,000, An Amendment to the Law on the Registration of Churches and Religious Societies, Act. No. 192 (1992), para. 2. The foregoing laws are available at <<http://www.religlaw.org>>.

down minimum member requirements of 50 as excessive.⁶⁶ There are other states which have higher thresholds for “intermediate tier” religious organizations, such as confessional communities (*Bekennnisgemeinschaften*) in Austria,⁶⁷ but in these states, base level legal entity status is available through some other vehicle (e.g., organization as a normal civil association) that does not have high minimum membership requirements. In Serbia, religious groups do not have access to entity status through forming secular civil associations in light of the 1995 decision of the Supreme Court of Serbia held that religious communities may not register as associations of citizens.⁶⁸ Laws governing registration of civil associations seldom require more than five or ten founders. It is not clear why registration as a religious group should be more difficult than registration as a nonprofit or charitable association. If anything, concerns for religious freedom would suggest that registration for religious organizations should be simpler.

75. Restricting access to legal entity status by setting a minimum threshold of 700 adult members is clearly inconsistent with international standards. This imposes severe limitations on smaller religious groups—restrictions which cannot withstand scrutiny under the limitations clauses of the applicable international instruments (ECHR, Article 9(2); ICCPR, Article 18(3)).⁶⁹ Brief reflection on the requirements of the limitations clauses explains why this is the case.

76. First, by making it difficult in countless ways for a religious organization to carry out its affairs, denial of registration clearly constitutes an interference with innumerable manifestations of religion by a religious community and its members. It is a frontal attack and limitation on the entire range of activities in which groups and individuals engage to manifest their religion.

⁶⁶ Decision the Constitutional Council of Kazakhstan, April 2002, Reported by US Department of State, International Religious Freedom Report 2002: Kazakhstan, sec. II, available at <<http://www.state.gov/g/drl/rls/irf/2002/13942.htm>> [last visited 4 November 2003]; Decision of the Macedonian Constitutional Court of 23–24 December 1998, p.3.

⁶⁷ See Herbert Kalb et al., *Religionsgemeinschaftenrecht* (Vienna: Verlag Österreich, 1998) (containing Austrian laws and commentary).

⁶⁸ Case of Meshichat of Islamic Community “Sandzak” from Novi Pazar, No. 3719/94 (01.02.1995); see Sima Avromovic, “Church and State in Serbia,” in Silvio Ferrari & W. Cole Durham, Jr., eds., *Law and Religion in Post-Communist Europe* (Belgium: Peeters, 2003), p. 301. See also U.S. Bureau of Democracy, Human Rights, and Labor, 2004 International Religious Freedom Report (Serbia and Montenegro), available at <http://belgrade.usembassy.gov/current/040921.html>.

⁶⁹ See Sections IV.B.2.b and IV.B.2.c above.

77. Second, there are often issues about whether denial of registration is “*prescribed by law*.” At one level, this is not the major problem with registration laws. After all, they are laws, and denial typically occurs because some feature of such a law has not been satisfied. However, it is important to remember that the “*prescribed by law*” requirement insists not only that the limitation be imposed pursuant to a law, but also that the law in question meet more general requirements of the rule of law. Most significantly, this means that a provision of a registration law may fail the “prescribed by law test” if the law under which registration is denied operates retroactively, arbitrarily, or is impermissibly vague. Thus, provisions of a registration law that fail to protect the rights of existing groups through adequate transition provisions fail this test. Similarly, provisions that allow registration officials arbitrary discretion to grant entity status to some groups while denying it to others are impermissible. Vague provisions are impermissible precisely because they allow such arbitrary decision-making. The 700 signature requirement of the Draft Law is not itself problematic in this regard, since it sets a clear threshold. But some of the grounds for dissolution (Article 65) would raise vagueness problems, and retraction of entity status of smaller groups by insisting on re-registration at the new minimum member requirement raises retroactivity problems.

78. Third, denial of registration must be justified under one of the specifically enumerated grounds that provide the sole permissible bases for restriction of freedom of religion or belief. That is, it must be shown how they further “public safety, public order, health or morals, or the rights and freedoms of others.” It is difficult to see any interest the state could have in setting such a high minimum standard other than to discriminate against smaller groups. Certainly, none of the legitimating grounds seems relevant. Raising the membership threshold is not likely to enhance public health or safety in any direct sense. Nor is it likely to promote public morals.⁷⁰ Setting a high member

⁷⁰ A state could conceivably be concerned about the moral values of some groups, but it is difficult to see how the 700 signature requirement is tied to that concern. In fact, because of the complexity and controversy that often accompanies the definition of moral issues in contemporary pluralistic societies, limitations on religion are seldom based on this ground. The U.N. Human Rights Committee has noted that if moral grounds are invoked, “limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.” United

requirement is also not likely to increase the protection of the rights of third parties. The most plausible argument would be that denial of registration may help protect public order in at least the loose sense suggested by the notion of *ordre public* used in French public and administrative law. The contention would be that religious association laws could be justified in that they are part of and in furtherance of the general structure of public order. The international instruments, however, do not support this reading. Significantly, the French version of the limitations clause does not use the generalized term *ordre public*, but instead *la protection de l'ordre*, terminology suggesting concrete public disturbance and disorder.⁷¹ In general, a high minimum member threshold is unlikely to prevent the imminent outbreak of public disturbances.

79. Sometimes the pressure for increasing the minimum member requirement comes from concerns to exercise better control over smaller, unknown, and sometimes dangerous groups. But setting high membership requirements is likely to be counterproductive on this score. Genuinely dangerous groups will simply go underground. The real burden of the high membership requirement will simply make such groups invisible to the registration system. The burden of the requirement will fall instead on law abiding groups for whom minimum founder requirements of 25 or 50 already operate as a significant burden on religious freedom rights.

80. Fourth, even if a provision could pass the “*prescribed by law*” and “*legitimizing grounds*” tests, it can survive limitation clause scrutiny only if it is genuinely necessary,⁷² and in particular, only if it is “*necessary in a democratic society.*”⁷³ In the words of the U.N. Human Rights Committee, limitations “*must be directly related and proportionate to the specific need on which they are predicated. As already noted above, it is extremely*

Nations Human Rights Committee, General Comment No. 22 (48), para. 8, adopted on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

⁷¹ Carolyn Evans, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (Oxford: Oxford University Press, 2001), p. 150. The French Conseil d'État has itself become progressively more scrupulous in its application of the doctrine of “*ordre publique*” in its decisions regarding religion and has recently rejected vague assertions of the doctrine. Francis Messner, et al., *TRAITÉ DE DROIT FRANÇAIS DES RELIGIONS* (Paris: 2003), 190-94. See also Manfred Nowak & Tanja Vospernik, *PERMISSIBLE RESTRICTIONS ON FREEDOM OF RELIGION OR BELIEF*, in Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie, *FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK* (Leiden: Martinus Nijhoff Publishers, 2004), 152-53.

⁷² ICCPR, Art. 18(3).

⁷³ ECHR, Art. 9(2).

*difficult to see a direct connection between the permissible grounds for a limitation and the 700-signature requirement. Moreover, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”*⁷⁴ In the case of the 700-signature requirement, it is difficult to see anything but a blatantly discriminatory line being drawn to block access to legal entity status for smaller religious groups. For much the same reasons, the 700-signature limitations cannot pass the necessity test because it constitutes state action that is not neutral and impartial,⁷⁵ and would result in an arbitrary denial of entity status to smaller religious groups.⁷⁶ It must also be remembered that an interference with religion cannot be said to be necessary where the interests the state seeks to protect are immediately and realistically threatened.⁷⁷ Denial of registration is not likely to be linked in any significant way to thwarting imminent threats.

2.3.4.3 Duration Requirements.

81. The Guidelines state that “[i]t is not appropriate to require lengthy existence in the State before registration is permitted.”⁷⁸ The basic reasons for this are parallel to those for the 700-signature requirement. The Draft Law does not impose any particular duration requirement for registration as a new religious organisation. Obviously, however, a group must have been present in Serbia at least 12 years (since 1993 or before) in order to be eligible to be a “Confessional Community.” Groups that have arrived in Serbia more recently are excluded. Providing the same functional rights under different labels is not a rights violation if new religious organisations are in fact treated equally with others. There are risks, however, that discrimination might in fact persist.

⁷⁴ United Nations Human Rights Committee, General Comment No. 22 (48), para. 8, adopted on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

⁷⁵ *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, App. No. 45701/99, 13 December 2001), para. 116.

⁷⁶ *Id.*, para. 118; *Manoussakis and Others v. Greece*, 23 EHRR 387 (1997) (ECtHR, 26 September 1996), paras. 43-53.

⁷⁷ *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, App. No. 45701/99, 13 December 2001), para. 125.

⁷⁸ Guidelines, p. 17.

2.3.4.4 Other Burdensome Constraints.

82. An earlier draft called for processing registration applications in 30 days, as opposed to the 60 days allowed by the current version of Article 62. The shorter period would have been preferable, and should have been sufficient. Lengthening of the period suggests that more than neutral, formal review is being provided, and this is not “*necessary in a democratic society.*” It would be advisable to have a provision specifying that applications not processed within the time period are deemed accepted. Appeal procedures in case of denial of registration should be specified, either by spelling them out in the draft law, or providing a reference to the applicable appeal procedures. It is important that the possibility of applications languishing as a result of administrative inaction should not be allowed.

2.3.4.5 Excessive Discretion.

83. A major difficulty with the provisions as currently drafted is that they provide no guidance to assure that the discretion of registration officials will not be abused, or applied in discriminatory ways. In fact, registration officials should be obligated to register a religious organisation promptly so long as formal requisites for registration are met.

2.3.4.6 Intervention in Internal Religious Affairs is Impermissible.

84. The Guidelines specify that “[i]ntervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed.”⁷⁹ Review of the “*fundamentals of religious teachings and history of the origin of the faith,*” as contemplated by Article 61, could violate this requirement if more than formal review is required.

2.3.4.7 Retroactive Provisions.

85. The Guidelines specify that “[p]rovisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities

⁷⁹ *Id.*

under new criteria)”⁸⁰ are inappropriate. They also provide that “[a]dequate transition rules should be provided when new rules are introduced.”⁸¹ On its face, the Draft Law calls for automatic re-registration of each of the various types of religious organisation that had been established under prior law. As noted earlier,⁸² however, the evidentiary standards that must be met in order to verify that a group was “*registered pursuant to laws in force in the period from 1953 to 1993*” are vague. If strict requirements are imposed, many groups that had acquired entity status earlier may suffer retroactive loss of that status, with uncertain results for any property the organisation may earlier have owned. Express provisions need to be added to rule out that possibility. The Draft Law does not appear to require pre-existing entities to meet the 700-signature requirement. If it did, that would be another impermissible retroactive imposition.

2.3.4.8 Religious Autonomy Should Be Respected in the Registration Process.

86. One religious organisation should not have the right to determine whether another group may be registered or otherwise approved. The Draft Law does not authorize any such determinative role in the registration process; it is important to take care that procedural safeguards are in place to assure that this does not occur. More generally, the state should not impose any preconceived notions or religious organization on a group as a condition for registration. So long as review of “*organisational structure and denotation of hierarchically lower organisational units*” under Article 61 remains formal only, this appears not to be a problem.

2.3.4.9 Assurance that Discriminatory Consequences Should Not Flow from Registration Status.

87. As the Guidelines note, there are a variety of consequences that often flow from acquiring legal personality—e.g., ability to obtain governmental permits, to invite foreign workers and volunteers into the country and to obtain the requisite visas, to obtain tax exempt status, to obtain access to hospitals, prisons and military institutions, and so forth.⁸³ There is a particular concern with the Draft Law, given the considerable differentiation of types of religious organisations, that these distinctions could be used as

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See p. 20 above.

⁸³ Guidelines, p. 18.

a basis for discrimination under other laws. In fact, at least on its face, the Draft Law itself does not key significant functional differences in privileges or benefits to the various types of religious entities it recognizes. However, there is a genuine risk that other legislation might make such differentiations. It would be useful to add a provision indicating that differences in the types of organisation are not intended to serve as a basis for differential treatment either in the Draft Law or in other legislation.

2.3.4.10 Dissolution Provisions.

88. The Guidelines suggest that religious organisations “*should be encouraged to provide adequately for what happens in the event of either voluntary or involuntary dissolution of a legal entity of the organisation.*”⁸⁴ Nothing in the current Draft Law contemplates the possibility of voluntary dissolution. But in fact, as religious organisations restructure their affairs from time to time, such dissolution is useful, and even important from the standpoint of religious autonomy. It would also be helpful to require or at least encourage religious organisations to include some provision in their chartering “*statute or other written act*”⁸⁵ specifying what other entity—presumably one that is itself religious or non-profit—should receive the property of the institution in the event of involuntary dissolution. As a matter of equality, it should be clear that all religious organisations, and not just newly registered ones, are subject to being deleted from the register. This presupposes that although traditional churches and historical religious communities do not need to provide any formal filing, some process is needed in order to make sure that the register actually lists the legal entities that have been created by the tradition churches and historical religious communities. It would also be helpful if the legal consequences of deletion from the register could be spelled out in more detail. Specifically, what happens to the residual property of the legal entity after deletion?

89. As currently framed, the grounds for dissolution spelled out in Article 65 leave much to be desired. They are vague and could easily be applied in arbitrary ways. The provisions about invoking various kinds of hatred are unlikely to be used against prevailing groups, but could easily be invoked against less popular groups. The provision

⁸⁴ *Id.*

⁸⁵ Article 61.

on “*systematically destroy[ing] families*” reflects stereotypical beliefs about new religious movements; it is much more that intra-familial disagreements about religion involving an unpopular group will trigger use of this provision that similar tensions experienced in families with more traditional religious backgrounds. What “*disrupts an individual’s spiritual integrity*” is also very unclear. Virtually anything that leads to a change of religion might qualify, but the right to change religion belongs to the domain of the internal forum which should in fact be left totally unregulated.⁸⁶ The requirement of Article 65 that deletion from the register occur only on the basis of a final decision of a competent court is to be welcomed. It would be helpful if, in addition, prompt appeal rights could be assured, and that the deletion could not be effectuated until all appeal rights had been exhausted.

⁸⁶ See Section IV.B.1 above.