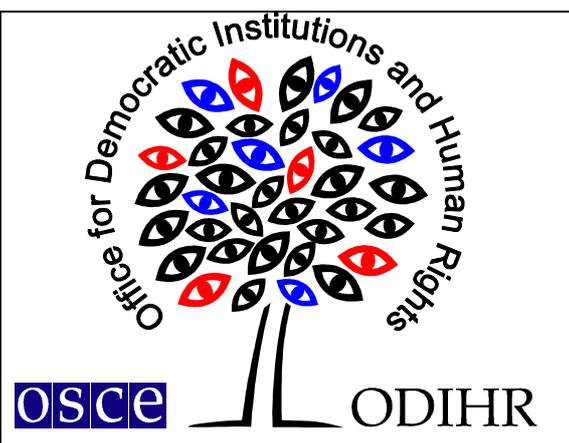


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Comments

On the Draft Law of the Republic of Albania

"ON FREEDOM OF RELIGION AND MUTUAL RELATIONS WITH THE STATE"

Prepared by the OSCE/ODIHR Advisory Council

on Freedom of Religion or Belief

I. INTRODUCTORY REMARKS

1. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been asked by the Government of the Republic of Albania through the OSCE Presence in Albania to review a draft law “On freedom of religion and mutual relations with the State” of the Republic of Albania (hereinafter referred to as the “Draft Law”). These comments are based on an unofficial translation into English of the Draft Law transmitted to the ODIHR by the OSCE Presence in Albania completed as of December 2008. This document is attached in Exhibit A. The text of the Draft Law in the Albanian language is attached in Exhibit B.
2. The task of preparing the comments has been given to the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the “Advisory Council”) The Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of religion or belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE’s participating States.
3. In revising the Draft Law the members of the Advisory Council who drafted these comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.

II. EXECUTIVE SUMMARY

4. The Draft Law of the Republic of Albania “On Freedom of Religion and Mutual Relations with the State” can be interpreted as guaranteeing far reaching freedom of religion or belief. It gives the basis for intense mutual cooperation between the State and religious organizations. In doing so the draft law can be understood as respecting autonomy of religious organizations. Religious pluralism is made possible. In its basic approach and in general the law respects the requirements of equal treatment of religions if interpreted and applied in a consistent manner.
5. However, the Draft Law in many of its provisions is unclear and confusing. This is especially the case in respect of defining the various religious organizations and their respective rights. In several cases, the relationship between general and specific provisions remains unclear. In many cases, provisions seem to be made repeatedly, but with differences in detail, so that it remains unclear what the exact meaning of the provisions is. The structures of many provisions and those of the draft law itself are often not easy to follow. All of these issues are highlighted in the part “Article-by-Article Analysis” below.

III. GENERAL ISSUES

A. International Standards

6. The comments are based on OSCE commitments that codify the fundamental right to freedom of religion or belief in international law.¹ The Republic of Albania is one of the OSCE's participating States.

7. The comments are likewise based on the relevant provisions of international treaties, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms² and the case law of the European Court of Human Rights, the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights,⁴ the Convention on the Rights of the Child⁵. The comments are further based on United Nations declarations, most notably the Universal Declaration of Human Rights⁶ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.⁷ They are also based on examples concerning practice of protecting the freedom of religion or belief.

8. The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.⁸

¹ For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf].

² European Convention for the Protection of Human Rights and Fundamental Freedoms and its First Protocol, opened for signature by the Council of Europe on 04 November 1950, entered into force 03 September 1953 (hereinafter "ECHR"). The ECHR has entered into force for the Republic of Albania on 2 October 1996.

³ International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976 (hereinafter "ICCPR"). The Republic of Albania has acceded to the ICCPR on 4 October 1991.

⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). The Republic of Albania has acceded to the ICESCR on 04 October 1991.

⁵ Convention on the Rights of the Child, adopted and opened for signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, entered into force 2 September 1990 (hereinafter "CRC"). The Republic of Albania has ratified the CRC on 27 February 1992.

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

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

⁸ The Guidelines were 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 Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61 para. 57. The major international instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf.

9. The Advisory Council also took into consideration Opinion No.249/2007 prepared by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe on the draft law on Freedom of religion, religious organizations and mutual relations with the State.

B. Recurring Issues

10. While some of the ambiguities and inconsistencies of the Draft Law may be caused by difficulties of translation, others may only seem to be ambiguities or inconsistencies to a non-Albanian reader and may be solved in the light of Albanian legal doctrine and legal tradition. However, many of such problems are a result of basic structures of the Draft Law. Many provisions are in their present wording open to be interpreted in a way that would result in violations of freedom of religion or belief and the right to non-discrimination. The “Article-by-Article Analysis” below highlights ambiguities and inconsistencies regardless of their possible source.
11. These ambiguities and inconsistencies are not merely a question of whether the Draft Law is more or less easy to read. Limitations to the manifestations of religion or belief must be clear and precise. Article 9 Section 2 ECHR allows limitations of the freedom to manifest one’s religion or belief only insofar as these limitations are prescribed by law. This does not only mean that there must be a law of any quality, but it requires that the law must be clear enough to make the limitations foreseeable. Limitations on freedom of thought, conscience, religion or belief, to the extent permissible at all, are only allowed with respect to manifestations of religion or belief. The limitations must be “prescribed by law”. The European Court of Human Rights has held that this phrase “does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention”.⁹ Rules that are ambiguous or inconsistent can be impermissibly vague and therefore may fail to meet this test.
12. In many cases, the reasons for different treatment of religious organizations in the Draft Law are hard to see. It is noted that there may be legitimate reasons to unequal treatment in individual cases. The “Article-by-Article Analysis” below highlight all of these issues regardless of whether a legitimate reason can be imagined or not. It is not the task of these Comments to invent or suppose reasons for specific provisions which may not be those of the drafters of the law. It has to be noted that Article 9 Section 2 ECHR as well as Article 18 section 3 ICCPR allow limitations to the freedom of religion or belief only when they are necessary for specified reasons.
13. While in many provisions the Draft Law guarantees internal autonomy of religious organizations, this is linked with the notion of “in compliance with the internal rules” of the religious organization. It is possible to interpret this connection in a way that gives almost complete control over internal affairs to state authorities. In such an interpretation the provisions would violate freedom of religion or belief

⁹ European Court of Human Rights, *Malone v. The United Kingdom*, 82 Eur. Ct. H.R. (ser. A) at 32 (1984).

14. A principle question raised by the Draft Law concerns the categories of religious organizations. It is possible to understand the Draft Law as creating a ‘two tier’ structure with religious communities and religious groups (leaving aside here the religious foundations). However, it is equally possible to understand the law as creating a ‘three tier’ structure involving ‘traditional religious communities’, ‘religious communities’ and ‘religious groups’. Whereas religious communities are able to enter into ‘agreements’ with the State, religious groups seemingly may not be. It is not clear what, precisely, such agreements are meant to encompass and although the law is couched in terms of neutrality, it seems that traditional religious communities enjoy a special position which has to be reconciled with State neutrality.
15. Any distinction between traditional religious communities and religious communities must not lead to discrimination of either of them. This should be carefully reconsidered.
16. The overarching issues concerning the structure of the section on registration should be reconsidered. Overall, the law seems to permit a fairly light touch system for registration of religious groups which can seek to become religious communities in time. However, there are a number of clear problems with this scheme. These are highlighted in the “Article-by-Article Analysis” below. One of the general problems with registration as outlined in the draft law is that it is not made clear that the exercise of the freedom of religion or belief is not conditional upon registration under this law. It would be helpful for this to be confirmed in clear language.
17. Although Article 13 says that there is a separation of religious organisations and the State and that the State is impartial, Article 42 provides for financial support for the four named traditional religions. Although this is couched in the language of reparation for past wrongs, it gives extensive financial support in Articles 42 Sections 4 and 5 to these four communities as well as permitting considerable discretionary financial assistance in Articles 42 Sections 2 and 3. This assistance is seemingly limited to these four traditional religious communities, which therefore do enjoy substantial and entrenched support from the State. Whilst it may be open to other religious communities to enter into agreements of this nature under Article 15 Section 1 Letter b., it is not clear that this is the case.
18. The criteria for registration as a group and as a community are not as clear as they should be. At one level, they appear to be very similar. The key difference is Article 31 Section 1 Letter b. which refers to ‘widespread’ activities in terms of location and numbers of supporters. This would appear to imply some numerical or other threshold criteria, which are not set out in the Draft Law. Greater clarity is needed as to what this means, since there are clear differences in the legal capacities of groups and communities; this needs some explanation.

19. The scope of the Draft Law is not clear: is it limited to freedom of religion or to freedom of religion or belief? Most of the Draft Law appears to be focused on freedom of religion, but some provisions also relate to matters of belief which could be non-religious in nature (e.g. Article 8 on freedom of conscience).
20. These comments do not make recommendations in detail. However, recommendations in general are:
 1. To ensure the consistency of the Draft Law;
 2. To clarify the meaning of ambiguous terms and structures as indicated;
 3. To ensure non-discrimination in the application of the Draft Law.

IV. ARTICLE-BY-ARTICLE ANALYSIS

21. **1. Article 1** provides under the heading “Scope” that: “This law confirms the continuity of the juridical personality of the religious communities historically present in Albania: the Muslim Community of Albania, the Autocephalous Orthodox Church of Albania, the Catholic Church of Albania, and the Bektashi World Centre.”
22. The scope of the law, however, is larger than indicated in Article 1.
23. It is not clear why the continuity of the legal personality of these four traditional groups is preserved in this way – and not that of others, which may currently have legal personality. Article 45 requires the submission of additional documentation for continuation of status under this Act. There is either a degree of confusion between the relationship of Articles 1 and 45, or a degree of discrimination in the manner in which different religious groups and communities are treated.
24. **2.** The heading of **Article 2** reads: “Religious Community, Group, and Grouping”.
25. The article, however, also deals with another religious organization: religious foundations.
26. **3. Article 2 Section 1** defines: “A religious community is the entirety of religious believers, who exercise their religious activity in a certain religious order, in compliance with the rules, principles, and canons of the community, and who are committed to take part in the life and mission of this community. A community is distinguished by its historical and territorial character. A religious community is entitled to ask the State Institution on Religious Affairs to sign agreements, which are approved by the Council of Ministers. Communities are registered with the Register of Religious Communities and Groups.”
27. It is not clear, why ‘religious’ is omitted here in describing a religious community in contrast to religious groups as defined in Article 2 Section 2.
28. The provision speaks of “religious believers ... who are committed to take part in the life...of the community.” This could be read as excluding those who are members of the community but do not take active part in the life or mission of the community. It

- is also not clear whether this should exclude minors who are baptised or otherwise admitted to the community, but cannot yet take conscious decisions.
29. When distinguishing a religious community by its “historical” and “territorial” character it is not clear what these terms mean.
 30. It is not clear from what time of existence one can speak of “historical”. This can well lead to unfair discrimination in violation of Article 14 ECHR.
 31. While the definition of religious communities, and the point of differentiation from religious groups, is linked to their history, it is not made clear how this differs from the ‘traditional religious communities’ listed in Article 42 and Article 1. Whilst it is clear that ‘groups’ can become ‘communities’, it appears that there is no means by which a religious community can become a ‘traditional religious community’. Given the additional advantages enjoyed by traditional religious communities, this may lead to unfair discrimination.
 32. It is also not clear what “territorial” means. One could think of territorial as implying that the community must be based on the territory of the Republic of Albania. This, however, is not expressed in the provision. If this in fact should be the meaning of the term it may exclude agreements such as concordats with the Holy See which is not territorially based in the Republic of Albania.
 33. **4. Article 2 Section 1 Sentence 3** states that “A religious community is entitled to ask the State Institution on Religious Affairs to sign agreements”.
 34. It is unclear whether this excludes agreements between the State and religious organizations other than religious communities or whether those other religious organizations just do not have the right to “ask” for such an agreement. It may be necessary or at least advisable or desirable to conclude agreements also with religious groups, i.e. non-territorial or non-historical religious organizations. Article 15 is unclear in this respect.
 35. **5. Article 2 Section 2** defines: “A religious group is the entirety of religious individuals, who exercise their religious activity in a certain religious order, in compliance with the rules, principles, and canons of the religious group, and who are committed to take part in the life and mission of this group. A religious group is entitled to register with the Register of Religious Communities and Groups.”
 36. It is not clear why the provision speaks of individuals in contrast to the definition of a religious community in Article 2 Section 1 which speaks of believers. This could give rise to discriminations violating Article 14 ECHR.
 37. The provision speaks of “religious individuals ... who are committed to take part in the life...of this group.” This could be read as excluding those who are members of the group, but do not take active part in the life or mission of the community. It is also not clear whether this should exclude minors who are baptised or otherwise admitted to the community, but cannot yet take conscious decisions.

38. **6. Article 2 Section 4** defines: “A religious organization, for the purposes of this law, is a general term which refers to religious communities, religious groups, religious groupings, and religious foundations.”
39. Religious foundations are not defined in contrast to religious communities, groups, and groupings. Religious foundations also do not figure anywhere else in the Draft Law. It is unclear what a religious foundation is and what the status of it should be.
40. **7. In its Article 3 Letter b)**, the Draft Law states as one of its purposes: “To guarantee the freedom of individuals to choose or change their religion, demonstrate it individually or collectively in religious institutions or outside them, through cults, education, practices, or through carrying out religious rituals;”
41. It is not clear what the difference in wording compared to Article 9 ECHR and Article 18 ICCPR entails. The provision could be read as over restrictive.
42. **8. Article 3 Letter b)** states: “The purpose of this law is: ...b) To guarantee the freedom of individuals to choose or change their religion, demonstrate it individually or collectively in religious institutions or outside them, through cults, education, practices, or through carrying out religious rituals;”
43. The use of the word ‘cults’ may be a translation issue. However, it would be better to use the language of Article 9 Section 1 ECHR: ‘Worship, teaching, practice, observance’.
44. **9. In its Article 3 Letter c)**, the Draft Law states as one of its purposes “To ensure the freedom of individuals not to be stopped or forced to be part of a religious organization, or take part in its practices, rituals, and steering structures;”
45. This taken in relation to Article 3 Letter b) implies that the individual could be forced to take part or not to take part in “cults” or “education” performed by a religious organization, because these terms figure in Article 3 Letter b), but not in Article 3 Letter c). At the least, the provision can be misunderstood.
46. **10. In its Article 3 Letter d)**, the Draft Law states as one of its purposes: “Freedom of religion may not become subject to restrictions other than those, which provided for in the law, constitute the necessary measures in a democratic society for (ensuring) the public safety, order, protecting the state, public health and moral, or for protecting the others' rights and freedoms.”
47. Article 9 Section 2 ECHR allows limitations only of the manifestations of religion or belief. Article 3 Letter d), however, could be read as also allowing limitations of the forum internum. This would violate Article 9 ECHR.
48. The provision of the Draft Law also allows limitations “for ... protecting the state”. Protecting the state is too vague a concept. Such limitations are impermissible in the light of Article 9 ECHR and Article 18 ICCPR. It would be better to include the ECHR limitations stated in its Article 9 Section 2: “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of

public order, health or morals, or for the protection of the rights and freedoms of others.”

49. **11.** In its **Article 3 Letter e)**, the Draft Law states as one of its purposes “To recognize and guarantee respect for the rights of religious communities, their institutions and structures, as well as the rights of legal persons established or recognized by them, to freely conduct religious, educational, and charitable activities.”
50. It is unclear why only the rights of religious communities should be guaranteed, and not also those of religious groups, groupings, and other religious organizations. This would be a discrimination of those other organizations in violation of Article 14 ECHR.
51. **12.** In its **Article 3 Letter e)**, the Draft Law states as one of its purposes “To ensure good relations between the State and the religious communities on principles of equality and non-discrimination, mutual respect of one-another's independence, as well as cooperation in the interest of each and everyone.”
52. It is not clear why good relations should be ensured only with religious communities and not with other religious organizations. This could run contrary to Article 14 ECHR.
53. **13. Article 4 Section 1** provides: “This law is applicable throughout the territory of the Republic of Albania to all legal and natural persons, residing in the territory of the Republic of Albania.”
54. The term ‘residing’ can be misleading and over-restrictive. ‘Present’ within the territory would be clearer than ‘residing in the territory’. Also, it might be clearer again to refer to those ‘present within the territory or otherwise subject to the jurisdiction of the Republic of Albania’.
55. **14. Article 4 Section 2** provides: “Albanian citizens with a temporary or permanent residence outside the borders of the Republic of Albania are entitled to the protection this law provides in the relationships they establish with the Albanian state bodies.”
56. It is unclear whether or why this should apply only to the relationships that the citizens establish and not to those relationships which the State authorities establish.
57. **15. Article 4 Section 3** provides: “Legal and natural persons, whose domicile, residence, or seat is outside the territory of the Republic of Albania, are entitled to the protection this law provides in the relationships they establish with the Albanian state bodies.”
58. The relationship of this provision with Article 4 No. 2 is unclear, because Albanian citizens are natural persons, and No. 3 does not seem to give different status than No. 2.

59. It is also unclear whether or why this protection should apply only to the relationships that the persons establish and not to those relationships which the State authorities establish.
60. **16. Article 4 Section 4** provides: “All the central and local state authorities, including the legislative authority, shall observe the freedom of faith and religion, as well as the right to exercise them, by avoiding every discrimination in this field, in all the normative act they approve and issue according to their competencies.”
61. The notion “by avoiding every discrimination” could be read as meaning that freedom of faith and religion should be observed only by avoiding discrimination. However, freedom of religion or belief can be also violated by other than discriminatory acts. Such violations must also be excluded.
62. Furthermore, this provision could be read in the sense that freedom of religion or belief should be observed only in normative acts. There are acts of authorities of mere factual character; these, also must respect freedom of faith and religion.
63. The provision is too narrow in aiming only at acts within the competencies of the authorities. Freedom of religion or belief must be respected even when State authorities act outside of their competencies.
64. **17. Article 4 Section 5** provides: “Agreements signed between representatives of religious communities and the Council of Ministers, ratified by the Assembly according to Article 10/5 of the Constitution, may not contain provisions which violate the freedom of religion, and/or which contain discriminations as provided for in Article 2/2, 3 of this law.”
65. The provision is unclear in describing the entities that conclude the agreements: Are the agreements concluded (or signed) with the representatives or with the religious communities as such? The Council of Ministers is an institution; here, the representatives are not mentioned. Thus, the agreements would be signed (or concluded?) between individual representatives on the one side and the institution as such on the other side.
66. The provision that an agreement may not “contain discriminations as provided for in Article 2/2, 3 of this law” is unclear. Article 2 Sections 2 and 3 of the Draft Law define religious groups and religious groupings. They do - apparently - not refer to discriminations.
67. **18. Article 5 Section 2** provides: “This law is based on the general principles sanctioned by the Constitution of the Republic of Albania, the international acts, which ensure the freedom of religion, and in which Albania is a party, as well as on special principles, among which are the following: ...2. Protection of, and respect for religious pluralism, from both the traditional and the recently updated viewpoint;”
68. The provision is vague. It is unclear what “the traditional and the recently updated viewpoint” could mean.

69. **19. Article 7:** “The right to exercise freedom of religion” is in part confusing. Article 7 Section 1 does not mention the right not to establish and not to take part in religious organizations, whereas Sections 3 and 5 explicitly mention that negative right. It is unclear whether anything and what would follow from this difference.
70. The heading of the article is confusing, because it mentions only freedom of religion. The chapter heading and other articles in this chapter as well as some of the provisions of Article 7, however, speak of religion and conscience (or belief).
71. The positive list of rights could be read as excluding other rights that usually are linked with the right to freedom of religion or belief, even when that is not intended by the provision. This especially relates to the right to change one’s religion. The relationship of the provision with Article 3 is not clear.
72. **20. Article 7 Number 4** guarantees “The right to disclose their faith or beliefs”.
73. In relation to Article 7 Section 1 this could be read as meaning that individuals may disclose, but not promote their faith or belief individually.
74. **21. Article 7 Number 6** states: “The exercising of the freedom of religion and conscience includes: ...6. The right of parents to educate their children according to their religious beliefs, under their direct care and responsibility;”
75. While this may be a matter of translation, this should address having children educated ‘in accordance with’ their religious beliefs, i. e. in State schools, rather than being limited to ‘direct care and responsibility’ of the parent. The provision could suggest that compulsory religious teaching could be given in State schools without the possibility for dissenters of opting out of this teaching, and it would be for parents to provide alternative forms of education if they wish.
76. **22. Article 8** provides: “All the Albanian citizens, foreign citizens, and persons without a citizenship, who live in the Republic of Albania, are entitled to freedom of religion and conscience according to the constitutional provisions in force, international acts ratified by the Assembly of Albania, and this law.”
77. It is not clear why the Draft Law limits freedom of religion and conscience (or belief?) to those who ‘live’ in Albania, as opposed to those within the jurisdiction, etc.
78. **23. Article 9:** The relationship of Article 9 with Article 10 is unclear and confusing.
79. **24. Article 9 Section 1** reads: “No one may be forced by any person or group of persons to act in contradiction with his religious beliefs or conscience, or hindered in showing his beliefs individually or collectively, privately or publicly.”
80. While this is at first sight favourable to freedom of religion or belief, it is unclear how these rights (and duties of third persons relate to limitation clauses set out in various places in the Draft Law.

81. **25. Article 9 Section 2** reads: “No one may be allowed to undertake, because of his religion or his religious beliefs, actions or behaviours, which provoke or discriminate against individuals or groups of individuals with religious beliefs different from their own.”
82. This is vague and far reaching. A believer in one faith could well be ‘provoked’ by the different belief of another believer. It could be understood as provocative when a religious person insists that the other is wrong, believes in a false religion, etc. The provision could eliminate all public discourse about religious truth.
83. **26. Article 9 Section 3** reads: “No one may be discriminated against, or privileged, directly or indirectly, because of his religion or beliefs.”
84. It is not clear who the addressee of this provision is: state authorities or any person (as in Article 9 Sections 1, 2). If also religious organizations or private persons are addressed and obligated by the provision this could mean that a religious organization must not give notice to a priest, imam or rabbi, etc. who turns to another faith. It may also mean that even dissenters must be hired as clergy, etc. These problems could be overcome when an adequate definition of the notion of discrimination and privilege exists either in the Draft Law itself or in the general law of the republic of Albania.
85. **27. Article 9 Section 4** reads: “No one may be forced to give up his religious functions or services, or take part in them against his will.”
86. It is unclear who the addressee of this norm is (see also comment on Article 9 Section 3). Again, this could mean that an employee or holder of a religious office cannot be given notice when he or she turns to another faith or is disloyal to the ethos of the organization. That could entail a violation of the right to religious autonomy as guaranteed by Article 9 ECHR.
87. **28. Article 9 Section 5** reads: “No one may be forced to take part in religious celebrations or rituals, or take an oath on religion-based formula.”
88. It is not clear how that relates to the general right not to take part in religious activities. In some provisions of the Draft Law such a negative right is explicitly stated, in other provisions not. This is at least confusing. It could be interpreted in a discriminatory way.
89. **29. Article 9 Section 6** reads: “No one may be forced to disclose his religious beliefs, except when this is related to rights or obligations, or compilation of various statistics.”
90. ‘Various statistics’ is too broad a category.
91. **30. Article 10** is headed: “Restrictions on freedom of religion”.
92. However, the article also entails provisions about restrictions of freedom of conscience and freedom of belief.

93. **31. Article 10 Section 1** reads: “Individual or collective practice of religion or conscience may be restricted only by law with the aim of guaranteeing public safety and order, social moral or fundamental rights and freedoms of other individuals.”
94. The relationship of this provision with Article 3 Letter d) is unclear. Both of these provisions refer to limitations of freedom of religion, but differ in scope and content as to the permissibility of such limitations.
95. While this may be a matter of translation, it is not clear why in this provision the term “practice” of religion is used and not the term “exercise” of religion. Practice would be a more narrow term than exercise.
96. **32. Article 10 Section 2** reads: “Exercise of the freedom of religion and conscience shall not justify shirking the tasks arising from the implementation of law.”
97. While this may be a matter of translation, the term ”shirking the tasks” could possibly lead to misuse and is at least misleading. In English language, “may not be used to avoid compliance with the legitimate requirements of the law” or some equivalent wording would avoid misunderstanding.
98. **33. Article 10 Section 3** reads: “Those citizens, who due to their religion or belief cannot perform obligatory military service, are entitled to alternative service to the Albanian State (in compliance with the respective law). In order to enjoy such right, citizens subject to obligatory military service shall submit a certificate confirming their religious faith and belief (see article 9/6).”
99. This is potentially problematic in requiring a ‘certificate’. It is not clear who should issue such a certificate and what contents of it are required.
100. **34. Article 11 Section 1** provides: “The right envisioned in article 7/2 as well as the right to possess and use objects necessary for practising religious faith or beliefs, shall also be guaranteed for individuals who: a. perform military service or other civilian services; b. are in healthcare centres or social care institutions, state run recreational facilities for children and young people; c. serving their criminal sentence in respective institutions, re-education centres or social care centres for young people.”
101. This provision is open to impermissibly narrow interpretation. Article 7 Section 2 only guarantees: “The right to undertake functions or services for fulfilling the obligations emerging from their faith or beliefs, in compliance with the principles of their faith or beliefs”. Other and more general rights under freedom of religion or belief are not mentioned. While special limitations and restrictions to manifesting one’s religion or belief are permissible in special institutions according to the needs and functions of those institutions, the rights mentioned in Article 11 Section 1 can be interpreted in a disproportionately narrow manner.
102. Article 11 Section 1 does not mention further institutions such as schools, universities, police force. This could mean that in those institutions, the rights stipulated in the provision are not guaranteed. It is not clear why that should be the case.

103. **35. Article 11 Section 2** provides: “The ways for practising faith and other beliefs pursuant to paragraph I of this article, shall be regulated with special acts.”
104. The reference to ‘other acts’ regulating “the ways for practicing” is potentially problematic as it could be read as exempting such institutions and bodies from the more general provisions of this Draft Law.
105. **36. Article 13 Number 1** provides: “None of the religions or religious communities shall be recognized by the state as a state religion or religious organization.”
106. It is unclear why this should apply only to religions and religious communities and not also to other religious organizations.
107. **37. Article 13 Number 6** provides: “Freedom of religious assembly and association is guaranteed in the Albanian legislation. It can be restricted only in cases explicitly stated in the law, in compliance with international standards, only when it is justified by the competent state bodies as necessary to the public safety, protection of health, public moral or fundamental rights and freedoms of third parties.”
108. It is not clear why this is considered in this Article as it is more closely related to Article 7.
109. It is potentially a problem to have a separate set of limitations attached to the exercise of this right in this Article, particularly as they are slightly different from those set out in Article 10.
110. **38. Article 13 Number 7** provides: “The religious communities are entitled to appeal to the State Institution on Religious Affairs or to the respective administrative bodies those acts which restrict such rights on a case by case basis.”
111. It is not clear why the right to appeal should not also apply to other religious organizations than religious communities. If this is not just a matter of translation into English language, such a restriction would violate the non-discrimination clause of Article 14 ECHR.
112. It is unclear whether all rights guaranteed in the Draft Law are being addressed here or only those stated in Article 13.
113. It is not clear which appeals go to the State Institution on Religious Affairs and which go to the respective administrative bodies. It is further unclear whether there is further appeal to the Courts.
114. **39. Article 13 Section 8** provides: “Other aspects related to the exercise of this right may be regulated by means of religious agreements as well.”
115. This provision is vague and unclear in scope.
116. **40. Article 14:** The State Institution on Religious Affairs is given significant powers under the Act – both in terms of issuing opinions concerning religious groups and in hearing complaints. Yet its composition is left to the Council of Ministers. Further thought and detail needs to be given to this body given its functions under this law in

order to ensure that it is properly independent and able to fulfil its functions in an appropriate manner.

117. **41. Article 15** is in part confusing. While the heading speaks of “Agreements between the Council of Ministers and the Religious Communities”, the provisions as such also refer to religious organizations in general. The relation of these provisions with Article 2 Section 1 is unclear. In Article 2 Section 1, agreements are mentioned only in respect of religious communities.
118. **42. Article 15 Section 5** reads: “Agreements with one or several religious communities may not contain such provisions that bring as a consequence restrictions to the activity of religious communities and other organizations.”
119. In the case that agreements can also be concluded with any religious organization it is not clear why this should not apply to those agreements as well.
120. **43. Article 15 Section 7** reads: “If a request or proposition to sign an agreement is refused by the Council of Ministers, the latter shall explain the reasons of the refusal through a decision, which may be related to constitutionality, legality or financial obligations.”
121. The provision is confusing, because the difference between constitutionality and legality is unclear.
122. The provision is also unclear in that there may be other legitimate reasons to refuse a specific provision in an agreement; e.g. differing views on interests of the State. It would give those religious organizations that can conclude agreements with the State a possibly illegitimately privileged position over non-agreement religious organizations when such other reasons may not cause a rejection of an agreement on the side of the State.
123. **44. Article 15 Section 8** reads: “The Council of Minister's decision for the refusal of the agreement with one or several religious communities may be appealed by the latter within 30 days from receiving notification of the decision.”
124. The provision is not clear: When there is the possibility of agreements with other religious organizations than a religious community, why may the refusal to conclude an agreement with a religious group (Article 15 Section 1 Letter a) or other religious organizations (Article 15 Section 1 Letter b) not be appealed?
125. It is not clear to whom the appeal may be made, while in other parts of the Draft Law specific indications about such issues is made.
126. **45. Article 16 Section 1** reads: “When a religious community submits a request for the signing of an agreement, the request must be reasoned and, together with the respective draft proposal, must be filed with the State Institution for Religious Affairs by the representative of this community. The State Institution for Religious Affairs shall perform all the preliminary actions for the examination and approval of the draft agreement within 30 days for the day of the submission of the request.”

127. The experience with agreements between the State and religious organizations in other countries shows that sometimes much longer periods of time than 30 days are reasonably needed for negotiations and approval.
128. **46. Article 16 Section 2** reads: “The State Institution for Religious Affairs may remand the text of the Agreement or certain provisions for complementation or revision only once, and only when it observes non-compliance with the Constitution and this law.”
129. The experience in other countries shows that there are often reasonable interests at stake and not only legal questions when negotiating an agreement.
130. **47. Article 16 Section 3** reads: “After the completion of the preliminary actions, the State Institution for Religious Affairs shall forward the request and the draft proposition to the Council of Ministers, which shall examine and approve it by decision within 90 days.”
131. The provision is confusing in that it apparently allows only approval of the draft agreement by the State Institution of religious Affairs. Does it have to approve even when it finds objectionable provisions in the agreement?
132. **48. Article 16 Section 4** reads: “Only the Council of Ministers may refuse the request and the draft proposition of the agreement in whole or in part for reasons provided for in Article 15.”
133. As stated in the comment to Article 15 Section 7 there may be other legitimate reasons to reject a specific provision within an agreement. The provision could result in undue privileges of religious communities with an agreement over non-agreement religious organizations. This could violate Article 14 ECHR.
134. **49. Article 17** reads: “Ratification of agreements with religious activities. Agreements signed between religious activities and the Council of Ministers are ratified or denounced in the Assembly, by a law approved by the majority of the present members, and according to the procedures of the Assembly's Regulation.”
135. This is unclear at least in the English translation. The term “activities” in the heading and in the provision itself would probably have to read “communities” or “organizations”.
136. The provision is also confusing in substance: Does the denouncing of an agreement has to be performed by law? Then, the denouncing of an agreement would have to undergo all other steps in lawmaking such as signing, publication, etc.
137. The provision is also confusing in relation to the necessary majorities: What happens when there is an even vote? Does that lead to ratification or to a rejection of the agreement?
138. **50. Article 18 Sentence 2** reads: “Religious communities may propose religious holidays that, in their opinion, may be declared as public holidays.”

139. It is not clear why other religious organizations or individuals should not be allowed to propose such holidays? This is discriminatory in view of Article 14 ECHR.
140. **51. Article 19 Section 2** reads: “Anyone is free to follow and observe also religious rules and customs for union in marriage, after following the legal way.”
141. General practice in is that civil marriage does not have to precede religious marriage.
142. **52. Article 19 Section 3** reads: “The religious communities and the State shall jointly commit to protect family values, and especially children.”
143. The provision is vague: Are there any consequences? What are family values exactly? The provision puts duties concerning their teaching on the religious communities and thus interferes with their internal affairs of theology.
144. As far as the duty of compliance with specific values should be legitimate it is not clear why that then should apply only to religious communities and not to other religious organizations.
145. **53. Article 20** reads in its heading: “Training and educational institutions of religious communities”.
146. This is confusing, because the Article also deals with religious groups.
147. It is not clear whether the article is addressing institutions providing for religious training (e.g. seminaries, etc) as well as addressing general educational establishments for children. This needs to be clarified. Depending on the answer to this question, the question of state control of the curriculum need to be considered further (i.e. it would be inappropriate in training seminaries, etc).
148. **54. Article 20 Section 2** reads: “The State, religious communities and groups shall commit to guarantee the individual's right to education without distinction, including religious education, observing the parents' right to provide education for their children according to their convictions.”
149. This should refer to the right of parents to have children educated in accordance with their religious or philosophical convictions, rather than their right to provide education according to their convictions.
150. **55. Article 20 Section 4** reads: “The religious communities shall draft the respective curricula for non-public religious schools for approval by the Ministry of Education, which assesses also the teaching personnel.”
151. The provision is confusing: While other provisions in the article also deal with religious groups this one only covers religious communities. It is unclear why only religious communities should be allowed to draft the respective curricula.
152. It is also unclear in respect of the scope of the curricula: While it may be probable that religious communities should have the right to draft curricula only for their own schools that is not clear from the text of the provision. However, if religious communities (which ones) should be allowed to draft the curricula for schools of other reli-

- gious organizations, then this would be an undue discrimination and would violate the autonomy rights of those religious organizations.
153. The requirements according to teaching personnel are not specified. This can give rise to discriminatory and arbitrary supervision.
 154. **56. Article 21** provides that: “Religious organizations shall be entitled to perform social activities of an economic, educational and healthcare character, including the establishment of suitable social facilities in compliance with the legislation in force.”
 155. The provision is unclear: What about feeding poor and hungry people or homes for the elderly or the running of orphanages – that is not necessarily economic, educational or healthcare activity, but a usual manifestation of religion or belief. If these other activities should be excluded, this would be a violation of Article 9 ECHR and Article 18 ICPPR.
 156. While this may well be a matter of translation, it is questionable whether these rights are best described as ‘social activities’. The description as ‘provision of social or community services’ might fit more easily.
 157. **57. Article 23** has as its heading: “Freedom of expression and the right to information”.
 158. However, the freedom of expression is much broader than the issues the article addresses. The article concerns access to the media. Rather than a series of provisions it might be clearer to have a single article confirming this rights – for example, just as Article 21 Section 4, with an appropriate caveat about the exercise of this right being subject to general regulations concerning the press and broadcast media.
 159. **58. Article 23 Section 1** reads: “The State and the religious organizations shall recognize and accept the public information means as an important element in protecting the freedom of expression and conscience.”
 160. It is unclear what the terms “recognize” and “accept” mean in the context of public information means.
 161. The Draft Law also seems to impose specific attitudes on religious organizations which may run contrary to their teachings and religious convictions. There are no legitimate reasons visible that would justify such impositions.
 162. **59. Article 23 Section 2** reads: “The religious organizations shall have the right to freely express and disseminate their beliefs through public communication means, the written and visual media, as well as any other recognized form or which shall be recognized in the future.
 163. It is unclear what the term “recognized” form of media should entail.
 164. **60. Article 23 Section 3 Sentence 1** reads: “The religious communities shall have the right to establish public communication structures in compliance with the legislation in force.”

165. It is not clear why this does not apply to other religious organizations than religious communities: Do they not have the right to establish public communication structures? Why not? What would be the legitimate reasons to such restrictions? This seems to be discriminatory.
166. **61. Article 23 Section 3 Sentence 2** reads: “The content broadcasted through means of mass communication shall not in any case transmit ideas which violate the constitutional order, violate the religious tolerance and discriminate other individuals or religious organizations and incite inter-religious disputes.”
167. This is a very far reaching restriction. To “transmit” ideas could mean that the media must not even report on the existence of such ideas. Notwithstanding the objectionable content of such ideas it would amount to an illegitimate limitation to freedom of expression if this should be the case.
168. In prohibiting to “incite inter-religious disputes” the provision is unduly restrictive and vague. Disputes are a normal thing among religions. Freedom of speech and freedom of religion or belief require freedom to have inter-religious disputes.
169. **62. Article 22 (probably rather: 24) Section 1 Sentence 1** states: “Buildings and objects which serve for performing religious ceremonies shall be considered sacred.”
170. The meaning of the term “sacred” is unclear in this context. There are religions that do not consider their places of worship to be sacred. It would contradict the secular nation of the State if it should declare specific places as sacred.
171. The provision seems to offer a high degree of immunity for religious premises, the scope of which is not clear.
172. Also, the term ‘buildings which serve for performing religious ceremonies’ is potentially very open ended and requires greater definition.
173. **63. Article 22 (probably rather: 24) Section 2 Sentence 2** states: “The location of cult objects in public spaces shall be done based only on legal provisions and with the approval of the Regional Council and the Municipalities for the communes and the towns respectively and by the TACRA (Territorial Adjustment Council of the Republic of Albania).”
174. It is unclear what the provision would mean: What happens if a believer has a vision such as the appearance of an angel in a public place such as a natural cave and other people go there to celebrate and make the cave an object of their cult?
175. The provision appears to restrict the public dimension of worship to an unacceptably high degree, requiring express permission from the municipal authorities for the ‘location of cult objects’.
176. It is not clear if this refers only to permanent location or temporary ones.
177. **64. Article 22 (probably rather: 24) Section 5** reads: “Building projects for cult and religious buildings, as well as their restoration shall take into account the tradition and architecture of national cult objects.”

178. Presumably, Article 22 Section 5 ought to focus on the traditions and architecture of the religious community/tradition in question, rather than the more general national traditions.
179. **65. Article 25 Section 1** reads: “Religious communities or groups shall be registered in the Register of Religious Communities and Groups at the Tirana District Court, as prescribed in this law.”
180. This is confusing: Is there a procedure for registration of religious foundations as mentioned in Article 2?
181. **66. Article 26** reads in its heading: “Organization and operation of religious communities”
182. This is confusing: The article also deals with religious groups in its Section 9.
183. **67. Article 26 Section 1** reads: “Religious communities shall be entitled to be organized and fulfil their mission independently.”
184. The provision is confusing and could be interpreted in a discriminatory way: What about religious groups and groupings? Article 33 gives different rules for the organization and mission of religious groups. This can lead to impermissible discrimination.
185. **68. Article 26 Section 1** reads: “The institutions and structures established by religious communities may perform any types of social, educational, healthcare and economic activities, in compliance with the rules of the community and the legislation in power which regulate among others the provision with licenses and respective permits.”
186. This provision is unclear: What is the relationship of this provision with Articles 21 – 23?
187. **69. Article 26 Section 1** reads: “Religious communities, religious groups as well as their natural persons shall be non-for-profit juridical persons in all of their legal forms.”
188. This provision is confusing: How can a natural person be a non-for-profit juridical person?
189. **70. Article 27 Section 1** reads: “Registration of religious communities shall be based on the agreement concluded between representatives of respective communities and the Council of Ministers, ratified by the Albanian Assembly.”
190. This is confusing: In Article 2, religious communities are entitled to ask for agreements; here, they must conclude such agreement in respect of registration.
191. **71. Article 27 Section 5** states: “Registration of religious community may be refused

- if: a. the documentation required in this article is not complete; b. the doctrine, aims and the organization expressed in the charter or regulation is in contradiction with the Constitution of the Republic of Albania or the laws of the country; c. the activity of the respective community violates (jeopardizes) public order, fundamental rights and freedoms of other persons, or disseminates hatred among the existing religious communities.”
192. The provision is unduly vague in its Letter a. Registration requires far reaching information according to Article 27 Sections 2 and 3. E.g., it is not clear what exactly the scope of information about the duties and authorities mentioned in Article 27 Section 3 Letter c. is. This could lead to non-registration on arbitrary grounds.
193. The provision is confusing in its Letter c. Registration is refused when the activity of the religious community disseminates hatred among existing religious communities. It is not clear why registration is granted when they disseminate hatred among religious groups or individuals or other third persons? This would constitute an impermissible discrimination.
194. **72. Article 28 Section 2** reads: “Registration of religious groups requires the submission of the following documents: a. request for registration b. charter of the group, c. representatives (founding members), d. sources of financing, e. the doctrine to be propagated, f. territory of activity, g. the opinion of the State Institution on Religious Affairs.”
195. The requirements for registration of religious groups differ from those for religious communities. It is not clear why that should be so: For religious groups, no statement about dissolution of the juridical person is required; their name need not be distinguishable, etc. It is not clear why that should be so.
196. It is not clear what the “opinion of the State Institution on Religious Affairs” should be on. It is also not clear what this opinion is meant to express, what the consequences of such an opinion should be, what it is to be based on, and how it is to be formed.
197. **73. Article 28 Section 4 Letter a.** reads: “Registration of religious groups may be refused if: ...a. the documentation required in this article is not complete”.
198. This provision taken together with Article 28 Section 2 Letter g. could lead to arbitrary delay or refusal of registration if the opinion of the Sate Institution on Religious Affairs is not given by this institution.
199. **74. Art 28 Section 4 Letter b.** reads: “Registration of religious groups may be refused if: ...b. the doctrine, aims and the organization expressed in the charter or regulation is in contradiction with the Constitution of the Republic of Albania or the laws of the country;”
200. Whilst restraint on these grounds may indeed be necessary, this provision seems to be potentially over-restrictive.
201. **75. Article 28 Section 4 Letter c.** reads: “Registration of religious groups may be re-

- fused if: ...the activity of the respective group violates public order, fundamental rights and freedoms of other persons, or disseminates hatred among believers.”
202. Whilst restraint on these grounds may indeed be necessary, the provision seems to be potentially over-restrictive, and in particular the ‘dissemination of hatred among believers’.
203. This provision is unclear and confusing. It could be read as allowing dissemination of hatred among religious groups, communities, groupings, foundations, and any third persons who are not (individual) believers. That would amount to an impermissible discrimination and would also be problematic in view of initiatives against hate speech.
204. **76. Article 29** reads: “Religious groups may carry out the following activities: b) establish objects of cult; c) perform religious rites in compliance with its internal rules; d) establish charitable centres (orphanages, retirement houses, etc.); e) carry out any other activities permissible by this law or other laws; f) carry out secondary activities in the exercise of the freedom of religion.”
205. This provision is unclear in its relation to Articles 21 – 23. There, the range of activities is described in a different way.
206. The provision also is unclear in its internal relations. Letter d) gives a general freedom of legal activity. The other activities could be understood as restricting, but also as mere examples of permissible activities.
207. The term ‘secondary activities’ in Article 29 Letter f) is unclear. In general, it would be clearer for this article to follow the language of Article 9 Section 1 ECHR.
208. **77. Article 30** deals with “Dissolution of religious groups”, while Article 35 deals with “Dissolution of religious organizations” and Article 36 with “Termination (de-registration) of religious organizations”.
209. The relationship between these provisions is unclear.
210. **78. Article 30 Section 1 Letter a.** provides: “Religious groups may be resolved when: a. the registration time expires”.
211. This is confusing. The provision can mean that a religious group is registered (only) for a certain period of time or that it can under certain circumstances be registered only for a certain period of time. The law does not make any statements about this beyond this provision. It is an open question under what circumstances such limited registration would be granted. The provision is not concrete enough.
212. **79. Article 30 Section 1 Letter b.** provides: “Religious groups may be resolved when: ... b. they submit a request to be registered as religious communities in compliance with the procedures anticipated in this law”.
213. It is difficult to see why submitting a request for registration as a religious community should be a ground for terminating the legal status of a religious group. Presumably,

this should only take place following a *successful* request for recognition as a community.

214. **80. Article 30 Section 2 Sentence 1** provides: “Religious groups may be deregistered as such if they violate the constitution and the internal laws or they do not perform the activities for which they have been registered.”
215. This could mean that deregistration is possible if the religious group violates its own internal laws. It remains an open question who would decide that is the case. It is already a problem whether a secular court could decide on that question which very often is of a religious nature.
216. The provision is also disproportionate if it means that even minor violations of internal laws can lead to deregistration of the religious group. This provision could lead to a complete control of religious groups by State authorities which would violate the right to religious autonomy.
217. In allowing deregistration in the case that a religious group does “do not perform the activities for which they have been registered” inactivity in certain fields of originally envisaged activity could lead to deregistration. That would be disproportionate and would amount to a violation of autonomy of religion.
218. **81. Article 31 Section 1 Letter b.** reads: “Any religious group is entitled to ask registration as a religious community (obtaining the status of religious community) in the meaning of this law, in case it meets the following criteria: ...its religious activity is considerably widespread in terms of territory and in terms of supporters of its doctrine;
219. This provision is vague in view of the exact determination what “considerable” and what “widespread” means in view of religious activity. It is also unclear what “widespread...in terms of supporters” means: does it mean that there are a considerable number of followers?
220. **82. Article 32** reads: “Juridical persons of religious groups may perform their activity for an unlimited period of time in part or all over the territory of the Republic of Albania according to the choice of the community itself.”
221. It is not clear why express provision needs to be made for the continuing activity of legal persons comprising religious groups at all. It is also unclear why, if it is necessary, that this should not also extend to religious communities.
222. The provision is unclear: It is unclear what a juridical person “of a” religious group is: This could be the religious group itself when registered or entities founded by the religious group.
223. The provision speaks about religious groups but makes its activity depending on the choice of a religious community. This could be a question of translation, but also a problem of discriminatory powers.
224. The relation to the rights of religious communities is not clear.

225. **83. Article 33** speaks in its heading of “The internal organization of the religious group” while the provisions of the Article 33 Sections 1, 3, and 5 speak of religious communities. This can be a matter of translation, however, it remains confusing.
226. In substance it is not clear why religious groups need different provisions about their internal structure than religious communities. It seems that religious communities have a higher, at least more explicit degree of autonomy.
227. **84. Article 33 Section 1** states: “In relations with other secular and religious bodies, institutions and organizations, national or international, the believers of the religious community are represented by bodies, functionaries and officials, as established, assigned or elected in accordance with their rules.”
228. While probably religious group is meant and not religious community it is not clear why the religious group should be represented the way it is described in relation with bodies, institutions and organizations, but apparently not in relation to individuals, functionaries or officials.
229. **85. Article 33 Section 2** states: “The religious group has the right to establish its bodies; assign its functionaries and leaders independently and in accordance with the provisions stipulated in its respective act.”
230. It is unclear why the language in this provision concerning religious groups should be different to that in Article 26 Section 1 concerning religious communities. This may lead to illegitimate discrimination.
231. **86. Article 33 Section 3** states: “The officials of the community are assigned according to the procedures and criteria stipulated in the group's charter.”
232. While probably religious groups are meant and not religious communities it is not clear why the provision explicitly regulates how officials of the religious group are assigned. The provision could be interpreted as giving widespread control to state authorities to control the proceedings within the religious group
233. **87. Article 33 Section 4** states: “Prior to the public declaration of the assigned official, and prior to changes to its management structures, the religious group notifies the Council of Ministers.”
234. It is unclear why the provision rules differently in regard of religious groups than the law provides for religious communities. This can give rise to illegitimate discrimination.
235. **88. Article 33 Section 5** states: “Functionaries, leaders and bodies of religious groups are guaranteed full freedom to conduct their religious, organizational and administrative activity, in accordance with the acts of the community, unless this activity is in violation of constitutional and legal provisions, or of the interests of third parties.”
236. While the provision probably refers to religious groups and not to religious communities, the specific need to remain in accordance with the internal rules could give rise

- to an interpretation that could lead to illegitimate interference with internal affairs of the group.
237. The provision is impermissibly vague in that it prohibits any activity of religious groups (or religious communities?) that violate “the interests of third parties”. Interests of third parties can be manifold. The interest of a religious group can be to convince everybody that it holds the unique truth. According to the Article 33 Section 5 of the Draft Law it could thus be illegal for another religious group to insist that it itself teaches the truth and not the other religious group. Or it could be illegal for a religious community to follow its own financial interests because this could be contrary to the economic interests of someone else. Also, it would be illegal that a religious group would try to construct a place of worship in a place where others just do not want to have such a place of worship. In doing so the provision also is impermissibly discriminatory against religious groups in relation to other entities and individuals.
238. While the provision is aimed at securing the internal autonomy of religious groups, it also permits state intrusion into internal affairs in a manner not applicable to religious communities under Article 26. The reason for this is not clear.
239. **89. Article 35** deals with: “Dissolution of religious organizations”.
240. The article is confusing. Article 30 concerns the dissolution of religious groups, not communities. Both communities and groups are ‘religious organisations’ (Article 2) and so both are covered by Article 35. However, Article 35 Section 3 seems only to address religious communities. It appears that ‘dissolution’ refers to the dissolving of the group or community of its own volition, hence the need for separate articles. If this is the case, Article 35 should refer to religious communities, not organisations. However, if this is the case, the Article 30 Section 2 would seem to be misplaced, as this article deals with ‘termination’ for violation of the constitution/law, etc. This is also covered in Article 36. The result is that the various articles in the draft concerning the dissolution of groups and communities appear to be confusing and overlapping.
241. Turning to substantive issues regarding termination, it does seem that an entire group/community may have its legal status terminated for what might be relatively trivial breaches of the law and its property may (depending on its Charter) be sequestered by the State. This is a potentially disproportionate sanction and needs to be reconsidered in the context of a thorough reappraisal of these provisions.
242. **90. Article 35 Section 2** stipulates: “The Council of Ministers, through the State Institution for Religious Affairs, is notified within 10 days of the dissolution or reorganization of the religious community.”
243. While this is likely to be a matter of translation, the provision - in its English language translation - only speaks of religious communities, but probably means all religious organizations as is indicated in the heading of the article “Dissolution of religious organizations”.
244. In substance it may be over-burdensome to have to inform the authorities of a reorganization of a religious organization within the short timeframe of 10 days. It can, in practical application of the law, be disproportionate to require such information even for minor reorganizations. This can also be disproportionate in view of Article 36

- Section 1 which allows for deregistration of a religious organization when it violates domestic law.
245. It is unclear how intense the reorganization must be in order to cause this duty of information.
246. **91. Article 36 Section 1** reads: “If a religious organization violates the Constitution and the domestic laws of the Albanian State, the competent court may decide to de-register this organization from the Register of Religious Communities.”
247. This provision can – in its possible application in specific cases – be disproportionate, because it allows deregistration for all violation of constitutional and other domestic law, even for minor ones.
248. **92. Article 36 Section 3 Letter a)** reads: “The court decides on the deregistration and termination of the activities of the religious organizations if the latter: a) professes ideas of religious intolerance or hate;”
249. The provision is vague. It is not clear what intolerance would mean in the context of the law.
250. **93. Article 36 Section 3 Letter b)** reads: “The court decides on the deregistration and termination of the activities of the religious organizations if the latter: . . . b) acts in violation with the laws or instructs others to act in violation of the laws;”
251. This provision can – in its possible application in specific cases – be disproportionate, because it allows deregistration for all violation of constitutional and other domestic law.
252. **94. Article 36 Section 3 Letter c)** reads: “The court decides on the deregistration and termination of the activities of the religious organizations if the latter: . . . c) violates its own charter or rules on the basis of which is registered as a religious organization;”
253. This provision allows for an impermissibly complete supervision of internal affairs in contradiction to the right of independently perform activities. It is at any event disproportionate for minor violations.
254. **95. Article 36 Section 3 Letter d)** reads: “The court decides on the deregistration and termination of the activities of the religious organizations if the latter: . . . d) conducts activities that violate national security, peace and public order, and the health and the moral of other persons;”
255. The provision is unduly vague. It is not clear what the violation of “peace” entails. It is also not clear what the meaning of “moral of other persons” means. These are very wide concepts that need clarification.

256. **96. Article 37** reads: “The state shall observe the independence of the religious organization in the administration of its assets, in accordance with its principles, rules, traditions (canons) and charter.”
257. This provision is unclear. On the one hand it guarantees religious autonomy, but on the other hand it seems to condition that by compliance of the religious organization with its internal regulations. This can mean that the State authorities could control all or many aspects of the religious life of the organization. This is the more problematic as Article 36 provides for deregistration of the religious organization even in minor violations of its internal regulations. It would furthermore open the interpretation of the (religious) traditions of a religious organization to the assessment of State authorities. This could violate the secular character of the State.
258. **97. Article 39 Section 1** reads: “Legal persons of religious organizations, besides their religious activity, do also have the right to conduct other activities in the social field, education and health, in accordance with the Albanian legislation on the respective licenses or permits.”
259. It is unclear what the term “legal persons of religious organizations” means: the religious organization itself or third entities founded by that religious organization. In the latter case meaning in respect of religious groupings is unclear which are founded by religious communities but form religious organizations of their own. The relationship to Article 39 Section 2 would also be unclear.
260. The relationship of this provision with Articles 21 – 23 is unclear. Article 39 Section 1 allows different kinds of activities than Articles 21 – 23. It is unclear why that should be the case.
261. **98. Article 39 Section 2** reads: “The institutions that are structured and established by religious organizations may conduct any type of social, educational, health and economic activity, in accordance with the rules of the organization and with the applicable law that regulates, inter alia, the granting of the respective licenses and permits.”
262. This provision is unclear. On the one hand it guarantees religious autonomy, but on the other hand it seems to condition that by compliance of the religious organization with its internal regulations. This can mean that the state organs could control all or many aspects of the religious life of the organization. This is the more problematic as Article 36 provides for deregistration of the religious organization even in minor violations of its internal regulations.
263. It is also unclear why the entities mentioned in Article 39 Section 2 may perform economic activity while the legal persons of religious organizations mentioned in Article 39 Section 1 may not – at least the economic activities are not mentioned besides social, educational, and health activities in that provision.
264. **99. Article 41 Section 2** asks for an “Opinion”: “Opinion: Should there be a tax contribution for religion?”
265. The Advisory Council does not give opinions on political issues. What can be given is an outline of various systems or models of tax contribution for religion that exist in a number of States. Any system of tax contribution to religion must meet the require-

ments of freedom of religion or belief as laid out in the international instruments, among them the need of non-discrimination. If these are met tax contributions to religions are legally possible. These can take the form of direct benefits, i.e. positive payments from the taxation system, and indirect benefits, i.e. exemptions from taxation.

266. **100. Article 42** provides for “Financial support to traditional religious communities”.
267. While State financial support for religious organizations is permissible under international law it must be granted on a basis that respects non discrimination. The provision must not be interpreted as excluding financial support to other religious organizations than the 4 traditional religious communities mentioned in the Article.
268. **101. Article 42 Section 2** reads in respect of traditional religious communities: “The state may, in special occasions, fund the construction of religious objects.”
269. It is not clear what the term “special occasions” means.
270. **102. Article 43** reads: “1. In cases of unresolved and negotiable disputes, which regard religious organizations in general or legal persons created by them in particular, a joint *ad hoc* commission shall be established with representatives of the state and of the religious organizations, with the scope of finding an acceptable solution through a Decision of the Council of Ministers, following consultations with the religious organizations. 2. If the case is not solved according to paragraph 1 of this Article, then the case shall be referred to the Tirana Judicial District Court.”
271. This provision establishes an ad hoc procedure for conflict resolution. It is not clear if it applies to disputes within or between religious organisations and/or disputes with State bodies. Nor is it clear what subject matter of dispute should be submitted to such a procedure. It is also unclear how this article relates to other articles in the Draft Law which concern appeals against decisions, etc. As a result, the entire framework of appeal against decision-making and dispute resolution in relation to the subject matter of the law (including possibly those agreements between religious communities and the state made under it) is unclear.
272. **103. Article 44** reads: “The Albanian State pledges to return, or compensate where physical restitution is not possible, the properties of religious communities, in accordance with the Albanian legislation, and shall assist with registration of the properties on behalf of the respective communities in the competent state bodies.”
273. The provision must not be interpreted as excluding restitution of properties to other religious organizations than religious communities. Otherwise, this would be a violation of the principle of non-discrimination.
274. **104. Article 45** reads: “1. This law is also applicable to religious organizations that are currently conducting their activity within the territory of the Republic of Albania. 2. The religious organizations conducting activity shall be recognized as such also by this law, if with the entry into force of this law they submit the additional documenta-

tion to be registered in the respective register, according to the above provisions. 3. The Judicial District Court examines the requests of these subjects with priority, deciding on their final formal recognition and registration. 4. If the religious group or community is recognized as a legal person before this law's entry into force, it is automatically re-recognized as a legal person after the judge's decision to accept the submission of additional documents.”

275. This effectively requires re-registration of all organisations in accordance with the new law. The consequences of a failure to seek re-registration are not made clear (i.e. do they lose legal personality or do they become liable for termination under the Act? Do their existing charters continue to govern distribution of property on termination, etc.? Do these provisions also apply to the traditional communities whose position is seemingly entrenched by the draft? Should there be a clear time-frame within which religious organisations should submit revised documentation? Would it be useful to provide existing bodies should be given advice on the additional documentation, if any, required? These transitional provisions suffer from both a lack of clarity and appear overly discretionary given the serious consequences which would flow from either being denied registration or being registered as a group rather than as a community.