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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

JOINT OPINION
ON THE LAW ON FREEDOM OF RELIGIOUS BELIEF
OF THE REPUBLIC OF AZERBAIJAN

by
THE VENICE COMMISSION
and
THE OSCE/ODIHR

Adopted by the Venice Commission
at its 92nd Plenary Session
(12-13 October 2012)

on the basis of comments by

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I. Introduction

1. By letter dated 6 June 2012, the Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Parliamentary Assembly of the Council of Europe requested the Venice Commission to provide an assessment of the Law "On Freedom of Religious Belief" in force in Azerbaijan, as last amended in 2011.

2. The Venice Commission appointed Ms Herdís Thorgeirsdóttir (Member on behalf of Iceland) and Mr Vladimir Djerić (Substitute Member on behalf of Serbia) as rapporteurs. The Venice Commission invited the OSCE/ODHIR to join in the assessment of the Law. They used an translation of the Law provided by the authorities (CDL-REF (2012)030). The rapporteurs observed that the English translation of the Law is wanting in many respects. Errors from translation may result.

3. The present Opinion is limited in scope to the Law and the relevant provision from the Constitution of Azerbaijan. It does not examine any other pieces of legislation, such as provisions of the Azerbaijani Criminal Code and of the Administrative Offences Code, which may affect or impose restrictions on the exercise of the right to freedom of religion or belief in Azerbaijan.

4. The Venice Commission is aware of the current religious situation in Azerbaijan. It appreciates that the authorities endorse the principle of the freedom of religion. However, that cannot absolve the Venice Commission from examining the specific provisions in the light of international human rights standards.

5. The OSCE/ODIHR and the Venice Commission underline that the Opinion provided herein is without prejudice to any other opinions or recommendations that the OSCE/ODIHR or the Venice Commission may wish to make on the issues under consideration in the future.

6. The Government of the Republic of Azerbaijan provided comments on the draft Joint Opinion by the OSCE/ODIHR and the Venice Commission on the Law on Freedom of Religious Belief (see CDL(2012) 073).

7. The present Opinion was drawn up on the basis of the rapporteurs' comments. It was discussed within the Sub-Commission of the Venice Commission on Fundamental Rights, on 11 October 2012, and adopted by the Venice Commission at its 92nd Plenary Session (12-13 October 2012).

II. Background information

8. In the framework of the monitoring process, the co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly, conducted a fact finding mission visit to Baku on 31 January – 2 February 2012¹.

9. They were informed that the amendments to the Law on Freedom of Religion adopted in June 2010, introduced the obligation for a certain number of religious communities, formerly registered, to re-register.

10. Indeed in its last report, published in March 2011, the European Commission against Racism and Intolerance (ECRI),² noted that restrictive provisions and practices had been tightened and that some religious communities had not yet been able to re-register. Those

¹ AS/Mon(2012)05 rev

² ECRI Report on Azerbaijan, European Commission against Racism and Intolerance, CR(2011)19, adopted on 23 March 2011

communities, whose applications were still pending, were in a state of legal uncertainty as to whether they could exercise their religious activities.

11. The Law under consideration has been amended ten times since its first adoption; the last amendment occurred in July 2011.

III. Executive summary and recommendations

12. The Law on Freedom of religious belief as amended in 2011 sets a legal framework which is in several aspects contrary to international standards and would benefit from additional revisions in order to meet these standards.

13. While it is recognized that a State benefits from a large margin of appreciation this should not be interpreted with a degree of latitude that would permit the undermining of the substance of human rights values. Freedom of thought, conscience and religion and of beliefs is one of the foundations of a “democratic society”³.

14. The Law appears to contain several quite restrictive provisions which are against international standards. In addition provisions regulating central issues such as the scope of the law and of the beneficiaries of the right to freedom of religion and conscience, the registration, the autonomy and liquidation of religious communities; the conscientious objection, the issue of proselytism, the publication and circulation of religious materials should be reformulated in order to meet international standards. The Law is moreover characterised by a vague terminology which may lead to arbitrary interpretation and implementation.

15. In the interest of being concise, the focus of the analysis contained in this Opinion will be on those provisions which are problematic.

Key Recommendations

A. to expand the scope of the Law on Freedom of Religion to cover freedom of religion or belief

B. to expand the definition of “freedom of religion” by prescribing also the right to adopt, or to change, a religion or belief and to manifest a religion or belief in private or public and in worship, teaching, practice and observance.

C. to ensure that the Law prescribes permissible limitations only to manifestations of freedom of religion or belief, in strict compliance with international law

D. to explicitly allow proper proselytism and remove from Article 1 par. 4 the prohibition on religious propagation by foreigners and persons without citizenship

E. to expressly allow in Article 4 for alternative civilian service for persons who refuse to perform military service owing to their religious or nonreligious conscientious beliefs

F. to explicitly submit (in Article 6 para 3 and 6) that public school instructions in religious subjects is given in a neutral and objective way and that if public education includes instruction in a particular religion or belief that a provision is made for a non-discriminatory exemptions or alternatives that will accommodate the wishes of parents and guardians

G. to consider changing or deleting the prescriptive provisions of Articles 7, 8 and 9 imposing a particular organizational structure on religious communities, and to provide religious

³ ECTHR, *Kokkinakis v. Greece* judgment of 25 May 1993, Series A No. 260-A, p. 17, para. 31.

communities with greater autonomy and self-determination on matters regarding issues of faith, belief or their internal organization as a group, as well as the choice of place of worship

H. to reconsider or delete the prescriptive provision concerning the name of a religious association and the compliance of a charter of a religious organisation with the statutes of its religious centre (department)

I. to reform the system of state registration of religious communities by:

- allowing individuals and religious communities to practice religion without state registration, if they so choose
- clarifying which information and documents require state registration
- ensuring that state authorities in charge of registration do not engage in a substantive review of the statute or character of a religious group
- setting a deadline for the state authorities to decide on registration

J. to amend the rules governing the liquidation of religious organizations by:

- removing clauses which are unduly restrictive or overly vague - providing, besides liquidation, for a range of administrative sanctions of varying severity, which could be proportionately applied to religious organizations that breach the law
- providing for an appeals procedure for religious organizations facing liquidation or other sanctions

K. to remove from Article 21 the provision stating that “Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan [who] studied in the Republic of Azerbaijan”

L. to remove undue restrictions on the rights of individuals and religious groups to produce, import, export, and freely disseminate, and sell religious literature, items and other informative materials

M. to cancel the requirement of the consent of a “relevant executive authority” for sending citizens abroad for religious education and for the foreign exchange of clergymen

N. as concerns the executive authorities’ prerogative to “obtain necessary information” from religious groups, to either repeal this provision or to phrase it in a more precise manner with safeguards against arbitrary and abusive state interference

O. in the interests of legal certainty and foreseeability, to re-phrase with greater precision certain provisions contained in Articles 1 par. 2; 4-1 ; 4 par. 2; 5 par. 5 and 6; 7 par 2; 9 par. 2; 10 ; 12 par. 5; 12-1 par.2; 29.

Additional recommendations

P. to redraft Article par 3 so as to ensure that non-citizens are also allowed to learn theology and receive religious education

Q. to reconsider the rule stating that religious organizations may only function at legal addresses indicated in the information submitted for state registration

R. to prescribe a right of religious groups to appeal against a decision rejecting their application for state registration

S. to consider either deleting or making more transparent and consultative the process of selecting clergymen who supervise prayer sites belonging to the Islamic faith

T. to allow religious organizations to raise funds with care taken also to avoid possible discrimination

U. to allow religious organizations to receive donations also from non-citizens

V. to redraft the provision stating that statutes (regulations) of religious organizations shall be adopted at general meetings of pious individuals or religious congresses or conferences

W. to ensure that the system of licensing religious educational institutions is fair, transparent and non-discriminatory

X. to redraft the provision stating that only religious centres and departments may establish religious educational institutions for the training of clergy and other religious staff.

IV. Standpoint of the analysis of the Law

A. International standards on freedom of religion or belief

16. The following opinion analyses the Law from the viewpoint of its compatibility with international standards on freedom of religion or belief. The most relevant instruments are the International Covenant on Civil and Political Rights (ICCPR hereinafter), which Azerbaijan acceded to on 19 August 1992 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR), which entered into force with regard to Azerbaijan on 15 April 2002.

17. In addition to the above mentioned treaties, relevant case law of the ECHR is used for the analysis, as well as the Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODHIR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the Venice Commission (OSCE/ODIHR-Venice Commission Guidelines hereinafter)⁴ and the UN Human Rights Committee General Comment No. 22 on Article 18 of the ICCPR.

18. The ICCPR's Article 18 (1) provides that everyone has the right to freedom of thought, conscience and religion; including freedom to have or to adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, to manifest his/her religion or belief in worship, observance, practice and teaching. Article 18 (2) states that no one shall be subject to such coercion, as would impair his/her freedom to have or to adopt a religion or belief of his/her choice. Article 18 (3) provides scope for restriction on the freedom to manifest one's religion or beliefs, which may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others. Finally Article 18(4) provides that States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

19. Article 9 (1) of the ECHR provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance. The restriction clause in Article 9 (2) provides that the freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, public order, health or morals, or for the protection of the rights and freedoms of others.

⁴ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 200, CDL-AD (2004)028.

B. Relevant provisions in the Constitution of Azerbaijan

20. According to Article 7 of the Constitution⁵, the State of Azerbaijan is a democratic, legal, secular, unitary republic. According to Article 18 (I), in the Republic of Azerbaijan religion is separated from state. All religions are equal before the law. Article 18 (II) prohibits the “spreading and propaganda of religion (religious movements)”, “humiliating people’s dignity and contradicting the principles of humanism”. Article 18 (III) provides that the state educational system is secular.

21. Article 25 of the Constitution enshrines the principle of equality for all before the law and the courts. In accordance with paragraph 3 of this article, the state guarantees equal rights and freedoms to all persons irrespective of inter alia, race, nationality, religion, language, sex, origin and convictions. Restrictions of rights or freedoms of persons or citizens on these grounds are prohibited. In a previous opinion on the Constitution of Azerbaijan, the Venice Commission has questioned the necessity of two new paragraphs (4 and 5) added to the article, prohibiting the granting of privileges or the refusal of advantages to anyone on the basis of the above grounds.⁶

22. Other basic rights protected by the Constitution include the right to defend his/her honour and dignity (Article 46); freedom of thought and speech (Article 47); freedom of conscience (Article 48); freedom of meetings (Article 49); freedom of information (Article 50); “right for joining” [to association] (Article 58).

23. Positive obligations to protect human rights are ascribed to “the legislative, executive and legal powers” (Article 71). According to point IV, “nobody, in [any] circumstances, may be forced to promulgate his/her religious and other beliefs, thoughts and to be persecuted for such”.

24. Article 76 II foresees that If beliefs of citizens come into conflict with service in the army then in some cases envisaged by legislation alternative service instead of regular army service is permitted.

25. Article 79 of the Constitution stipulates that no one may be forced to carry out obligations contradicting the Constitution and laws of the Republic of Azerbaijan.

26. Article 12 (I) of the Constitution, furthermore, provides that ensuring the rights and freedoms of a person and citizen is the highest objective of the State. According to paragraph II of Article 12, the rights and freedoms of persons and citizens mentioned in the Constitution are to be implemented in accordance with the international instruments to which the Republic of Azerbaijan is party.

V. Analysis of the Law

27. The analysis will focus on those articles to which comments and recommendations have been deemed necessary.

The title of the law

28. The title of the Law, as well as some of its provisions, reveal that its scope is confined to the right to religious belief and hence not protecting the right to non-religious belief. OSCE/ODIHR-Venice Commission Guidelines emphasize the basic values underlying international standards for freedom of religion or belief such as the principle that the right to

⁵ Text of the Constitution available under the following source: <http://www.unhcr.org/refworld/pdfid/4d4828112.pdf>

⁶ Venice Commission, Opinion on the draft amendment to the Constitution of the Republic of Azerbaijan, adopted by the Venice Commission in its 78th Plenary (Venice 13-14 March 2009), CDL-AD(2009)10

have, adopt or change religion or belief is not subject to any limitation. Moreover, the right to manifest religion or belief must be broadly construed.⁷ Legislation that protects only worship or narrow manifestation in the sense of ritual practice is therefore inadequate.⁸ Non-religious deeply held beliefs and their manifestations must be equally protected by law, and it is recommended to amend the title of the law to reflect that.

Chapter 1. General Provisions

This Chapter contains six Articles, which all lead to specific comments and recommendations.

Article 1. Freedom of religious belief

29. The definition of “freedom of religious belief” contained in Article 1 of the Law calls for specific comments under several aspects.

The need to broadly construe protection, including the right to change and manifest ones religion or belief

30. First of all, by stipulating that “everyone shall determine his/her attitude to religion”, unless the translation is misleading, the provision seems to set a compelling requirement which is at odds with the underlying principle of freedom of religion or belief. No one can be compelled to determine or reveal his/her thoughts or adherence to a religion or belief. The European Court of Human Rights has underlined that the freedom to manifest one’s religion has the negative aspect of not being obliged to disclose one’s religion.⁹ International human rights standards require there to be a clear distinction between the right to believe and the freedom to manifest religion or belief. Hence, the requirement to determine one’s attitude to religion should be deleted.

31. Second, the definition provided for in Article 1 paragraph 1 fails explicitly to mention the right to change one’s religion or belief. Both Article 9 (1) ECHR and Article 18 (1) ICCPR expressly recognize that the right to freedom of religion “includes freedom to change [one’s] religion or belief”. It is recommended that this right is also guaranteed, as it falls within the domain of the *forum internum*, which is absolute.¹⁰ The definition of “freedom of religious belief” contained in Article 1 of the Law should therefore be expanded to include also the right to adopt, or to change, a religion or belief.

32. Furthermore, the first sentence of Article 1 does not in its wording include the important guarantees provided for in international treaties, according to which the freedom of religion includes freedom to manifest one’s religion or belief in public and private. The definition contained in Article 1 of the Law should therefore be expanded to include also the right to do so in public and private.

33. Furthermore, although the definition includes everyone’s right to “express and spread his/her belief dealing with his/her attitude to religion”, i.e. to manifest his/her religious beliefs, it fails to specify that this can be done “in worship, teaching, practice and observance” as guaranteed by international human rights instruments. It is recommended to specify that

⁷ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 10.

⁸ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODHIR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, p. 10.

⁹ ECtHR, *Sinan Isik v. Turkey* (21924/05), chamber judgment of 02.02.2010.

¹⁰ Cf., Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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).

one's religious belief can be exercised "in worship, teaching, practice and observance" as guaranteed by international human rights instruments.

34. Lastly, Article 1 paragraph 2 of the Law states that "nobody is obliged to express his/her belief . . .". To be compatible with international human rights standards the term belief must have a broad scope and not be limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.¹¹ The term belief must be detached from religion so that it is clear that the law protects freedom of religion *and* belief in a very broad sense, i.e. also theistic, non-theistic, atheistic and agnostic beliefs.¹²

Proselytism and missionary activity

35. The limitation in Article 1 paragraph 2 according to which "propaganda and dissemination of religions (religious trends) *humiliating human dignity and contradicting [...] humanity principles* is prohibited" appears to provide a wider scope for restriction or arbitrary official interpretation than the grounds specified in the above mentioned international instruments allow.

36. There must be a pressing social need for any kind of restriction of the right to religion and belief, and the above grounds are too vague and not necessarily directly related to the purposes for which the permissible restrictions are prescribed (in Art. 18 (3) and Art. 9 (2) of the ICCPR and ECHR respectively) or proportionate to the specific need on which they are predicated.

37. While the aim of these provisions is understandable, the terms used (e.g. "humiliating human dignity" and "contradicting humanity principles") are inappropriate for a legislative text, because they are overly vague and therefore prone to divergent interpretations, which may in turn lead to arbitrary and discretionary application of the Law. In order to prevent such potential consequences of vague terminology, the cited provisions should be either replaced with more precise terminology, defined in the Law, or be eliminated altogether. Consideration may also be given to whether the aims sought to be achieved through such provisions would not be better pursued through general laws on criminal or administrative liability, always taking into account the principle of proportionality of laws.

38. Article 1, paragraph 3, deals with restrictions of "the freedom of religious belief". In doing so, it fails to specify that it is only *manifestations* of freedom of religion or belief – and not freedom of religion as such – that can be justifiably limited. Under international law, inner beliefs (*forum internum*) may not be subject to limitations of any kind, and the freedom of religion or belief may only be restricted in its external manifestations (*forum externum*), strictly in accordance with the limitations clauses prescribed by Articles 9 (2) ECHR and 18 (3) 3 ICCPR¹³. For that reason, Article 1 paragraph 3 of the Law should specify that it is only the freedom *to manifest* one's religion or belief, and not freedom of religion or belief in general, that can be subject to restrictions.

39. One of the basic values underlying international human rights standards of religion or belief is non-coercion. No one should be subject to coercion that would impair his or her freedom of religion or belief. This aspect of freedom of religion protects against practices that use compulsion to go beyond reasonable persuasion using improper methods or means.¹⁴

¹¹ Cf., General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para. 2.

¹² Ibid.

¹³ See also, Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 10.

¹⁴ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy

40. Article 1, paragraph 4, expressly prohibits “religious propagation by foreigners and persons without citizenship”. This prohibition conflicts with international law, which protects non-coercive religious expression (including proselytism, or missionary activity)¹⁵ by “everyone”, regardless of a person’s nationality. It should be emphasized that the right to discuss and “propagate” one’s belief is protected not only under Article 9 ECHR and Article 18 ICCPR, but also under the freedom of expression provisions of both international treaties (Article 10 ECHR and Article 19 (2) ICCPR).

41. The right to freedom of thought, conscience, religion or belief includes the freedom, “to write, issue and disseminate relevant publications” in the area of religious affairs.¹⁶ This is emphasized in the Commission on Human Rights’ Resolution 2005/40 (paragraph 4(d)) and Human Rights Council Resolution 6/37 (paragraph 9(g)) where States are urged “[t]o ensure, in particular, [. . .] the right of all persons, to write, issue and disseminate relevant publications in these areas”. The Human Rights Committee’s General Comment No. 22 emphasizes that “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [. . .] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications”.¹⁷ Hence proselytising or missionary activity is protected as non-coercive religious expression when such activities are conducted without improper means.¹⁸

42. Non-coercive religious expression or teaching of religious trends or beliefs furthermore enjoys protection as freedom of expression (Art. 19 ICCPR, Art. 10 ECHR); both on the side of the imparting as well as the receiving end. Moreover the freedom to engage in such “religious propagation” cannot be restricted on grounds of nationality or citizenship. Furthermore, such a restriction seems to be incompatible with Article 25 (3) of the Constitution.

43. The prohibition set by Article 1 paragraph 4 should therefore be repealed.

Conscientious objection

44. Article 4, paragraph 2, of the Law provides that religious belief cannot be invoked as a ground for refusal or avoidance of one’s legal obligations, but the substitution of one obligation by fulfilling another for religious motives may be allowed only “in cases stipulated by the legislation of the Republic of Azerbaijan.” While this provision opens up a possibility of alternative civilian service for conscientious objectors, its regulation is left to another, unspecified law.

45. As recently recalled by the Council of Europe Commissioner of Human Rights¹⁹, the right to conscientious objection has been endorsed by the Council of Europe ever since 1967 when a first Resolution on the topic was adopted by the Parliamentary Assembly. The recognition of this right later became a requirement for states seeking accession to the organisation. According to reports of the Parliamentary Assembly, Azerbaijan has not adopted a law on alternative civilian service, although this was one of the commitments it undertook upon accession to the Council of Europe²⁰.

through Law (Venice Commission). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 11.

¹⁵ See ECtHR *Kokkinakis v. Greece*, Judgment of 25 May 1993 (Application no. 14307/88), para. 31.

¹⁶ 1981 General Assembly Declaration on Freedom of Religion or Belief.

¹⁷ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para. 4.

¹⁸ ECtHR *Kokkinakis v. Greece* (14307/88), chamber judgment of 25.05.1993.

¹⁹ http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=205

²⁰ See docs. AS/Mon(2011)07rev., para. 39 & As/Mon(2012)05rev

46. It should be noted, in this context, that the Human Rights Committee is of the position that a right to conscientious objection “can be derived from Article 18” ICCPR²¹. Recently the European Court of Human Rights recognised in the case *Bayatyan v. Armenia*²² that the right to conscientious objection was guaranteed by Article 9 of the European Convention, protecting freedom of thought, conscience and religion. The ECtHR stated that, since “almost all the member States of the Council of Europe which ever had or still have compulsory military service have introduced alternatives to such service [...] a State which has not done so enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference”²³. In particular, in a system that failed to allow “any conscious-based exceptions” to compulsory military service, penalizing those who refused to perform this obligation could not be considered a measure necessary in a democratic society (*ibid.* para. 124). In addition, the Court pointed out the fact that the State concerned had committed itself to adopt a law on alternative service and concluded that this was an indication that the conviction for refusal to perform military service did not serve a pressing social need (*ibid.* para. 127).

47. It must be added, that when this right is recognized by law or practice, there should be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; and no discrimination against conscientious objectors because they have failed to perform military service;²⁴ also, the alternative service should not be punitive in terms of having a much longer duration.²⁵

48. It is therefore recommended introducing legislation so as to expressly allow for alternative civilian service for those who refuse to perform military service owing to their religious (or non-religious conscientious) beliefs.

Article 4-1 Professional Religious Activity and Religious Figure

49. This article defines the notions of “religious figure” (clergyman) and “professional religious activity”. This article has to be seen in the light of the judgment of the European Court of Human Rights in *Seyidzade v. Azerbaijan*²⁶. In this case, the Court found a violation of Article 3 of Protocol No. 1 ECHR by Azerbaijan because its legislation that restricted clergymen’s eligibility to stand for elections was not foreseeable and sufficiently precise, while the lack of any definition of the terms “clergyman” and “professional religious activity” opened the way for arbitrariness in applying such restriction.

50. The new Article 4-1, paragraph 2, of the Law defines a “religious figure” (clergyman) as “a person with secondary and high religious education engaged in [professional] religious activity”, while Article 4-1, paragraph 1, defines “professional religious activity” as “activity aimed at religious education, religious training, meeting religious needs of devout, dissemination of religions,... preaching... [etc.]”. By defining “professional religious activity” as an activity “aimed at” certain acts and not as simply being these acts (training, preaching etc.), the Law introduces an element of vagueness since the question would immediately arise whether or not an activity is “aimed at” some of the specified types of acts, who is entitled to determine this, and on the basis of which criteria.

²¹ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para. 11.

²² ECtHR, *Bayatyan v. Armenia*, Application no. 23459/03, Judgement of 7 July 2011,

²³ ECtHR, *Bayatyan v. Armenia*, Application no. 23459/03, Judgement of 7 July 2011, para 123.

²⁴ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para. 11.

²⁵ Concluding observations adopted by the Human Rights Committee on 25 April 2005 (CCPR/CO/83/GRC) further to the initial periodic report submitted by Greece (CCPR/C/GRC/2004/1), paragraph 15. See also CCPR/CO/83/GRC at paragraph 15, cited by Special Rapporteur, UNCHR Summary of cases transmitted to Governments and replies received, E/CN.4/2006/5/Add.1, 27 March 2006, at page 5.

²⁶ ECtHR, *Seyidzade v. Azerbaijan*, Application no. 37700/05, Final Judgment of 03/03/2010, see §37

51. Further, certain types of acts that are considered a “professional religious activity” in Article 4-1.1. are *per se* defined broadly, such as “dissemination of religions”, “meeting religious needs of devout” and “preaching”. These notions seem sufficiently vague to be open to interpretations that could excessively broaden the category of persons affected by certain concomitant restrictions, for example the suspension of professional religious activities in case of being elected/appointed for public office (see Article 5, paragraph 6, of the Law), which would be contrary to the principle of proportionality inherent in ECHR and, specifically, Article 3 of Protocol No. 1 (right to free elections).²⁷

Article 5. State and religious associations.

52. Religion and religious associations are separated from the State according to Article 5 paragraph 1 of the Law and all religions and religious associations are equal in relation to the law (Article 5, paragraph 3).

53. Article 5, paragraph 5, provides that religious associations shall not “partake in the activities of political parties”. This provision is unduly vague and allows for a problematically wide range of interpretations. It is therefore recommended to redraft this provision in order to clarify its meaning.

54. Article 5, paragraph 6, provides that professional religious activities of religious figures (clergyman) appointed or elected “to work at state authorities” shall be suspended” for relevant time. This provision is problematic under a variety of aspects. Without a more precise definition of “professional religious activity” and, consequently, of clergyman (see above §§ 49-51 concerning Article 4-1), this provision remains too vague. Many religions have a lay clergy; those individuals perform religious functions in addition to their secular professional life. There are many forms of religious orders where members work in secular professions. It is unclear whether all of those are barred from taking public office without losing their religious functions. It is also not clear whether and in which respect such a provision is necessary in a democratic society.

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

56. Furthermore, it is not clear whether the provision only applies when the clergyman voluntarily opts for a public office. There are examples where states appoint citizens to public office such as members of court juries which the citizen cannot reject. It would violate freedom of religion or belief if a state could or would appoint a clergyman against his or her will to public office and this person would then automatically lose his or her religious functions. It is recommended to reconsider and redraft the provision.

Freedom of religion and the right to education

This issue is mainly dealt with under Articles 6 and 10 of the Law.

Article 6. Relations between religion and school

57. Article, paragraph 1, of the Law stipulates that the state education system is separated from religion. Yet, Article 6 paragraph 2 of the Law provides that religious-philosophical material “with the bases of the sacred-cult books may be included into educational programs of state educational institutions”.

²⁷ See, ECtHR, *Seyidzade v. Azerbaijan*, Application no. 37700/05, Final Judgment of 03/03/2010, §37; ECtHR, *Ždanoka v. Latvi*, Application no. 58278/00, judgment of 16 March 2006, paras. 114 & 115 (e).

58. To be compatible with international human rights standards, public school instructions on religious subjects must be given in a neutral and objective way.²⁸ States must respect the rights of parents to ensure that school education and teaching is in conformity with their own religious and philosophical convictions, according to Article 2 of Protocol 1 to the ECHR (right to education). The European Court of Human Rights has placed emphasis on the need to give a broad overview of “other religions and philosophies together” – serving the principle of pluralism and objectivity, embodied in Article 2 of Protocol No. 1. The Court has in this respect also warned against the option of having children exempted from certain parts of the curriculum as this could subject the parents concerned to a heavy burden with a risk of undue exposure of their private life, while the potential of conflict may be likely to deter them from making requests for exemption.²⁹

59. The OSCE/ODIHR – Venice Commission Guidelines emphasize that it is generally recognized that parents have the right to determine the religious education of their children.³⁰ Article 18(4) of the ICCPR gives special recognition to the parental bond regarding the freedom of the religious freedom of the child. According to Article 14 (2) of the UN Convention on the Rights of the Child, which Azerbaijan acceded to in 1992, States must respect the rights and duties of the parents or legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

60. As the best interests of the child shall be a primary consideration, as stipulated in Article 3 of the UN Convention on the Rights of the Child, the balanced approach in stipulating the religious education of children is to secure a broad and objective religious education in public schools in accordance with the underlying principles of the right to education and the right to freedom of expression and respect for family and private life. These requirements shall be taken into account when drafting provisions related to religious education of the child³¹.

61. Article 6, paragraph 3, of the Law confines the right to religious education to “citizens”. This clause infringes both the right of everyone to freedom of religion in Articles 18 (1) and 9 (1) of the ICCPR and ECHR respectively as well as the right to education in Article 2 of Protocol 1 to the ECHR which explicitly states that “no one shall be denied the right to education”. Article 9 ECHR and Article 18 ICCPR do not allow blanket restrictions of freedom of religion on the basis of citizenship. The said clause should hence replace the word “citizens” with “everyone”.

62. A new paragraph 5 was added to Article 6 in July 2011 with the requirement that “the courses of religious associations for studying holy books by youth [and elderlies] shall be organized in accordance with charters of those associations under consent of religious centres and departments they obey”. It seems that the requirement that courses (studies) of holy books must be in accordance with charters of religious associations and subject to the consent of some (higher) religious/organizational authority within a religious organization constitutes an impermissible interference with the right to manifest freedom of religion through teaching, especially as this may effectively compel a religious group to function under “a single leadership”³². This requirement appears to infringe the freedom to manifest religion through teaching as well as the freedom of expression, i.e. the right to impart

²⁸ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para.6.

²⁹ *ECtHR, Folgerø and Others v. Norway*, Application no. 15472/02, Grand Chamber judgment of 29.06.2007.

³⁰ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 13.

³¹ See Opinion of the Venice Commission, amicus curiae brief on the compatibility with human rights standards of certain articles of the law on primary education of the Sarajevo canton of the Federation of Bosnia and Herzegovina, CDL-AD(2012)013

³² See ECtHR, *Metropolitan Church of Bessarabia and others v. Moldova* application no. 45701/99, chamber judgment of 12.12.2001. para. 117.

information and ideas, as protected under Article 10 of the ECHR and Article 19 of the ICCPR.³³

63. Article 10 (Religious educational Institutions) of the Law provides that “only religious centres and departments may establish religious educational institutions for the training of clergy and other religious staff”. This provision constitutes an interference with the right of everyone to “manifest his religion or belief [. . .] in practice and teaching” as stated in Article 18 (1) of the ICCPR and almost the exact same wording in its counterpart in Article 9.1 of the ECHR. This would in effect annul the right of individuals who are not members of religious centres and departments to manifest, in community with others, their religion through worship and teaching. As such this restriction is not necessary in a democratic society. It is, moreover, difficult to see why only religious centres and departments should have such a right and not also other religious entities. It is also not clear why non-religious entities should not be allowed to at least train other religious staff; in this respect the meaning of the term “religious staff” remains unclear. It is recommended to redraft the provision.

Religious associations and communities

64. This issue is covered in Chapter II. Religious Associations in the Republic of Azerbaijan. Charters of Religious Organisations and the registration and liquidation process are dealt with in this Chapter too.

65. The Law introduces different categories of religious associations: Article 7 sets the notion of Religious Association, Article 8 of Religious Community, Article 9 of Religious Centres and Departments.

66. Article 7 defines religious associations that shall be represented by the departments. Paragraph 2 provides that these associations must act in accordance with this Law “and their approved charters”. This wording may provide an unnecessarily wide scope for interference by public authorities. The listed purpose of Article 7 paragraph 2 is not clear and does not clarify why such a requirement is necessary. It does not mention how to or who should assess whether a religious association is acting in accordance with its charter or why there is a need to confine the practice to such extent. It seems that this clause could facilitate undue interference of the State into activities and the autonomy of religious organizations. It is recommended to redraft this paragraph more precisely.

67. Article 7, paragraph 3, requires that Islamic religious associations acting in Azerbaijan “must present reports on their activity to Caucasian Muslims Board.” This provision has to be analysed together with Article 8, paragraph 2, which provides that Islamic religious communes in Azerbaijan “are subordinated by the Caucasian Muslims Board, in terms of organizational matters” and Article 9, paragraph 1, which states that Islamic religious communes are “united in their historical centre – the Caucasian Muslims Board”. Furthermore, Article 8, paragraph 3, provides that clergymen who “lead” Islamic prayer sites shall be appointed by the Caucasus Muslims Board. In other words, the Law requires all Islamic religious groups or associations to function under one organizational authority, the Caucasian Muslims Board, which also appoints their clergymen.

68. Whereas the freedom of thought and conscience as well as the freedom to choose a religion or belief are strictly personal freedoms, the right to freedom of religion has not only an individual but also a collective dimension, where the right of the collective body to manifest and practice religion is also protected.³⁴ The collective right to assemble to practice or manifest religion or beliefs is furthermore protected under Article 11 of the ECHR and Article 21 of the ICCPR. It “encompasses the expectation that believers will be allowed to

³³ Cf., EctHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, application no. 45701/99, chamber judgment of 12.12.2001.

³⁴ EctHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, chamber judgment, of 13.12.2001, para. 114.

associate freely, without arbitrary State intervention.³⁵ The European Court of Human Rights has emphasized that the principle of freedom of religion for the purposes of the ECHR excludes assessment by the State of the “legitimacy of religious beliefs or the ways in which those beliefs are expressed”.³⁶ Furthermore, “state measures favouring a particular leader [. . .] would also constitute an infringement of the freedom of religion”.³⁷

69. In other words, a state cannot require individual members or groups belonging to a religious denomination to become a part of, or be supervised or controlled by, a specific religious authority or organization. However, this is precisely what the said provisions of the Law do in the present case and what should be removed from the Law.

70. In contrast to that, and not contrary to international standards, Article 8 paragraph 2, by making a distinction between the obligation of Islamic religious communes which must be subordinated by the Caucasian Muslims Board “whereas non-Islamic religious associations have the right to be subordinated and to change their subordination to religious centres (departments) operational in Azerbaijan and outside it”, *in fine* guarantees the right (not obligation) of non-Islamic religious associations “to be subordinated and to change their respective subordination to religious centers (departments) operational in Azerbaijan and outside it.”

71. According to Article 8, paragraph 4, “Islam religious communities are established in Mosques by the citizens of the Republic of Azerbaijan.” This provision constitutes a two-fold restriction of the right to freedom of religion. First, it determines mosques as the only places where an Islamic religious community may be established. Second, it prevents foreigners and stateless persons from establishing such communities. The requirement that Islamic religious organizations must be established only in mosques seems too excessive and not necessary in a democratic society, especially considering that it is conceivable that certain Islamic religious groups may wish to avoid mosques as part of their set of beliefs. As far as the latter (nationality) restriction is concerned, it effectively prohibits non-citizens to organize religious organizations or participate in them. Confining the right to establish religious communities to citizens is also in conflict with the right to freedom of religion, which belongs to everyone as well as the right to freedom of association in Article 22(1) of the ICCPR and Article 11(1) of the ECHR.

72. It is therefore necessary to amend the prescriptive provisions which impose a particular organizational and hierarchical structure on religious communities, unless the subordination applies to mere administrative aspects and has no implications on religious issues. Religious communities must enjoy autonomy and self-determination on any matters regarding issues of faith, belief or their internal organization as a group.

73. Article 9, paragraph 1, provides that Islamic religious communes are united in the Caucasian Muslims Board. This clause conflicts with the principles underlying the right to freedom of religion which excludes state measures seeking to compel religious communities under a single leadership.³⁸ The provision needs to be amended or deleted.

74. Article 9, paragraph 2, provides that “[n]on-Islamic religious communes, centres of which are outside the Republic of Azerbaijan can follow, in carrying out activities, charters of their respective centres in cases which don’t contradict the legislation of the Republic of Azerbaijan”. The reference to the legislation of Azerbaijan is too broad, vague and demanding. It should be enough to state in this respect that these religious communes must not go against public safety, order, health, or morals or the fundamental rights of others.

³⁵ Ibid, para 117.

³⁶ Ibid., para 117.

³⁷ Ibid.

³⁸ ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (45701/99), chamber judgment of 13.12.2001, para. 117.

75. Article 9, paragraph 4, of the Law provides that “religious centres and departments may establish praying houses and religious educational institutions in accordance with their charter”. Here, it is difficult to see why individuals and religious groups (including “religious communities”) should not also have the right to establish places of prayer (praying houses). It is also difficult to see why only religious centres and departments, and no other entities, would have the right to establish educational institutions. These restrictions seem hard to justify as necessary in a democratic society. It is recommended that this provision be revised.

Article 11. Charters of Religious Organisations

76. Article 11, paragraph 2, provides that charters of religious associations are adopted “at the believers’ general meeting or at religious congress, conferences”. This provision raises concerns in relation to possible undue interference with the autonomy of religious and belief organizations. It must be left to the religious organization to decide in which way internal rules are adopted and put into force. It is recommended to redraft this provision.

77. Article 11, paragraph 4, provides that “the name of [a] religious association must reflect to which religion it belongs.” This provision appears to be quite restrictive with regard to the freedom and autonomy of religious associations to choose their own name. Moreover, it raises the question of who would be able to assess whether a name of a religious association reflects its religion or not, which is a religious matter not suitable for the State to decide. In this regard it is worth mentioning an opinion of the Venice Commission, concerning the right of the Orthodox Patriarchate in Turkey to use the title “ecumenical”. The Commission held “that any interference with this right would constitute a violation of the autonomy of the Orthodox Church under Article 9 ECHR”³⁹.

78. Article 11, paragraph 7, provides that the statute of a religious organization shall comply with the statute of its religious centre (department), which again would appear to interfere with the autonomy of religious organizations and also raises the question of whether the State should be involved into internal issues of religious entities. The provision needs to be amended or deleted.

State registration of religious associations

Article 12. State registration of religious associations

79. According to Article 12, paragraph 1, religious associations can only operate in Azerbaijan after state registration. This provision appears to be quite strict and may well interfere with the right of everyone to manifest and practice religion. Registering an association should be optional and not a legal requirement.⁴⁰ There may, of course, be certain benefits to legal registration and hence it may be appropriate to impose certain necessary formalities upon religious communities for the purpose of registration. Nevertheless, making registration mandatory goes against the fundamental principle of freedom of religion and the applicable international human rights standards, also as regards freedom of association, protected under Article 11 of the ECHR and Article 22 of the ICCPR.

80. Furthermore, registration requirements that call for substantive as opposed to formal review of the statute or character of a religious organization are impermissible⁴¹.

³⁹ CDL-AD(2010)005, §110, reasoning §§ 80-100

⁴⁰ Cf., Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p.17.

⁴¹ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 11. See also ECtHR, *Metropolitan Church of Bessarabia v. Moldova*, ECtHR judgment of 13 December 2001, (Application no. 45701/99), paragraph 116.

81. Care must be taken that cumbersome legal requirements (such as high minimum membership) to those seeking registration do not deter registration. The right to voluntarily establish an association to pursue any legitimate goal without undue interference from the State is an inherent aspect of the right to freedom of association. Broad grounds for denial of registration would violate this fundamental right. Furthermore, the requirement that a religious association can operate only at the place identified in its registration documents seems overly restrictive and not required in a democratic society.

82. Article 12, paragraph 2, appears quite burdensome in its long listing of requirements for state registration and may lead to excessive governmental discretion in giving approvals. As the Venice Commission has emphasized, “official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited”.⁴² If a religious community does not wish, for whatever reason, to submit its registration application through the higher religious and/or organizational authority as provided for in this Article, forcing it to do so, as the said provision does, would appear to raise serious issues under the ECHR. Also, it is unclear what happens when a religious center/department does not forward to the authorities an application by the religious community, thereby effectively preventing its registration.

83. Article 12, paragraph 4, of the Law provides that religious associations are registered “during time specified by legislation”. This vague referential drafting again renders the provision insufficiently foreseeable and does not appear to provide additional information in this respect. There is no reason why the present Law itself, as *lex specialis*, cannot expressly prescribe the time-period afforded to executive authorities for making a decision on the registration of religious organizations. It is recommended that that period be directly spelled out in Article 12 paragraph 4.

84. Article 12, paragraph 5, of the Law requires religious organizations to notify authorities of any changes “in data required for state registration”. The scope of this requirement is unclear. It would be overly burdensome if any development in the traditions, methods of activities or contents of teachings would have to be notified. It is further noted that this provision is particularly significant since under Art. 12-1 paragraph 2 no. 9), a repeated non-compliance with the notification requirement can lead to the liquidation of a religious organization (see §§ 88-94 below). It is therefore recommended that this provision be clarified.

85. The current version of the Law no longer contains provisions setting out grounds on which a registration application may be rejected and the obligation of the authorities to inform about the reasons for the rejection. If this means that religious organizations merely register their existence with authorities as a formality, it should be clearly stated. Otherwise, the lack of grounds for the refusal of registration of religious associations in the present Law would be contrary to the principle of the rule of law, and could well open the way for arbitrary decisions.

86. In conclusion, it is strongly recommended that the registration policy prescribed by the Law is redrafted so as to comply with the above described guiding principles.

87. In this context, it is worth noting that a possibility of administrative appeal and judicial review should exist where registration is denied. Such an appeals procedure should be expeditious and effective, and should ideally be handled by a judicial body. If this is not already envisaged by the laws regulating administrative procedure in Azerbaijan, it should be included in the present Law.

⁴² Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 17.

Liquidation of religious organisations

88. Article 12-1 provides for dissolution of a religious organisation, either voluntary by the founders or body authorized or by a court decision. The grounds for dissolution by court decision are listed in Article 12-1 paragraph 2 of the Law.

89. Article 12-1, paragraph 2 provides that a religious organization can be liquidated for “causing racial, national, religious, social hostility or enmity” and for the “dissemination and promotion of religions contradicting with humanity principles and humiliating human dignity”. Such terms are vague and open to different interpretations, and may lead to arbitrary application of the Law. Other unduly vague grounds for liquidation include : “prevent getting secularized education” ; and “incitement or forcing members of religious association and other persons to resign their property in favour of religious association” which, if interpreted extensively, could in fact apply to any solicitation for voluntary financial and other contributions, an activity expressly protected by OSCE commitments⁴³. It is recommended that the cited provisions be either replaced with more precise terminology or be removed from the Law.

90. The provision allowing for the liquidation of religious organizations for “incitement of persons to refuse execution of activities defined by legislation” must be interpreted in line with the comments made above on the issue of conscientious objection (See above §§ 44-48).

91. Article 12-1 paragraph 2 no. 9, which provides that a religious organization may be liquidated for “repeatedly refusing to carry out requests to present information about changes in documents and reports required for state registration to relevant executive authority”, is unnecessarily harsh. This provision would enable liquidation upon twice missing notification. It is recommended to either delete the provision or to replace it with a more proportionate rule.

92. It should also be borne in mind that the liquidation of a religious organization may have grave consequences for the religious life of all members of a religious community, and for that reason, care should be taken not to terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organizations should lead to *in personam* liability through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organization accountable.

93. On a more general note, it is recommended that the Law provide for a range of sanctions of varying severity (such as official warnings, (proportionate) fines, temporary suspension), rather than prescribing just one drastic sanction in the form of liquidation. This would help ensure that the sanctions applied to religious organizations are proportionate to the contravention committed. Moreover, it would also enable religious organizations to take corrective action (or pursue appropriate appeals) before facing liquidation. In general, the harsh sanction of liquidating a religious organization should be a measure of last resort. It is recommended to include such a procedure in Article 12 paragraph 1.

94. The Law should furthermore provide for a detailed appeals procedure so that a religious organization which is facing liquidation (or other sanctions) could contest the respective underlying decision, preferably before a judicial body⁴⁴. To prevent arbitrary sanctioning, the Law should require a written and reasoned decision by the decision-making body, which decision should be appealable before a court of law within a reasonable period of time and following a transparent procedure lay down in the Law.

⁴³ See paragraph 16. 4 of the OSCE Concluding Document of Vienna (1989).

⁴⁴ The right to an effective remedy is guaranteed by Art. 13 ECHR and Art. 2 par. 3 ICCPR.

Financing and economic activity of religious organizations

This issue is dealt with in Chapter III. Status of Assets of Religious Associations, from which two articles have drawn attention.

Article 16. Usage of assets owned by the state, public organisations or citizens

95. Article 16 of the Law provides that state buildings and other property may be transferred to religious organizations for use. The cost-free usage of state-owned building by religious association is foreseen under Article 16 paragraph 2.

96. As religion and religious associations are separated from the State in Azerbaijan (cf., Article 18(1) of the Constitution and Article 5 paragraph 1 of the Law) financial support from the State must avoid any kind of discrimination. The Law should provide the possibility of appropriate remedy in case of discrimination.

97. Article 16, paragraph 4, provides that decisions on transfers shall be made within one month and in writing. Here, it would be advisable to include a possibility of appeal in case of a negative decision, unless this is already regulated by some other law.

Article 18. Property of religious associations

98. Article 18, paragraph 2, states that properties acquired by religious associations may be "sacrificed by citizens". If correctly interpreted, it means that religious organizations may receive donations from citizens but not from non-citizens. If that is the case, then the provision is discriminatory and violates the freedom to manifest one's religion as a human right. Everyone has the right to support a religious association as a form of guaranteed manifestation and practice of her/his belief. Foreign contribution may be subject to proportionate regulation, though. It is recommended to redraft the provision.

Chapter IV. "Rights of Citizens and Religious Associations on Religious Freedom"

All Articles of this Chapter have led to specific comments.

99. The title of Chapter IV, which deals with the rights of citizens and religious associations regrettably confines the rights found therein to citizens. States are obliged to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind.⁴⁵ Freedom of religion or belief is a human right that is not restricted to citizens. It is therefore recommended to extend the scope of the prescribed rights to non-citizens, unless specific limitations are necessary in a democratic society for the purposes established under international law.

Article 21. Religious rites and rituals

100. According to Article 21, paragraph 3, of the Law, "Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan [who?] studied in the Republic of Azerbaijan." This provision would also appear to be discriminatory and should be deleted, as under international law, freedom of religion cannot be restricted on grounds such as nationality or place of study⁴⁶. The above requirement is unnecessarily strict and in conflict not only with the premise of the law that state and religion are separate but also with the freedom to manifest his religion in "worship, teaching, practice and observance", as stated in Article 9 (1) of the ECHR.

⁴⁵ See Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 10.

⁴⁶ See Articles 9 and 14 ECHR and Articles 18 and 26 ICCPR.

Article 22. Religious literature and articles of religious assignment

101. Article 22, paragraph 2, of the Law provides that “religious associations, legal and natural entities, which are not religious associations, have the right, upon consent of the corresponding executive authority, to produce, import, and export and freely spread literature, thing of cult designation and other informational materials of religious content”.

102. The above provision requesting prior consent before spreading information would appear to be in direct breach of Article 10 (1) of the ECHR and Article 19 (1) of the ICCPR. Freedom of expression entails the right to impart and receive information and ideas without interference by public authorities and regardless of frontiers. The requirement of prior consent for the production and dissemination of religious literature is arguably unnecessary in a democratic society and may violate both freedom of expression and freedom of religion norms. The UN Human Rights Committee has stated that “the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts [...]; the practice and teaching of a religion or belief includes [...] the freedom to prepare and distribute religious texts or publication⁴⁷”. The UN General Assembly has similarly called upon States to ensure “the right to all persons to write, issue, and disseminate relevant publications in these areas (of religion or belief)⁴⁸”. The OSCE Vienna Concluding Document (1989) likewise provides that OSCE participating States shall “respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications [...] and other articles and materials related to the practice of religion or belief” and “allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials⁴⁹”. Any restriction of this right must satisfy the criteria of a pressing social need in a democratic society. To comply with international human rights, it is recommended that this clause is omitted.

103. Article 22, paragraph 3, of the Law requires that religious literature and items are sold only through specialized sale points established with state consent. This requirement raises serious questions not only under Article 9 but also under Article 10 ECHR, and it is doubtful whether it would be possible to justify it as necessary in a democratic society. To comply with international human rights, it is recommended that this clause is omitted.

Article 23. Charitable and cultural enlightening activity of religious associations

104. Article 23 of the Law provides that “religious associations [] shall carry out their cultural enlightening and charitable activities independently and through *self-established* funds, as well as by means of public funds”. The provision is unclear.

105. Furthermore, it is not quite clear the consequences there are if a religious association is required to conduct its activities on the basis of “self-established” funds – as public funding is not a guarantee for such an association. Likewise, it is not apparent whether this clause is restricting religious activities in receiving funds from various sources, for example from abroad, which authorities may claim are not “self-established”.

106. According to OSCE/ODHIR- Venice Commission Guidelines, States may provide some limitations on how funds can be raised⁵⁰. A sensitive approach would be to allow associations to raise funds provided they do not violate other important public policies. It is recommended that this Article is reviewed and that care is taken also to avoid possible discrimination.

⁴⁷ See paragraph 4 of the UN Human Rights Committee CCPR General Comment no. 22, Article 18

⁴⁸ See par. 10 letter “c” of the UN General Assembly Resolution 62/157 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (adopted on 18 December 2007).

⁴⁹ See the OSCE Vienna Concluding Document (1989), paragraphs 16.9 and 16.10.

Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared 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). Adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004) 028, p. 15

Article 24. International relations and communication of believers and religious associations

107. Article 24 paragraph 2, provides that prior consent is needed from authorities before sending “citizens” abroad for religious education. This requirement would appear to be coercive in nature by improperly preventing individuals from exercising their right to freedom of religion, freedom of movement, Article 2 Protocol 4 and right to education, as protected under Article 2(1) of Protocol 1 to the ECHR.

108. Article 24 paragraph 2 furthermore provides that sending Azerbaijani citizens abroad for religious education, as well as exchange of clerics “is implemented by religious centres or departments being coordinated with corresponding executive power body.”

109. The above clause vitiates the rights guaranteed under international human rights law . Indeed, any degree of compulsory control/coordination (not to mention the prior consent of authorities) over the exchange of clerics or citizens who are going to religious studies abroad would not appear to be compatible with a democratic society. This requirement would appear to be coercive in nature, improperly preventing individuals from exercising their right to freedom of religion, freedom of expression and right to education, as protected under Article 2(1) of Protocol 1 to the ECHR. Such restriction cannot be objectively justified and is thus unnecessary in a democratic society. It is recommended to clarify the meaning of this provision and, if necessary, to rephrase it so that it reflects and does not infringe international standards.

Employment by religious associations

110. This issue is dealt with in Chapter V. Labor activity at religious associations and their enterprise. The following Article has drawn attention and recommendations.

Article 25 “Labor interrelations in religious associations”

111. Article 25 of the Law stipulates that labour relations within religious associations must be regulated in accordance with the Labour Code of the Republic of Azerbaijan. The European Court of Human Rights has reiterated that the autonomy of religious communities is protected against undue interference by the State under Article 9 (freedom of religion) ECHR and Article 11 ECHR (freedom of association). Yet, states also must comply with their positive obligations towards individuals in employment relations.⁵¹ A fair balance must be struck between the right of religious associations to autonomy and the protection of individuals from the potential exploitation of their rights by third parties who are relying on their right to freedom of religion.

Implementation of the Law

112. The implementation of the Law is dealt with in Chapter VI, State Bodies and religious Associations, out of which the following Article has drawn attention and recommendations.

Article 29. “Relevant Body of Executive Power”

113. Article 29 provides that a “relevant body of executive power” has various listed tasks in ensuring that freedom of religion is in accordance with the objectives of the Law. Some of the listed tasks seem, however, rather vague and superficial and hence open to wide interpretations. Taking into account that religion is separated from the state⁵² and that the executive power shall “receive necessary information from religious centers, religious departments and other religious associations”, it is, for example, questionable why the

⁵¹ ECtHR, *Schüth v. Germany*, Application no.1620/03, chamber judgment of 23.09.2010

⁵² Article 18(1) of the Constitution and Article 5 paragraph 1 of the Law

executive power's role in implementing the law involves "help[ing] strengthen mutual understanding, tolerance and respect environment among religious associations of various religious beliefs"; or "maintain[ing] connections with relevant bodies of foreign states". These clauses are wide open for abuse and undue interference into the internal affairs of religious associations.

114. With regard to the term "necessary information", it is prone to varying interpretations and may lead to abusive practices that could have a chilling effect on religious practice.

115. Furthermore, abusive gathering of information may also infringe the concerned persons' "right to private life". It is therefore recommended to either repeal the respective provisions or to rephrase them in a more precise manner and provide safeguards against arbitrary and abusive interference.