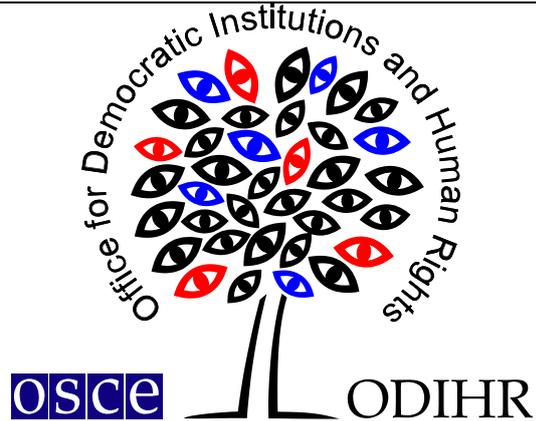


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COMMENTS

ON AMENDMENTS AND ADDITIONS TO THE LAW OF THE KYRGYZ REPUBLIC “ON FREEDOM OF RELIGION AND RELIGIOUS ORGANIZATIONS IN THE KYRGYZ REPUBLIC”

Based on an unofficial English translation provided by the OSCE Centre in Bishkek

*This Opinion has benefited from contributions made by Professor Silvio Ferrari,
member of the OSCE/ODIHR Advisory Council on Freedom of Religion and Belief*

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Annex 1: Amendments and Additions to the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic”

I. INTRODUCTION

1. *On 13 March 2012, the Acting Head of the OSCE Centre in Bishkek sent a letter to the OSCE/ODIHR Director informing him about the recent adoption by the Jogorku Kenesh (Parliament) of Kyrgyzstan of amendments and additions to the Law on Freedom of Religion and Religious Organizations in the Kyrgyz Republic, and requesting OSCE/ODIHR to review compliance of the respective amendments/additions with relevant OSCE Commitments. The review was requested in an attempt to enhance the respective amendments’ conformity with OSCE Commitments, while the amendments to the law are still under the President’s consideration.*
2. *These Comments were prepared by the OSCE/ODIHR in response to the above-mentioned request. The Comments were drafted by the OSCE/ODIHR and peer-reviewed by Professor Silvio Ferrari, member of the OSCE/ODIHR Advisory Council on Freedom of Religion and Belief, a consultative body of the OSCE/ODIHR with internationally acknowledged expertise in the field of freedom of religion and belief.*

II. SCOPE OF REVIEW

3. These Comments cover only the above-mentioned Amendments and Additions to the Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic”¹ and, where necessary, the Law on Freedom of Conscience and Religious Organizations, adopted in December 2008.² Thus limited, the Comments do not constitute a comprehensive review of legislation pertaining to freedom of religion or belief in Kyrgyzstan.
4. A number of concerns raised in these Comments are rooted in the 2008 Law on Freedom of Conscience and Religious Organizations. That Law, while still at the drafting stage, was the subject of a Joint Opinion of the OSCE/ODIHR and the Venice Commission, issued in 2008.³ To avoid repetition, these Comments do not reiterate the specific concerns raised in the 2008 Joint Opinion, which do however remain valid.
5. These Comments raise key issues and provide indications of areas of concern. The ensuing recommendations are based on international standards and good practices related to freedom of religion or belief, as found in international agreements and commitments ratified and entered into by Kyrgyzstan. The Comments are also informed by the *Guidelines for Review of Legislation Pertaining to Religion or Belief*, which were developed jointly by the

¹ Law of the Kyrgyz Republic on Amendments and Additions to the Law on Freedom of Conscience and Religious Organizations, adopted in third reading on 2 March 2012.

² Law of the Kyrgyz Republic on Freedom of Conscience and Religious Organizations (No. 282), adopted on 31 December 2008.

³ OSCE/ODIHR-Venice Commission *Joint Opinion on Freedom of Conscience and Religious Organizations in Kyrgyzstan*, adopted at the 76th Plenary Session of the Venice Commission (17-18 October 2008) and available at <http://www.legislationline.org/documents/id/15360>.

OSCE/ODIHR and the European Commission for Democracy Through Law (Venice Commission) of the Council of Europe.⁴

6. These Comments are based on an unofficial translation of the respective amendments, provided by the OSCE Centre in Bishkek and attached to this document as Annex 1. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that these Comments are without prejudice to any written or oral recommendations and comments to this or other legislation related to freedom of religion or belief in Kyrgyzstan that the OSCE/ODIHR has made in the past or may make in the future.

III. EXECUTIVE SUMMARY

8. In order to ensure full conformity with international standards, and to prevent undue restrictions of the fundamental right to freedom of religion or belief, as well as of the autonomy of religious organizations, it is recommended to reconsider the reviewed Amendments and Additions to the Law on Freedom of Conscience and Religious Organizations, as adopted by the Jogorku Kenesh.
9. It is also recommended to re-visit some provisions in the current law, which have been recommended to be improved by the Joint Opinion of the OSCE/ODIHR and the Venice Commission, issued in 2008.
10. A more detailed analysis of these Amendments and Additions follows in the ensuing paragraphs.

IV. ANALYSIS OF THE LAW AND RECOMMENDATIONS

1. Relevant International Standards

11. When analysing the Amendments and Additions to the Law on Freedom of Conscience and Religious Organizations (hereinafter, “Amendments”), it is important to bear in mind that religious organizations should generally enjoy autonomy and self-determination, and that state authorities should not unduly interfere with their activities.⁵ It must also be noted that the import, production and distribution of religious material forms an essential part of the “freedom to manifest [...] religion or belief in worship, observance, practice and teaching”, which is protected by Article 18 of the International Covenant

⁴ The OSCE Guidelines were adopted by the Venice Commission of the Council of Europe 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 OSCE Guidelines have also been commended by the United Nations Special Rapporteur on Freedom of Religion or Belief in the Report of the Special Rapporteur on the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57, <http://www2.ohchr.org/english/issues/religion/annual.htm>. For the text of the OSCE Guidelines, see www.legislationline.org.

⁵ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 15.

on Civil and Political Rights,⁶ (hereinafter, “ICCPR”) to which Kyrgyzstan is a party. In its General Comment No. 22 on Article 18 of the ICCPR, the UN Human Rights Committee has explicitly stated that “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as [...] the freedom to prepare and distribute religious texts or publications.”⁷

12. Like all manifestations of the fundamental right to freedom of religion, the production and distribution of religious material “may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (Article 18 par 3 of the ICCPR). This crucial requirement, known as the “limitations-clause” analysis, implies a rigorous test which will be satisfied only if the restrictions imposed are prescribed by an accessible and foreseeable law, aim to protect one of the above-mentioned legitimate grounds, and if they are genuinely necessary for, and directly related and proportionate to, the specific need which they predicate.
13. Moreover, it bears recalling that the production and distribution of religious material is also protected by international standards on freedom of expression. Thus, under Article 19 par. 2 of the ICCPR, “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
14. The right to manifest religion through the production and distribution of religious material is also reflected in the OSCE Commitments that Kyrgyzstan has signed up to, which expressly provide that the participating States will
 - “respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief”, and
 - “allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”.⁸
15. OSCE Commitments furthermore prescribe that participating States will “foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers”.⁹

2. Analysis of the Amendments and Additions

16. The Amendments make several changes and insertions to the Law on Freedom of Conscience and Religious Organizations, more specifically to Article 22 titled “Religious literature and objects of religious orientation”. In a novel

⁶ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, in force from 23 March 1976, acceded to by Kyrgyzstan on 7 October 1994.

⁷ United Nations Human Rights Committee, *General Comment 22: The right to freedom of thought, conscience and religion* (07/30/1993. CCPR/C/21/Rev.1/Add.4), paragraph 4.

⁸ Principles 16.9 and 16.10 of the OSCE 1989 Vienna Document.

⁹ Principle 16.2 of the OSCE 1989 Vienna Document.

development, the Amendments provide in their Article 1 that “the central management bodies of religious organizations” may be requested by the state body on religious affairs to provide theological expertise on religious material. This includes religious literature and any other printed, audio and video material. To the extent that this amounts to imposing a duty on the central management bodies of religious organizations, it violates their autonomy and self-determination.¹⁰ Furthermore, the process may be interpreted to mean requesting one religious community to pronounce itself on the religious material of another, which is fraught with risks of arbitrary and abusive application. The law does not specify how such theological expertise would be prepared (whether by representatives of the same religious group, by a different religious group or by a mixed entity comprising representatives of various groups), and based upon what criteria. This would violate the requirement that the law be clear and foreseeable. It would also mean that there are no safeguards in place to ensure that the respective “theological expertise” would be neutral and impartial, which compounds the risks of abusive or discriminatory treatment of some religious groups.

17. The amendments further provide that registered religious organizations “must assist the state and local self-government bodies to counteract extremist and separatist activities and religious fundamentalism, including [through explaining] the contents of printed, photo, video and other materials”. This is yet another inappropriate duty for religious organizations to perform. Religious organisations are not investigative bodies, and it is improper to require their involvement in the conduct of law-enforcement activities. While it is true that most national criminal laws make it an offence to conceal evidence of serious crime (with appropriate exceptions for information revealed during confessions), requiring religious organizations (as groups) to assist state bodies in counteracting extremist and separatist activities is rather unprecedented and fundamentally at odds with international standards and best practices, and should therefore be revoked.
18. The Amendments also add “importation” and “acquisition” to the list of activities prohibited in Article 22 par 8 – namely, the “[p]roduction, storage, and distribution of printed materials, film, photo, audio, video production, and other material containing ideas of religious extremism, separatism, and fundamentalism”. Under the same provision, these actions entail liability “in accordance with the legislation of Kyrgyzstan”. This is problematic because of the underlying vague terminology banning religious “extremism”, “separatism” and “fundamentalism”. Since these concepts do not feature a precise legal definition – at least not in the Amendments nor in the current Law on Freedom of Conscience and Religious Organizations – they are insufficiently foreseeable and open the door for arbitrary application of the law, and could therefore be conducive to unjustified bans on certain religious material. It should be emphasized that international standards explicitly caution that terms such as “extremism” should not be used “to suppress

¹⁰ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 15.

legitimate religious expression or to target groups whose beliefs may simply be different or unusual”.¹¹

19. Finally, Article 1 of the Amendments vests unspecified “authorized state bodies on religious affairs, national security and internal affairs” with control powers over the importation, production, acquisition, storage and distribution of film, photo, audio, video and other material, with the stated goal of identifying “ideas of religious extremism, separatism and religious fundamentalism”. In this context, it should be noted that freedom of religion or belief protects all peaceful manifestations of religion or belief, and that laws should “focus on genuinely dangerous *acts* or commission of *violence*, and not unduly grant police powers to the State to suppress groups that are merely disfavored or unusual”.¹² Terms such as ‘fundamentalist’ or ‘extremist’ do not necessarily imply any intent to engage in violent behaviour that would authorize state interference. It is particularly unclear what is meant by [religious] “separatism”: if this refers to the separation of some members from a religious community, then it must be stressed that such activity forms part of every person’s “right to have or to adopt a religion or belief of his choice”, protected by Article 18 ICCPR,¹³ and the state should not interfere with individuals wishing to leave a particular religious group or organization.
20. The law may therefore inadvertently restrict the freedom of religion or belief of peaceful religious communities. As stated above, the use of vague terminology creates a significant risk of arbitrary application of the law. Terms such as “religious extremism, separatism and religious fundamentalism” lack a clear legal definition and thus do not circumscribe with sufficient clarity the scope of executive discretion in “controlling” the exercise of the fundamental right to manifest religious freedom through the production and distribution of religious material. In practice, the assessment of whether a material is extremist, separatist or fundamentalist will rest solely within the discretion of the implementing authority. The above provision should therefore be reconsidered as it might lead to disproportionate restrictions of freedom of religion or belief.
21. Article 2 of the Amendments merely constitutes an implementation provision with regard to Article 1. Should the relevant decision-makers decide to revoke Article 1, the same will apply to Article 2.
22. Overall, the Amendments to the Law on Freedom of Conscience and Religious Organizations aim to reinforce provisions of the Law permitting censorship over religious material by unduly intruding into the autonomy of religious organisations and employing vague terminology to restrict the exercise of the fundamental right to manifest religious freedom through the production and distribution of religious material. While the Amendments may well be motivated by legitimate goals, such as the need to protect public safety, order

¹¹ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 9. See also paragraph 139 of the OSCE/ODIHR-Venice Commission *Joint Opinion on Freedom of Conscience and Religious Organizations in Kyrgyzstan*, adopted at the 76th Plenary Session of the Venice Commission (17-18 October 2008).

¹² See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 9.

¹³ United Nations Human Rights Committee, *General Comment 22: The right to freedom of thought, conscience and religion* (07/30/1993. CCPR/C/21/Rev.1/Add.4), paragraph 5.

or the fundamental rights and freedoms of others, in their current reading they are both too vague and disproportionately restrictive to conform to international standards. It should be recalled that violent separatism and terrorism are better addressed not through laws on freedom of religion, but rather through the ordinary criminal law or through precisely formulated special laws on national security – which moreover should not be used as a pretext to restrict legitimate religious activity.¹⁴ For these reasons, it is strongly recommended that the Amendments be reconsidered in their entirety. Furthermore, the process of amendments to the Law, presents an opportunity to re-visit some provisions in the Law, which have been recommended to be improved by the Joint Opinion of the OSCE/ODIHR and the Venice Commission, issued in 2008.

[END OF TEXT]

¹⁴ See the OSCE/ODIHR – Venice Commission *Guidelines for Review of Legislation Pertaining to Religion or Belief*, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), pages 24-25.

Draft Law for the 3rd Reading

Law “On amendments and additions to the Law of the Kyrgyz Republic “On freedom of religion and religious organizations in the Kyrgyz Republic”

Article 1.

Introduce to the Law of the Kyrgyz Republic “On freedom of religion and religious organizations in the Kyrgyz Republic” (Vedomosti of the Jogorku Kenesh of the Kyrgyz Republic, 2008, #10, p.1110) **following additions and amendments:**

1. In Article 22

In paragraph 1 of Part 3, after the word “audio video materials”, add words “, directly through central management organs of religious organizations”;

To supplement Part 3 with Paragraph 3 of the following content:

“Religious organizations, registered in accordance with the national legislation of the Kyrgyz Republic, must assist the state and local self-government organs to counteract extremist and separatist activities and religious fundamentalism, including explanation of contents of printed, photo, video, and other materials”;

In Part 8, replace the word “production” with words “importation, production, acquisition, ”.

To supplement Article 22 with Part 9 of the following content:

“9. Control over importation, production, acquisition, storage and distribution of printed materials, film, photo, audio, and video productions and other materials to identify ideas of religious extremism, separatism and religious fundamentalism is carried out by the authorized state organs on religious affairs, national security and internal affairs”.

Article 2

1. The current law enters into force since the official publication.

2. Task the Government of the Kyrgyz Republic:

- to bring its normative legal acts in line with the current law;
- to adopt normative legal acts providing implementation of the current law;
- to take measures on establishment of Coordination Expert Committee to be entitled to conduct expertise with a view to identify extremist contents in information materials and oral statements no later than two months from the day of effectiveness of the law.

President of the Kyrgyz Republic