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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

ARMENIA

JOINT OPINION

**ON THE DRAFT LAW AMENDING THE LAW
ON FREEDOM OF CONSCIENCE
AND ON RELIGIOUS ORGANISATIONS**

**Adopted by the Venice Commission
at its 114th Plenary Session
(Venice, 16-17 March 2018)**

on the basis of comments by

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I. Introduction

1. On 28 November 2017, the Minister of Justice of the Republic of Armenia, Mr Davit Harutyunyan, sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) and the European Commission for Democracy through Law of the Council of Europe (hereinafter “the Venice Commission”) a request for an opinion on the Draft Law amending the Law of the Republic of Armenia “On Freedom of Conscience and on Religious Organisations” (hereinafter “the Draft Law”, CDL-REF(2018)006) to assess its compliance with international human rights standards and OSCE commitments.
2. Ms Jasna Omejec (Member, Croatia), Mr Jan Velaers (Member, Belgium) and Mr Ben Vermeulen (Member, Netherlands) were appointed as rapporteurs for the Venice Commission. Ms Zoila Combalía and Ms Alice Thomas were appointed as legal experts for the OSCE/ODIHR.
3. On 6-7 February 2018, a joint delegation composed of Ms Jasna Omejec and Mr Jan Velaers on behalf of the Venice Commission, and of Ms Zoila Combalía on behalf of the OSCE/ODIHR, accompanied by Mr Grigory Dikov, legal officer at the Secretariat, visited Yerevan, Armenia, to meet with representatives of the competent State authorities, politicians, representatives of religious or belief communities, non-governmental organisations (NGOs) and other stakeholders. This Joint Opinion takes into account the information obtained during the visit. The members of the delegation of the Venice Commission and of the OSCE/ODIHR express their gratitude for the very cooperative and constructive attitude of the Armenian authorities demonstrated during the visit.
4. This Joint Opinion was examined by the Sub-Commission on Fundamental Rights and subsequently by the Venice Commission at its 114th Plenary Session (Venice, 16-17 March 2018).

II. Scope of the Joint Opinion

5. On 16 October 2017, the OSCE/ODIHR had already published an Opinion on an earlier version of the Draft Law,¹ upon the request of the Human Rights Defender of the Republic of Armenia (hereinafter “2017 OSCE/ODIHR Opinion”). In 2009 and 2010, the OSCE/ODIHR and the Venice Commission had also reviewed and issued two joint opinions on previous draft amendments to the Law on Freedom of Conscience and on Religious Organisations (hereinafter “the 2009 Joint Opinion” and “the 2010 Interim Joint Opinion” respectively).² These draft amendments were, however, never enacted into law. In 2011, the Armenian authorities had prepared a new Draft Law of the Republic of Armenia on Freedoms of Conscience and

¹ OSCE/ODIHR, *Opinion on the Draft Law of the Republic of Armenia Amending the Law on “Freedom of Conscience and Religious Organisations”*, FORB-ARM/311/2017 [AIC], 16 October 2017, <<http://www.legislationline.org/documents/id/21314>> (English version) and <<http://www.legislationline.org/documents/id/21378>> (Armenian version).

² OSCE/ODIHR-Venice Commission-Directorate General of Human Rights and Legal Affairs of the Council of Europe, *Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organisations and on the Law Amending the Criminal Code of Armenia*, CDL-AD(2009)036, 23 June 2009, <<http://www.legislationline.org/documents/id/15602>> (hereinafter “the 2009 Joint Opinion”); and *Interim Joint Opinion on the Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organisations and on the Laws on Amending the Criminal Code, the Administrative Offences Code and the Law on Charity of the Republic of Armenia*, CDL-AD(2010)054, (hereinafter “the 2010 Interim Joint Opinion”). <<http://www.legislationline.org/documents/id/16086>>

Religion, which was also reviewed by the OSCE/ODIHR and the Venice Commission,³ but was in the end not adopted.

6. The scope of this Joint Opinion covers only the Draft Law, submitted for review, and the legislation that is being amended. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the right to freedom of religion or belief in Armenia.

7. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing recommendations are based on relevant Council of Europe and other international human rights standards and obligations, OSCE commitments, and good national practices. Where appropriate, they also refer to the relevant recommendations made in previous legal opinions published by the OSCE/ODIHR and/or the Venice Commission (see par 5 *supra*). This Joint Opinion is based on an unofficial English translation of the Draft Law provided by the Ministry of Justice of Armenia on 28 November 2017. Errors from translation may result.

8. In view of the above, the OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion may not cover all aspects of the Draft Law, and that the Joint Opinion thus does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in Armenia in future.

III. Executive Summary

9. The OSCE/ODIHR and the Venice Commission welcome Armenia's efforts to amend its existing legal framework relating to the right to freedom of religion or belief, with a view to bringing it into compliance with international standards on freedom of religion or belief and the new Constitution adopted in 2015. Overall, the Draft Law is an improvement, is well-structured and deals with most of the major issues that this kind of legislation should regulate. However, the Draft Law would benefit from some clarifications and amendments in order to ensure its compliance with international standards and OSCE commitments.

10. The Draft Law contains a number of improvements compared to the existing Law on the Freedom of Conscience and on Religious Organisations (1991, as last amended in 2011)⁴ and reflects some of the recommendations made by the OSCE/ODIHR and the Venice Commission in their previous opinions on Armenian legislation pertaining to freedom of religion or belief. Of significance, and as already noted in the 2017 OSCE/ODIHR Opinion,⁵ the Draft Law now includes guarantees of the right to freedom of conscience and religion for every person, and not only for Armenian citizens (Article 3 par 1 of the Draft Law). The Draft Law also refers to the freedom to change one's religion, faith or belief, to manifest one's religion, faith or belief in public or private and to act according to one's religion, faith or belief in daily life (Article 3 par 2 of the Draft Law), all of which are fundamental aspects of the right to freedom of religion or belief. Further, Article 3 par 6 of the Draft Law specifies that the "[m]anifestation of the freedom of conscience and religion shall not be conditioned by establishing a religious organisation or by being a believer of a religious organisation", thus implying that religious/belief communities may exercise their rights without state registration, although this should be made more explicit.

³ OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Freedoms of Conscience and Religion and on the Laws Making Amendments and Supplements to the Criminal Code, the Administrative Offences Code and the Law on the Relations between the Republic of Armenia and the Holy Armenian Apostolic Church*, CDL-AD(2011)028, (hereinafter "the 2011 Joint Opinion"), <<http://www.legislationline.org/documents/id/16663>>

⁴ Available at <<http://www.legislationline.org/topics/country/45/topic/78>>.

⁵ *Op. cit.* footnote 1, par 21 (2017 OSCE/ODIHR Opinion).

11. At the same time, it is noted that some positive aspects of the Draft Law as reviewed by the OSCE/ODIHR in its 2017 Opinion have been removed from the current version of the Draft Law. Moreover, some key recommendations from previous opinions have not been addressed and the Draft Law still raises issues on several points that should be carefully addressed prior to adoption, especially regarding the scope and wording of the provisions on limitations to the manifestation of freedom of religion or belief and the requirements for registering religious organisations.

12. In order to further improve the compliance of the Draft Law with international human rights standards and OSCE commitments, the OSCE/ODIHR and the Venice Commission make the following key recommendations:

- A. to amend the Draft Law to ensure that it systematically refers not only to “religion” but also to “belief” and to “religious *or belief* organisations”; [par 20]
- B. to consider providing other religious groups or belief communities with a fair opportunity to benefit from some of the advantages enjoyed by the Holy Armenian Apostolic Church, while specifying reasonable criteria for accessing such advantages; [par 28]
- C. to narrow down and qualify more strictly the limitations on the manifestation of freedom of religion or belief set out in Article 4, including by:
 - removing the reference to “state security” and replacing it with the term “public safety” in line with international standards, or alternatively specifying that for the purpose of the Draft Law, “state security” should be interpreted as referring to public safety and order in line with international standards; [par 39]
 - considering removing from Article 4 those limitation grounds that are broadly or vaguely worded, or defining them more narrowly, particularly the references to “illegal or immoral acts”, “religious fanaticism”, “mercenary purposes”, while prohibiting the incitement to violence on religious grounds or the prohibition of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; [pars 42-46]
 - ensuring that only “improper proselytism” is prohibited, i.e., “preaching” or “teaching” accompanied by incitement to violence or religious hatred or to commit specific unlawful acts, by coercion or fraud, by offering material or social advantages with a view to gaining new members or exerting improper pressure on people in distress or in need, by the use of violence, by a certain form of harassment or the application of undue pressure in abuse of power, or by other aggressive forms of preaching violating privacy or public order; [par 46]
- D. to explicitly state in the Draft Law that religious or belief groups may exist and operate without registration [par 32], to provide an open-ended list of the rights enjoyed by all religious or belief communities, both registered or unregistered, including the right to exercise the freedom of religion collectively [par 33], and to clarify that any religious or belief community can acquire some sort of legal personality status in the national legal order [par 34];
- E. to remove some of the registration requirements that are too burdensome and/or discriminatory, in particular by specifying more clearly in Article 8 the very limited cases where state registration may be refused, in line with international standards and deleting Article 8 par 1 (4) and (5) and Article 8 par 3 from the Draft Law, which respectively refer to “*historically canonised holy book*”, the fact that the faith “*is part of the system of world’s contemporary religious communities*” and the need to submit a document “*certifying the consent of the relevant foreign spiritual centre given the existence thereof*”; [par 58]
- F. to reconsider the blanket prohibition on foreign funding provided in Article 11 par 2; [par 75]

- G. to clarify the rules concerning the suspension of religious organisations in Chapter 6, by strictly defining the meaning of “gross violation of the law” and by introducing a wider variety of proportionate sanctions that may be imposed; and provide that dissolution is only permissible where other measures for eliminating or preventing the violation are exhausted, or the violations may not be sanctioned or eliminated otherwise through application of administrative, civil or criminal law. [pars 79, 81 and 87]

These and additional Recommendations, as highlighted in bold, are included throughout the text of this Joint Opinion.

IV. Analysis and Recommendations

A. International Standards and OSCE Commitments relating to the Right to Freedom of Religion or Belief

13. For an overview of international standards and OSCE commitments on the right to freedom of religion or belief, the OSCE/ODIHR and the Venice Commission hereby refer to Part IV, Sub-Section 1 of the 2017 OSCE/ODIHR Opinion and relevant sections of their previous joint opinions. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which provide further and more detailed guidance, such as the 2004 OSCE/ODIHR-Venice Commission Joint Guidelines on Legislation pertaining to Religion or Belief⁶ (hereinafter “2004 Joint Freedom of Religion or Belief Guidelines”), the 2014 OSCE/ODIHR-Venice Commission Joint Guidelines on the Legal Personality of Religious or Belief Communities⁷ (hereinafter “2014 Joint Legal Personality Guidelines”) and the 2015 OSCE/ODIHR Joint Guidelines on Freedom of Association.⁸

B. National Legal Framework

14. Article 41 of the Constitution of the Republic of Armenia of 5 July 1995, as last amended on 6 December 2015 (hereinafter “the Constitution”) grants everyone the rights of freedom of thought, conscience, and religion. It specifies that “[t]he expression of freedom of thought, conscience and religion may be restricted only by law for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others” (Article 41 par 2). Article 41 par 3 also specifically refers to “religious organisations” and emphasizes that they should enjoy legal equality and shall be vested with autonomy, while stating that the procedure for the establishment and operation of such organisations shall be prescribed by law. While stipulating the principle of separation of religious organisations from the State (Article 17 par 2 of the Constitution), the Republic of Armenia recognises the “*exceptional mission of the Holy Armenian Apostolic Church, as the national church, in the spiritual life of the Armenian people, the development of its national culture, and the preservation of its national identity*” (Article 18 par 1 of the Constitution). Article 18 par 2 specifies that the “*relations between the Republic of Armenia and the Holy Armenian Apostolic Church may be regulated by law*”.

15. Article 29 of the Constitution contains a provision that sets out a general prohibition of discrimination on the ground of *inter alia*, “*religion, worldview, political or any other views [...] or other personal or social circumstances*”.

⁶ OSCE/ODIHR and the Venice Commission, Guidelines for Review of Legislation Pertaining to Religion or Belief (2004), (hereinafter “2004 Joint Freedom of Religion or Belief Guidelines”), <http://www.legislationline.org/download/action/download/id/2283/file/Guidelines_Review_Legislation_Religion_Belief.pdf>

⁷ OSCE/ODIHR and the Venice Commission, Guidelines on the Legal Personality of Religious or Belief Communities (2014), (hereinafter “the 2014 Joint Legal Personality Guidelines”), <<http://www.osce.org/odihr/139046?download=true>>

⁸ OSCE/ODIHR and Venice Commission, Guidelines on Freedom of Association (2015) (hereinafter “2015 Joint Guidelines on Freedom of Association”), <<http://www.osce.org/odihr/132371>>

16. Articles 77 to 81 of the Constitution include specific provisions regarding restrictions to human rights and fundamental freedoms, particularly the principles of legal certainty and of proportionality, while specifying that “[r]estrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia” (Article 81 par 2).

C. General Comments

17. At the outset, the OSCE/ODIHR and the Venice Commission welcome the provisions of the Draft Law which address some of the recommendations made in their previous Joint Opinions, particularly with respect to:

- the specific reference to international treaties ratified by the Republic of Armenia as part of the legislation regulating the manifestation of the freedom of conscience and religion and the activities of religious organisations (see Article 2 of the Draft Law);⁹
- the fact that freedom of conscience and religion is guaranteed for every person, and not only for Armenian citizens, as currently provided in the 1991 Law (see Article 3 par 1 of the Draft Law);¹⁰
- the express reference to the right to *change* one’s religion, faith or belief, the freedom to manifest religion, faith or belief *in public or private* and the right to act in accordance with one’s religion, faith or belief *in daily life* (Article 3 par 2 of the Draft Law), which constitute fundamental aspects of the right to freedom of religion or belief not currently mentioned in the 1991 Law;¹¹
- the rights of parents and other legal representatives (adopters, guardians or curators) to ensure the religious education of their children (adoptees, wards) under the age of sixteen in conformity with their own beliefs (Article 3 par 7 of the Draft Law);¹²
- the expansion of the right to manifest one’s religion or belief to cover not only church ceremonies or other worship rituals, but also other practices (Article 3 par 2 of the Draft Law), thus not limiting the provision to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions;¹³
- the fact that the manifestation of the freedom of conscience and religion is not conditioned by the establishment of a religious organisation or by being a believer of a religious organisation (Article 3 par 6 of the Draft Law); and
- the removal of the express prohibition of proselytism currently provided in Article 8 of the 1991 Law,¹⁴ although some other provisions of the Draft Law may still limit some forms of legitimate proselytism (see par 46 *infra*), among others.

D. The Scope of the Draft Law as regards the Freedom of “Belief”

18. The scope of the Draft Law defined in Articles 1 and 2 only refer to the “freedom of conscience and religion” and to “religious organisations”, but do not mention the freedom of belief, although some other provisions of the Draft Law mention the word “belief”.¹⁵ Throughout the Draft Law, there are also only references to “religious organisations”, but not to other organisations based on people’s beliefs. From the scope of the Draft Law, it is not clear that the

⁹ *Op. cit.* footnote 3, par 25 (2011 Joint Opinion).

¹⁰ *Ibid.* par 22 (2011 Joint Opinion).

¹¹ *Ibid.* par 22 (2011 Joint Opinion).

¹² *Ibid.* par 26 (2011 Joint Opinion).

¹³ *Ibid.* par 24 (2011 Joint Opinion).

¹⁴ *Ibid.* pars 43-60 (2011 Joint Opinion).

¹⁵ See the reference to the word “belief” in Article 3 pars 2, 3, 7, 8 and 9; Article 4 pars 2 (4) and 3; Article 5; and Article 8 par 5 (3) of the Draft Law.

Draft Law also covers “beliefs”. Also, the reference to the freedom of thought, which was mentioned in a previous version of the Draft Law has been removed.

19. Article 18 of the International Covenant on Civil and Political Rights¹⁶ (hereinafter “the ICCPR”) and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁷ (hereinafter “the ECHR”) guarantee not only the freedom of religion, but also the “freedom of belief”,¹⁸ as do OSCE commitments.¹⁹ Moreover, the UN Human Rights Committee has expressly stated that the “freedom of thought” and the “freedom of conscience” are protected equally with the freedom of religion and belief,²⁰ while ensuring that a potentially broad interpretation is given to the types of value-systems protected under Article 18 of the ICCPR and Article 9 of the ECHR, including the right not to profess any religion or belief.²¹

20. While it was mentioned during the country visit of the delegation of the Venice Commission and the OSCE/ODIHR that “belief organisations” would be regulated under separate legislation governing NGOs, this would mean that “belief organisations” may not necessarily benefit from the same rights and guarantees as “religious organisations” do. Such differential treatment between “religious organisations” and “belief organisations” seems hardly justifiable, thus potentially constituting discrimination. It is therefore recommended to regulate religious and belief organisations in the same law. Hence, in order to avoid any ambiguity as to the broad coverage of the Draft Law, including non-religious beliefs, **it is recommended to amend the title and scope of the Draft Law to refer to the “freedom of thought, conscience, religion or belief” while ensuring throughout the Draft Law that non-religious beliefs and not just “religion” as well as “religious or belief organisations” are covered**, in line with Article 18 of the ICCPR, Article 9 of the ECHR and relevant OSCE commitments.²²

¹⁶ UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Armenia acceded to the ICCPR on 23 June 1993.

¹⁷ The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Armenia ratified the ECHR on 26 April 2002.

¹⁸ See also *op. cit.* footnote 6, Part II.A.3, p. 4-5 (2004 Joint Freedom of Religion or Belief Guidelines).

¹⁹ See, in particular, OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June-29 July 1990), pars 5 and 5.12, <<http://www.osce.org/fr/odihr/elections/14304>>; and OSCE, *Ministerial Council Decision No. 3/13 on the Freedom of Thought, Conscience, Religion or Belief* (Kyiv, 2013), <<http://www.osce.org/mc/109339>>. For an overview of other OSCE human dimension commitments, see OSCE/ODIHR, *Human Dimension Commitments (Thematic Compilation)*, 3rd Edition, particularly Sub-Section 3.1.8, <<http://www.osce.org/odihr/76894>>.

²⁰ UN Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18 of the ICCPR)*, 27 September 1993, par 1, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en>.

²¹ *Ibid.* pars 1-2 (1993 UNHRC General Comment No. 22). See also the reference to value-systems such as pacifism, atheism and veganism or certain political ideology such as communism which the ECtHR considered *prima facie* as being covered by Article 9 of the ECHR; see European Commission of Human Rights (EComHR), *Arrowsmith v. the United Kingdom*, (Application no. 7050/75, decision of 16 May 1977/1978), <<http://hudoc.echr.coe.int/eng?i=001-74916>>; *Angelini v. Sweden* (Application no. 10491/83, decision of 3 December 1986), <<http://hudoc.echr.coe.int/eng?i=001-78932>>; *W v. the United Kingdom* (Application no. 18187/91, decision of 10 February 1993), <<http://hudoc.echr.coe.int/eng?i=001-1503>>; *Hazar, Hazar and Acik v. Turkey* (Application nos. 16311/90, 16312/90 and 16313/90, decision of 11 October 1991), <<http://hudoc.echr.coe.int/eng?i=001-1178>>.

²² A recommendation in that respect was already made in the 2017 OSCE/ODIHR Opinion, par 25.

E. The Holy Armenian Apostolic Church

1. ***The Inter-relation between the Draft Law and the 2007 Law on the Relations between the Republic of Armenia and the Holy Armenian Apostolic Church***

21. Article 5 par 4 of the Draft Law states that the “*religious organisations operating in the Republic of Armenia are the Holy Armenian Apostolic Church with its traditional organisations, and other religious organisations*”. This seems to imply that the Holy Armenian Apostolic Church as a religious organisation should in principle be subject to the same obligations and limitations imposed by the Draft Law and other legislation as any other religious (or belief) organisation. Additionally, Article 7 par 3 of the Draft Law specifies that contrary to other religious organisations, the name of the Holy Armenian Apostolic Church does not need to contain the words “religious organisation”. This may suggest that any exemption for the Holy Armenian Apostolic Church from the requirements or obligations imposed by the Draft Law would be specifically mentioned. As the Draft Law does not mention any other such derogation, it may thus be assumed that the Holy Armenian Apostolic Church is subject to all obligations set out therein (see Sub-Section H *infra*).

22. At the same time, the special role of the Holy Armenian Apostolic Church is conferred by Article 18 of the Constitution, which recognises the “exceptional mission” of the Holy Armenian Apostolic Church²³ and its status as a “national church”. Also, the relationship between the Republic of Armenia and the Holy Armenian Apostolic Church is currently governed by the 2007 Law of the Republic of Armenia “On the Relations Between the Republic of Armenia and the Holy Armenian Apostolic Church” (hereinafter “the 2007 Law”).²⁴ According to Article IV of the 2007 Law, while the Constitution should set out the “regulating principles” of the relationship between the Republic of Armenia and the Holy Armenian Apostolic Church (see par 14 *supra*), their “general relationship” shall be delineated by the Law on Freedom of Conscience and Religious Organisations, other laws and international agreements. The special relationship between the State and the Holy Armenian Apostolic Church as the national church shall be determined by the 2007 Law. This seems to suggest that the 2007 Law is considered as a special law in relation to the more general Draft Law. Hence, any conflict of norms between the 2007 Law and the Draft Law should be resolved by applying the principle *lex specialis derogat legi generali* i.e., that the 2007 Law as the special law should prevail over potential conflicting norms contained in the Draft Law. This relation between the Draft Law and the 2007 Law was confirmed during the visit of the delegation of the Venice Commission and the OSCE/ODIHR to the country.

23. In concrete terms, this would mean that although the Draft Law is binding on the Holy Armenian Apostolic Church as well, it could be exempted from certain obligations or restrictions imposed on religious organisations by the Draft Law in cases where these are seen to contradict the 2007 Law.²⁵

²³ It is worth reiterating that the Venice Commission expressed some concerns regarding the recognition of an “exclusive mission” of the HAAC in its First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, CDL-AD(2015)037, pars 32-33, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)037-e)>. In the Second Opinion on the Constitution of Armenia (CDL-AD(2015)038, par 16) the Venice Commission noted that, as explained by the Armenian authorities, the correct English translation of the Armenian term employed in Article 17 is not “exclusive”, but “unique” in the sense of “exceptional”, which is more acceptable “to the extent that it expresses the recognition of the special historic mission of the Armenian Apostolic Holy Church in the preservation of the Armenian national identity instead of reserving an exclusive position to it over other confessions.”

²⁴ Available at

<http://www.legislationline.org/download/action/download/id/7241/file/Armenia_Law_State%20and%20Holy%20Apostolic%20Church_2007_en.pdf>.

²⁵ For instance, Article VIII of the 2007 Law on the role of the Holy Armenian Apostolic Church in the educational sphere and Article X on the right to have its permanent spiritual representative of the Holy Armenian Apostolic Church in hospitals, orphanages, boarding schools, military bases and penal institutions, somewhat contradict

24. To avoid any ambiguity in this context, **the legal drafters should discuss and clarify the applicability of the Draft Law to the Holy Armenian Apostolic Church, and to specify which articles of the Draft Law apply to it and which articles do not.**

2. *The Special Status of the Holy Armenian Apostolic Church*

25. The Holy Armenian Apostolic Church benefits from a number of advantages in comparison with other religious organisations, as set out in the 2007 Law.²⁶

26. Previous OSCE/ODIHR-Venice Commission Joint Opinions have already acknowledged the special historical role of the Holy Armenian Apostolic Church in the Republic of Armenia, noting that its special status was not *per se* impermissible but should not be allowed to lead to or serve as a basis for discrimination against other religious or belief communities.²⁷ The Venice Commission and the OSCE/ODIHR were not asked to examine the 2007 Law, and did not scrutinise the privileges this law may confer on the Holy Armenian Apostolic Church. However, the difference in treatment between the Holy Armenian Apostolic Church and other religious (or belief) organisations could be, potentially, interpreted as being discriminatory.²⁸

27. On this point, the Venice Commission and the OSCE/ODIHR refer the Armenian authorities to the case law of the European Court of Human Rights (hereinafter “ECtHR”), stating that arrangements which favour particular religious communities do not, in principle, contravene the requirements of the ECHR provided that the State complies with its duty of neutrality, that there is an objective and reasonable justification for the difference in treatment, and that religious communities have a fair opportunity to apply for any privileged status if they wish so.²⁹ In this case, the criteria established should be reasonable in light of the public

Article 4 par 2 (2) of the Draft Law regarding the prohibition of religious preaching in instructional or nursery or educational establishments where minors under the age of 16 receive instruction or education and Article 4 par 2 (5), which prohibits religious preaching or the dissemination of propaganda materials of religious nature in or in the vicinity of playgrounds, cultural educational institutions for children and young people, hospitals, retirement homes and institutions intended for other socially vulnerable groups. Article XI of the 2007 Law does not refer to any restriction in terms of public fundraising efforts and receiving donations and gifts, whereas Article 11 par 2 of the Draft Law prohibits the financing by political parties or spiritual centres located outside of the territory of Armenia. Article VII of the 2007 Law provides for some forms of state financial assistance for the maintenance of the properties of the Holy Armenian Apostolic Church that are part of the national cultural heritage whereas Article 12 (3) of the Draft Law prohibits state funding of religious organisations. The 2007 Law also recognises religious marriages performed by the Holy Armenian Apostolic Church and the involvement of the Holy Armenian Apostolic Church in the sphere of education (e.g., establishment or sponsoring of education institutions and development of curriculum and textbooks on “Armenian Church History” courses within state educational institutions). The Draft Law also provides for a number of requirements or obligations applicable to all religious organisations (e.g., Article 8 par 5 regarding the obligation to have a charter including a number of detailed information about the organisation and administration of the religious organisation; Article 11 par 1 (3) and Article 13 on the reporting requirements applicable to religious organisations; and Article 16 on the supervision over activities of religious organisations) and it is unclear whether those would also be binding upon the Holy Armenian Apostolic Church.

²⁶ See footnote 25 above.

²⁷ See *op. cit.* footnote 3, par 20 (2011 Joint Opinion); *op. cit.* footnote 2, par 10 (2010 Interim Joint Opinion) and pars 20-21 (2009 Joint Opinion). See also *op. cit.* footnote 6, Part II.B.3, p. 6 (2004 Joint Freedom of Religion or Belief Guidelines); *op. cit.* footnote 7, par 40 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 20, par 9 (1993 UNHRC General Comment No. 22), which states that “[t]he fact that a religion is recognised as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the [ICCPR], including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers”.

²⁸ See e.g., ECtHR, *Manoussakis v. Greece* (Application no. 18748/91, judgment of 26 September 1996), particularly par 48, <<http://hudoc.echr.coe.int/eng?i=001-58071>>.

²⁹ See e.g., ECtHR, *Izzettin Doğan and Others v. Turkey* [GC] (Application no. 62649/10, judgment of 26 April 2016), pars 163-164 and 183, <<http://hudoc.echr.coe.int/eng?i=001-162697>>; and ECtHR, *Alujer Fernandez And Caballero Garcia v. Spain* (Application no. 53072/99, decision of 14 June 2001), <<http://hudoc.echr.coe.int/eng?i=001-22645>>. See also ECtHR, *Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, judgment of 8 April 2014), par 113, <<http://hudoc.echr.coe.int/eng?i=001-142196>>, where the Court held as follows: “Wherever the State, in conformity with Articles 9 and 11, legitimately decides to retain a system in which the State is constitutionally mandated to adhere to a particular religion [...], as is the

interest pursued, objective and non-discriminatory.³⁰ When examining whether there may be an objective and reasonable justification for a difference in treatment between religious communities, the ECtHR takes into account the historical context and the particular features of the religion in question but may also have other legitimate reasons for restricting eligibility for a specific system to certain religious denominations.³¹

28. In light of the above, and while recognising the special role of the Holy Armenian Apostolic Church, the **legal drafters should ensure that the privileges enjoyed by the Holy Armenian Apostolic Church have a reasonable and objective justification and are thus non-discriminatory, while considering providing other religious or belief communities with a fair opportunity to benefit from some of them according to reasonable, objective and non-discriminatory criteria.** The Venice Commission and the OSCE/ODIHR are at the disposal of the Armenian authorities if they wish to review the 2007 Law from this angle.

F. Guarantees for Securing the Right to Freedom of Religion (or Belief) to Non-registered Religious or Belief Groups

29. Article 3 par 2 of the Draft Law lists a number of guarantees that constitute fundamental aspects of the right to freedom of religion (or belief), which are not expressly guaranteed in the 1991 Law, such as the right to change one's religion, faith or belief and the freedom to manifest one's religion, faith or belief in public or private, among others (see also par 17 *supra*). Overall, this provision adequately reflects the guarantees provided in the ICCPR and in the ECHR.

30. It is not clear whether state registration of a religious organisation is a condition for exercising the freedom of religion collectively. On the one hand, several articles seem to imply that the registration of religious organisation is not a pre-condition for doing so.³² At the same time, it is unclear what the purpose of registration would be, if not to grant the rights mentioned in Article 10 to registered religious organisations only. This ambiguity is enhanced by the wording of Article 8, the title of which refers to the "establishment of a religious organisation", whereas the text of the article refers to state registration.

31. International instruments not only guarantee the individual freedom of religion, but also the freedom to adopt and exercise a religion or belief "in community with others". This latter freedom implies the right to establish a religious or belief community, without having to be recognised previously by a State authority through registration or other similar procedures,³³ or having to seek legal personality.³⁴

case in some European countries, and it provides State benefits only to some religious entities and not to others in the furtherance of legally prescribed public interests, this must be done on the basis of reasonable criteria related to the pursuance of public interests". In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (Application no. 40825/98, judgment of 31 July 2008), par 92, <<http://hudoc.echr.coe.int/eng?i=001-88022>>, the ECtHR held as follows: "*if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner*" [emphasis added]. See also the ECtHR case of *Ásatrúarfélagið v. Iceland* (Application no. 22897/08, decision of 18 September 2012), par 34, <<http://hudoc.echr.coe.int/eng?i=001-113920>>, where the ECtHR essentially held that the Icelandic National Church may receive better funding because its members have more obligations vis-à-vis the society.

³⁰ Ibid.

³¹ Ibid. par 175 (ECtHR case of *Izzettin Doğan and Others v. Turkey*).

³² See e.g., Article 3 par 6 of the Draft Law, which states that the "[m]anifestation of the freedom of conscience and religion shall not be conditioned by establishing a religious organisation or by being a believer of a religious organisation" – although this provision seems to pertain only to the individual freedom. Article 8 par 1 of the Draft Law also emphasizes that "[a] group of persons may register as a religious organisation", which seems to imply that religious or belief communities are not obliged to do so.

³³ See *op. cit.* footnote 7, par 10 (2014 Joint Legal Personality Guidelines).

³⁴ Ibid. pars 10 and 21 (2014 Joint Legal Personality Guidelines). See also UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, 22 December 2011, A/HRC/19/60, par 58, which states that "[r]espect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as freedom of religion or belief has the status of a human right, prior to and independent from any

32. To avoid any ambiguity, it would be advisable **to expressly state in the Draft Law that religious or belief groups may exist and operate without registration**, as was stated in the previous 2017 version of the Draft Law reviewed by the OSCE/ODIHR, which read “[p]ersons and associations shall be free to exercise their rights prescribed by part 1 of this Article without state registration”.

33. It is worth noting that Article 10 of the Draft Law lists the rights of the religious organisations but it is not clear from the Draft Law whether unregistered religious or belief communities enjoy some of these rights. Under international standards, most of the rights listed in Article 10 of the Draft Law should also be enjoyed by unregistered religious or belief groups, and even individuals, on a par with registered religious (or belief) organisations. While the State may legitimately restrict certain benefits – such as tax exemptions on donations (Article 10 par 2) – to registered religious organisations only, there is no reason why unregistered religious or belief groups should not enjoy such basic rights as, for instance “*bringing together their believers*” (Article 10 par 1 (1)), “*ensuring the fulfilment of all the spiritual and religious needs and demands of their believers*” (Article 10 par 1 (2)), “*disseminating information on their activities*” (Article 10 par 1 (3)), “*conducting religious masses, rites and ceremonies*” (Article 10 par 1 (6)), “*creating relevant religious teaching groups*” (Article 10 par 1 (7)), “*engaging in theological, religious, historical and cultural studies*” (Article 10 par 1 (8)), among others. These are essential manifestations of freedom of religion or belief, guaranteed by Article 18 of the ICCPR and Article 9 of the ECHR. For that reason, and as already recommended in the 2011 Joint Opinion concerning similar provisions,³⁵ **the Draft Law should provide an open-ended list of the rights enjoyed by all religious or belief communities, both registered and unregistered.**³⁶ It is important that the extent of the “group rights” should be interpreted broadly, in the light of Constitutional provisions and of international standards. Then, as stated in Article 8, a group of persons may decide to register, if they so wish, in order to benefit from *additional* prerogatives granted to a religious (or belief) organisation,³⁷ provided that the said community satisfies the formal (and reasonable) criteria for obtaining such status.

34. It is not clear from the Draft Law what the status of religious or belief communities which have not registered as “religious (or belief) organisation” would be and whether they could benefit from some form of legal personality but without all the rights granted to religious (or belief) organisations. It seems that, currently, religious groups which are not registered as “religious organisations” can obtain the legal status of an “association” (see Section 5 of the 1991 Law). As already mentioned in the 2011 and 2010 Joint Opinions, “*any religious group must have access to legal personality status if it wishes [so]*”, and should therefore be able to acquire such status regardless of how many members it may have.³⁸ Indeed, the right to legal

acts of State approval”. See also Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, Joint Opinion on Freedom of Conscience and Religious Organisations in the Republic of Kyrgyzstan, CDL-AD(2008)032, par 26, <<http://www.legislationline.org/documents/id/15360>>, where the OSCE/ODIHR and the Venice Commission considered that “[t]he decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on whether a group has sought and acquired legal entity status”.

³⁵ *Op. cit.* footnote 3, par 72 (2011 Joint Opinion).

³⁶ Including the rights to bring together the believers, conduct ceremonies or other practices and discussions, disseminate information about their religious ideas and other beliefs, including through mass-media, decide on the matters related to the life of the religious/belief community, communicate with other groups, defend the rights of their members or of the group, etc.

³⁷ See *op. cit.* footnote 34, par 26 (OSCE/ODIHR-Venice Commission 2008 Joint Opinion on Freedom of Conscience and Religious Organisations in the Republic of Kyrgyzstan). The ECtHR has also specifically stated that “[s]ince religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is, thus, an issue at the very heart of the protection which Article 9 affords” – see *op. cit.* footnote 29 (ECtHR, *Religionsgemeinschaft der Zeugen Jehovas v. Austria*).

³⁸ *Op. cit.* footnote 3, par 64 (2011 Joint Opinion); and *op. cit.* footnote 2, par 38 (2010 Interim Joint Opinion). See also *ibid.* par 61 (ECtHR, *Religionsgemeinschaft der Zeugen Jehovas v. Austria*); ECtHR, *Gozelik and Others v. Poland* [GC] (Application no. 44158/98, judgment of 17 February 2004), par 52, <<http://hudoc.echr.coe.int/eng/?i=001-61637>>; ECtHR, *Sidiropoulos and others v. Greece* (Application no.

personality status is vital to the full realisation of the right to freedom of religion or belief and a number of key aspects of organised community life³⁹ in this area become impossible or extremely difficult without access to legal personality.⁴⁰ Hence, undue restrictions on the right to legal personality are, accordingly, inconsistent with both the right to association and the right to freedom of religion or belief. Consequently, **the Draft Law should clarify that any religious or belief community can acquire legal personality status, for instance by registering as an association or a foundation, if it so wishes, irrespective of the number of its members or believers, while ensuring that, regardless of the system used, access to legal personality and the rights that emanate from this status are obtained in a quick, transparent, fair, inclusive and non-discriminatory manner.**⁴¹

35. In this context, it is noted that a requirement to be registered as a religious (or belief) organisation in order to be formally recognised by the State for certain purposes (taxation, access to certain public facilities, etc.) can in principle be justified.⁴² However, where the registration is refused by the State, the religious group concerned should be able to challenge such refusal in court. It was explained by the Armenian authorities that judicial review of such decisions is governed by the procedural legislation which is not analysed in the present Joint Opinion.

G. Limitations to the Right to Manifest One's Religion or Belief

36. Article 4 of the Draft Law deals with limitations to the *manifestation* of the freedom of conscience and religion. This wording generally reflects one of the recommendations made in the 2011 Joint Opinion regarding the freedom to *manifest* thought, conscience and religion or belief, which can be limited, as opposed to the right to have, adopt or change a religion or belief (*forum internum*), which is absolute and cannot be subject to limitations of any kind.⁴³

1. Content-based Limitations

37. Article 4 par 1 of the Draft Law reads: "*Manifestation of the freedom of conscience and religion may be limited only when the maintenance of the state security ... prevail[s] over the manifestation of the freedom of conscience and religion*".

38. The OSCE/ODIHR and the Venice Commission have on several occurrences raised some concerns concerning the inclusion of "state security" as a ground for limiting freedom of religion

26695/95, judgment of 10 July 1998), par 31 et passim, <<http://hudoc.echr.coe.int/eng?i=001-58205>>. See also ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 105, <<http://hudoc.echr.coe.int/eng?i=001-59985>>.

³⁹ These include for instance having bank accounts in its own name, ensuring judicial protection of the community, its members and its assets; maintaining the continuity of ownership of religious edifices; the construction of new religious edifices; establishing and operating schools and institutes of higher learning; facilitating larger-scale production of items used in religious customs and rites; the employment of staff; and the establishment and running of media operations – see *op. cit.* footnote 7, par 20 (2014 Joint Legal Personality Guidelines).

⁴⁰ *Ibid.* par 20 (2014 Joint Legal Personality Guidelines).

⁴¹ *Ibid.* par 24 (2014 Joint Legal Personality Guidelines).

⁴² ECtHR, *Cârmuirea Spirituaal a Musulmanilor din Republica Moldova v. Moldavia* (dec.) (Application no. 12282/02, decision of 14 June 2005), <<http://hudoc.echr.coe.int/eng?i=001-69667>>, where the Court held unanimously that "*the requirement to obtain registration (...) served the legitimate aim of allowing the Government to ensure that the religious organisations aspiring to their official recognition by the State were acting in accordance with the law, did not present any danger for a democratic society and did not carry out any activity directed against the interests of public safety, public order, health, morals or the rights and freedoms of others.(...) Without such a document the State could not determine the authenticity of the organisation seeking recognition as a religion and whether the denomination in question presented any danger for a democratic society. The Court does not consider that such a requirement is too onerous and thus disproportionate under Article 9 of the Convention*".

⁴³ *Op. cit.* footnote 6, par 1, p. 10 (2004 Joint Freedom of Religion or Belief Guidelines).

or belief.⁴⁴ Indeed, both the UN Human Rights Committee and the ECtHR have considered that the grounds justifying exceptions to the right to manifest one's religion or belief must be narrowly interpreted and be exhaustive.⁴⁵ The list of limitation grounds laid out in international instruments – which do not refer to “state security” – allows limitations on manifestations of religion or belief only where these involve or may lead to a concrete breach of public order or safety, but not in cases involving generalised claims of threats to state security.⁴⁶ As stated in the 2011 Joint Opinion, “[t]o the extent that the phrase ‘public security’ could be construed to include national security concerns that do not constitute concrete and imminent threats to public order or safety, it includes too much”.⁴⁷

39. Article 41 par 2 of the Armenian Constitution explicitly lists “state security” among the legitimate aims for restricting the exercise of freedom of thought, conscience and religion. At the same time, Article 81 par 2 of the Constitution also specifies that “[r]estrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia”. While an amendment to the Constitution may be recommendable, the Draft Law could be considered as interpreting the constitutional provision in such a way as to condition its application to the existence of a concrete and imminent threat to public order or safety.⁴⁸ In light of the above, the **reference to “state security” in Article 4 par 1 should be deleted and replaced by the term “public safety”, in line with international standards and the recommendation made in the 2011 Joint Opinion. Alternatively, Article 4 par 1 could specify that for the purpose of the law, “state security” should be interpreted as referring to public safety and order** in accordance with Article 18 of the ICCPR and Article 9 of the ECHR, and relevant case-law. Similarly, **the limitation grounds referring to “undermining of state security” and “weakening [of] its defence capacity” in Article 4 par 2 (1) should be removed or alternatively interpreted in the light of the “public order and safety” concepts enshrined in Article 18 of the ICCPR and Article 9 of the ECHR.**

40. Restrictions to the manifestation of the freedom of thought, conscience and religion must be prescribed by law (i.e., they must be sufficiently clear to allow individuals and legal persons to ensure that their activities comply with the restrictions) and need to be necessary and proportionate to the (legitimate) aims that they pursue. In this context, it is noted that Articles 77 and 78 of the Constitution do refer to the principles of proportionality and legal certainty for restricting basic rights and freedoms. Furthermore, Article 4 par 1 of the Draft Law stresses that limitations to the manifestation of the freedom of conscience and religion are only allowed when the fundamental aims it mentions prevail. At the same time, in order to ensure that such principles are understood and systematically applied by public authorities and courts in the context of the right to freedom of religion or belief, it is recommended, as done in the 2011 Joint Opinion, **to specify in Article 4 par 1 of the Draft Law that the freedom to manifest religion or belief can be subjected only to such limitations as are necessary and proportionate to the (legitimate) aims that they pursue.**⁴⁹

⁴⁴ *Op. cit.* footnote 3, par 39 (2011 Joint Opinion). See also, in this respect, CDL-AD(2017)023, the Venice Commission Opinion on the Draft Revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017, par 39 < [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e)>.

⁴⁵ *Op. cit.* footnote 20, par 8 (1993 UNHRC General Comment No. 22), which states that “[r]estrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security”; and ECtHR, *Nolan and K. v. Russia* (Application no. 2512/04, judgment of 12 February 2009), par 73, <<http://hudoc.echr.coe.int/eng?i=001-91302>>. See also *op. cit.* footnote 7, par 8 (2014 Joint Legal Personality Guidelines); and UN Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, <<http://www.refworld.org/docid/4672bc122.html>>.

⁴⁶ See *op. cit.* footnote 20, par 8 (1993 UNHRC General Comment No. 22). See also *op. cit.* footnote 7, par 8 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 3, par 39 (2011 Joint Opinion),

⁴⁷ *Ibid.* par 39 (2011 Joint Opinion).

⁴⁸ *Ibid.* par 39 (2011 Joint Opinion).

⁴⁹ *Ibid.* par 34 (2011 Joint Opinion).

41. Moreover, as already recommended in the 2011 Joint Opinion, it is important to regulate the process leading up to such restrictions being imposed, including an indication of the responsible decision-making body, the content and modalities of the communications of the decisions on restriction and the need to motivate them.⁵⁰ As explained by the Armenian authorities during the country visit, these matters are regulated in the general legislation on administrative procedures and review, which is not examined within the present Joint Opinion.

2. Specific Grounds for Prohibition

42. Article 4 par 2 (1) of the Draft Law provides that a manifestation of the freedom of conscience and religion shall be prohibited when it is aimed at “*engaging in an illegal [...] act*”. This provision seems to imply that any act that is intended to breach any prohibition contained in the entire body of legislation, however minor such “illegality” might be, could be prohibited. **This wording should therefore be reconsidered, in order to reflect the principle of proportionality.**

43. The principle of legality requires a clear and foreseeable legal basis for any decision imposing a restriction on human rights and freedoms, formulated with sufficient precision to enable legal subjects to regulate their conduct accordingly and not leaving too much discretion to the public authorities.⁵¹ In that respect, Article 4 of the Draft Law raises a number of concerns. Notably, Article 4 par 2 (1) prohibits the manifestation of conscience or religion if it involves “**immoral acts**”. The meaning of the words “immoral acts” is not clear and the Armenian authorities have not been able to clarify it during the country visit. As such, it does not meet the criteria of clarity and foreseeability required to avoid arbitrary application by the public authorities. **Such wording should be reconsidered, in order to develop and clarify the notion of “immoral acts”.**⁵²

44. Article 4 par 2 (1) also prohibits the preaching of “**religious fanaticism**”. This wording is also relatively vague and could potentially lead to undue limitations of the right to freedom of expression protected under Article 19 of the ICCPR and Article 10 of the ECHR. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has specifically warned against vague and overbroad legal provisions which can be abused to censor discussion on matters of legitimate public interest, for instance by using terms such as “fanaticism”.⁵³ Also, it is unclear how this conduct would be different from other behaviour prohibited under Article 4. **It would be more appropriate to refer to the incitement to violence on religious grounds or to the advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.** In order to give a general direction to judges applying Article 4, the explanatory memorandum to the Draft Law should stipulate clearly that mere advocacy of supremacy/rightness of one’s religious views or other beliefs, or criticism of views/beliefs held by others should not be regarded as an incitement to discrimination, hostility or violence, unless it is associated with the calls for violence or other similar unlawful behaviour. The Draft Law should ensure a space for free discussion and criticism.

⁵⁰ Ibid. par 38 (2011 Joint Opinion). See also *op. cit.* footnote 1, par 41 (2017 OSCE/ODIHR Opinion).

⁵¹ See e.g., ECtHR, *Koretskiy v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), par 48, <<http://hudoc.echr.coe.int/eng?i=001-85679>>; and *The Sunday Times v. the United Kingdom (No. 1)* (Application no. 6538/74, judgment of 26 April 1979), par 49, <<http://hudoc.echr.coe.int/eng?i=001-57584>>. See also Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, par 58 <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)>.

⁵² See e.g., the Venice Commission Opinion on the Draft Code of Judicial Ethic of the Republic of Kazakhstan (CDL-AD(2016)013), par 72, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)013-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)013-e)>.

⁵³ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Report on Hate Speech and Incitement to Hatred, A/67/357*, 7 September 2012, par 52, <<http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/67/357&Lang=E>>.

45. Similarly, Article 4 par 2 (3) prohibits the manifestation of conscience or religion for **“mercenary purposes”** (sic). This term, used in the English translation of the Draft Law provided by the Armenian authorities, is understood as referring to economic or mercantile activities. It is neither uncommon nor illegal for religious or belief communities to seek to make profit by selling religious items or engaging in other legal activities to raise revenues.⁵⁴ This practice seems to be confirmed by Article 10 par 2 of the Draft Law, which states that the “production and sales of ritual goods and items” is not subject to taxation. To ensure that a religious or belief community is able to do so, **the provision should specify that it may engage in certain commercial activities as a means of enabling the realisation of its “spiritual aims”, providing that these activities are not its main purpose.**

46. Article 4 par 2 (4) prohibits the **“influence sought through preaching [which] is incompatible with the respect for the freedom of conscience and religion of persons having other religious or faith affiliation or beliefs”**. Such wording may aim at targeting some forms of “improper proselytism”, which is legitimate: “improper proselytism” can be prohibited provided that the respective limitations are clearly and strictly defined in the legislation. However, this provision should not be interpreted as prohibiting “legitimate proselytism”. Indeed, it is important to underscore that the freedom to manifest one’s religion or belief also encompasses the right to try to convince others of the validity of one’s religion or beliefs or to attempt to persuade others to convert to another’s religion, for example through “preaching” or “teaching”.⁵⁵ Hence, **only preaching accompanied by incitement to violence or religious hatred or to commit specific unlawful acts, by coercion or fraud,⁵⁶ by offering material or social advantages with a view to gaining new members or exerting improper pressure on people in distress or in need,⁵⁷ by the use of violence,⁵⁸ by a certain form of harassment or the application of undue pressure in abuse of power,⁵⁹ or by other aggressive forms of preaching violating privacy or public order should be prohibited. Article 4 par 2 (4) should be supplemented accordingly.**

47. Similarly, the wording of Article 4 par 2 (6), which refers to *“control [that] is exerted or an attempt [that] is made at exerting control over the personal life, health, property and conduct of the believers”* is unclear and unduly broad, as this behaviour does not necessarily imply the use of “illegitimate means”, such as violence, harassment, improper pressure etc. Reinforcing and strengthening the beliefs of members/believers, without the use of such “illegitimate means”, should be allowed.

48. Article 4 par 2 (5) of the Draft Law provides that the manifestation of the freedom of conscience and religion is prohibited where *“assembly points are established, religious preaching is carried out or propaganda materials of religious nature are disseminated in or in the vicinity of playgrounds, cultural educational institutions for children and young people, hospitals, retirement homes and institutions intended for other socially vulnerable groups”*. The limitation enshrined in Article 4 par 2 (5) allegedly aims to protect minors and “other vulnerable groups” against improper proselytism, which is legitimate, although, as for any limitation, it should be construed strictly. It is unclear what is meant by “vicinity” and “institutions intended for other socially vulnerable groups”, and the provision should be more strictly circumscribed by replacing “vicinity” with a narrower term (such as “close vicinity” or “within sight and sound”), and the list of institutions should be narrowed down.

⁵⁴ *Op. cit.* footnote 2, par 35 (2009 Joint Opinion).

⁵⁵ See e.g., ECtHR, *Larissis and others v. Greece* (Application no. 140/1996/759/958-960, judgment of 24 February 1998), par 45, <<http://hudoc.echr.coe.int/eng?i=001-58139>>.

⁵⁶ *Op. cit.* footnote 6, Part II.J, page 20 (2004 Freedom of Religion or Belief Guidelines).

⁵⁷ See e.g., ECtHR, *Kokkinakis v. Greece* (Application no. 14307/88, judgment of 25 May 1993), par 48, <<http://hudoc.echr.coe.int/eng?i=001-57827>>.

⁵⁸ *Ibid.* par 48 (ECtHR, *Kokkinakis v. Greece*).

⁵⁹ *Op. cit.* footnote 55, par 51 (ECtHR, *Larissis and others v. Greece*).

49. Finally, Article 4 par 3 of the Draft Law prescribes that “*the engagement of a believer in actions provided for by part 2 of this Article may serve as a ground for the dissolution of a religious organisation, where there is a direct link between those actions and the doctrines, beliefs or teachings of that religious organisation*”. This could imply that a religious organisation is liable for the actions of all its believers, which imposes a huge burden on the religious organisation itself and also has grave consequences for the religious life of all its believers. First, the provision implies that any violation of Article 4 par 2 may lead to dissolution, which is excessive as only grave or repeated violations may lead to dissolution of a religious or belief organisation (see Sub-Section H (5) *infra*). Moreover, in principle, **any sanction for a wrongdoing of individual leaders and members of religious organisations should primarily be addressed to the person in question through criminal, administrative or civil proceedings**, rather than to the community and other members.⁶⁰ **This should be stated clearly under Article 4 par 3**. More generally, it may be difficult to interpret what is meant by “*direct link between those actions and the doctrines, beliefs or teachings of that religious organisation*”. In principle, a religious (or belief) organisation should only be held responsible for actions that are imputable to the organisation, i.e., when they are a direct result of the orders of its leaders, or are specifically prescribed by the doctrine, beliefs or teachings of the religious or belief organisation and its leaders encourage or tolerate such illegal practices. **Article 4 par 3 should be amended accordingly** (see also additional comments on dissolution of religious organisations in Sub-Section H (5) *infra*).

H. Religious Organisations

50. The main objective of the Draft Law is to provide a legal framework for the registration of religious communities in Armenia. The previous version of the Draft Law as reviewed by the OSCE/ODIHR introduced a novel classification of religious groups in Armenia, namely “religious associations”, which were distinct from “religious organisations”. Religious associations did not enjoy the same rights provided for religious organisations, but religious associations with at least 150 adult members had the possibility to register as religious organisations. This differentiation between “religious associations” and “religious organisations” seems to have been abandoned in the Draft Law under review.

1. Establishment (Registration) of a Religious Organisation

51. The autonomous existence of religious or belief communities through access to legal personality status is essential to the full realisation of the right to freedom of religion or belief.⁶¹ Hence, the conditions and procedure of registering as a “religious organisations” in Armenia should not be burdensome⁶² and the registration process should ideally be quick, transparent, fair, inclusive and non-discriminatory.⁶³

52. The Venice Commission and the OSCE/ODIHR reiterate the recommendation formulated in paragraph 34 above, namely that a religious or belief group should be able, if it so wishes, to acquire legal personality status, for instance by registering as an association or a foundation, irrespective of the number of its members or believers. It is understood that the status of a “religious organisation”, provided by the Draft Law, may open access to some special privileges which other legal entities do not enjoy.

53. To be registered as a “religious organisation”, the community of believers should have, pursuant to Article 8 par 1 of the Draft Law, “at least 100 adult founders”. The current threshold for registration as a “religious organisation” is 50 members (Section 5 of the 1991 Law). Previously, the Venice Commission has considered that the threshold of fifty members as a

⁶⁰ *Op. cit.* footnote 7, par 34 (2014 Joint Legal Personality Guidelines).

⁶¹ *Ibid.* par 20 (2014 Joint Legal Personality Guidelines).

⁶² *Ibid.* par 25 (2014 Joint Legal Personality Guidelines).

⁶³ *Ibid.* par 24 (2014 Joint Legal Personality Guidelines).

pre-condition for the registration of a religious organisation does not give rise to criticism.⁶⁴ By contrast, in the previous joint opinions on Armenia,⁶⁵ the threshold of 500 and even 200 members was described as “discriminatory and disproportionate”, in the absence of a justification of this figure. According to the 2004 and 2014 Joint Guidelines, obtaining legal personality should not be contingent on a religious or belief community having a high minimum number of members as this may discriminate against small or newly-established religious or belief communities.⁶⁶ While the new threshold proposed in the Draft Law does not appear excessive *per se*, the Venice Commission and the OSCE/ODIHR note that the reason for doubling the threshold (from 50 members to 100) remains unclear and was not explained during the country visit.

54. Some of the other requirements for establishing a religious (or belief) organisation prescribed in Article 8 par 1 of the Draft Law instead raise concerns, as previously noted by the OSCE/ODIHR and the Venice Commission in their previous Joint Opinions.

55. According to Article 8 par 1 (1), a group of persons may only register when its activities “do not contradict Article 4 of this Law”. The scope of this provision is too broad, as it refers to all grounds for limitations foreseen in Article 4 of the Draft Law. In order to be in compliance with the principle of proportionality, only wrongdoings that reach a certain threshold of seriousness should be taken into account. Concerning already existing religious organisations, they should be considered to be in compliance with the requirements of the law, insofar as their past activities are concerned, for the purposes of “re-registration” (or “update” of their charter) required under Article 2 par 2 (“Final Provisions”) of the Draft Law (see also par 89 *infra* on re-registration). In light of the above, **it is recommended to specify more clearly in Article 8 the very limited cases where state registration may be refused, in line with international standards, and to explicitly provide that the principle of proportionality has to be respected in the application of these provisions.**

56. According to Article 8 par 1 (3), a group of persons may only register as a religious organisation when its activities are not aimed at receiving material benefits. As mentioned in par 45 *supra* regarding the prohibition to pursue “mercenary purposes”, religious or belief communities may have a legitimate need to engage in certain commercial activities as a means of furthering their “spiritual goals”.⁶⁷ Moreover, such a provision may somewhat contradict Article 10 par 2 of the Draft Law, which refers to the production and sales of ritual goods and items. As recommended in the 2009 Joint Opinion, **such a requirement should be reworded to specify that religious associations should not be “profit-making organisations that distribute profits to employees or officials” while ensuring that they can engage in economic or commercial activities in order to be able to pursue their non-profit activities.**⁶⁸

57. According to Article 8 par 1 (4) and (5), a group of persons may only register when its activities “are based on a historically canonised holy book” and “its faith is part of the system of world’s contemporary religious communities”, thus mirroring the requirements currently stated in Section 5 of the 1991 Law. Such requirements were not mentioned in the earlier 2017 version of the Draft Law reviewed by the OSCE/ODIHR, which was noted as an improvement.⁶⁹ It may be legitimate for the State to refuse registration of certain groups who hold views that do

⁶⁴ The Venice Commission, *Opinion on the Draft Law on Amending and Supplementation of Law no. 02/L-31 on Freedom of Religion of Kosovo*, adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), CDL-AD(2014)012, 25 March 2014, par 106, <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)012-e)>.

⁶⁵ See *op. cit.* footnote 2, par 36 (e) (2009 Joint Opinion); and par 83 (2010 Interim Joint Opinion).

⁶⁶ *Op. cit.* footnote 7, par 27 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 6, Part II.F.1, page 17 (2004 Freedom of Religion or Belief Guidelines).

⁶⁷ *Op. cit.* footnote 2, par 36 (d) (2009 Joint Opinion).

⁶⁸ *ibid.* par 36 (d) (2009 Joint Opinion).

⁶⁹ *Op. cit.* footnote 1, par 21, seventh indent (2017 OSCE/ODIHR Opinion).

not attain a certain level of “cogency, seriousness, cohesion and importance”,⁷⁰ although it may be challenging in practice to assess such aspects in an objective manner. In any case, the registering body should never assess the truthfulness or legitimacy of the views or system of values of the applicant.

58. In the past, the Venice Commission and the OSCE/ODIHR have raised some concerns regarding provisions similar to Article 8 par 1 (4) and (5),⁷¹ noting that relying on “historically recognized scriptures” do not form part of what is meant by “religion”.⁷² The ECtHR has indicated that older faiths such as Druidism have no “holy scriptures”,⁷³ as do religious movements of more recent origin such as Scientology,⁷⁴ the Moon Sect,⁷⁵ the Divine Light Zentrum⁷⁶ and the teachings of Osho⁷⁷ - all of which fall within the scope of protection of Article 9 of the ECHR. Moreover, freedom of religion or belief should not depend on the international or contemporaneous acknowledgment of one’s religion or belief. Such requirements potentially limit registration to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views,⁷⁸ potentially making it difficult for other, non-traditional or new, religious or belief communities to have access to the status of the religious organisation if they wish.⁷⁹ Furthermore, the wording itself seems open to different interpretations and may thus lead to arbitrary application.⁸⁰ Similarly, the obligation to submit a document “*certifying the consent of the relevant foreign spiritual centre given the existence thereof*” (Article 8 par 3), is subject to the same criticism. **It is thus recommended to delete Article 8 par 1 (4) and (5) and Article 8 par 3 from the Draft Law.**

59. Article 8 par 4 provides that “[t]he body carrying out state registration of legal persons shall, on its own initiative, obtain — as prescribed by the Minister of Justice of the Republic of Armenia — an expert opinion on the conditions prescribed by part 1 of this Article for the registration of a religious organisation”. It is unclear from the Draft Law which entity will be responsible for issuing such an “expert opinion”, and this should be clarified. In any event, **such an expert opinion should be provided by an independent body, where the representatives of other religious or belief communities do not play a decisive role**, and such independent expert opinion should not assess the truthfulness of the religion or belief under review.⁸¹

60. Pursuant to Article 8 par 5, the charter of the religious organisation shall also enshrine the “**faith affiliation of the religious organisation**” (point (4)), the “**structure of the religious organisation**” (point (8)), and the “**bodies of the religious organisation, procedure and time limits for their formation, their powers, procedure for adoption of decisions by them**” (point (9)), among others. These provisions seem to exclude from registration religious

⁷⁰ See e.g., ECtHR, *Campbell and Cosans v. United Kingdom* (Application no. 7511/76; 7743/76, judgment of 25 February 1982), par 36, <<http://hudoc.echr.coe.int/eng?i=001-57455>>.

⁷¹ *Op. cit.* footnote 2, par 36 (b) and (c) (2009 Joint Opinion).

⁷² See, e.g., EComHR, *ISKCON and 8 Others v. United Kingdom* (Application no. 20490/92, decision of 8 March 1994), <<http://hudoc.echr.coe.int/eng?i=001-2550>>.

⁷³ See EComHR, *Chappell v. the United Kingdom* (Application no. 12587/86, decision of 14 July 1987), <<http://hudoc.echr.coe.int/eng?i=001-481>>.

⁷⁴ See EComHR, *X. and Church of Scientology v. Sweden* (Application no. 7805/77, decision of 5 May 1979), <<http://hudoc.echr.coe.int/eng?i=001-73995>>.

⁷⁵ See EComHR, *X. v. Austria* (Application no. 8652/79, decision of 15 October 1981), <<http://hudoc.echr.coe.int/eng?i=001-73930>>.

⁷⁶ See EComHR, *Omkanananda and the Divine Light Zentrum v. Switzerland* (Application no. [8118/77](http://hudoc.echr.coe.int/eng?i=001-74403), decision of 19 March 1981), <<http://hudoc.echr.coe.int/eng?i=001-74403>>.

⁷⁷ See ECtHR, *Leela Förderkreis E.V. and Others v. Germany* (Application no. 58911/00, judgment of 6 November 2008), par81, <<http://hudoc.echr.coe.int/eng?i=001-89420>>.

⁷⁸ *Op. cit.* footnote 7, par 2 (2014 Joint Legal Personality Guidelines).

⁷⁹ *Op. cit.* footnote 2, pars 36-38 (2009 Joint Opinion).

⁸⁰ *Ibid.* par 36 (c) (2009 Joint Opinion).

⁸¹ *Op. cit.* footnote 2, par 68 (2010 Interim Joint Opinion). See also OSCE/ODIHR, *Comments on the Law on Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on Issues of Religious Freedom and Religious Organisations*, January 2009, par 60, <<http://www.legislationline.org/documents/id/15504>>.

or belief communities which are less structured along formal regulations and forms of organisation. However, not all religion or belief groups have a clear structure and “*there are also communities which are more loosely organized or have a democratic-horizontal structure*”.⁸² As noted in the 2014 Joint Legal Personality Guidelines, considering the wide range of different organisational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.⁸³

61. As further stated in the Guidelines, requiring that excessively detailed information be provided in the statute of a religious or belief organisation is considered as a burdensome requirement that is not justified under international law.⁸⁴ Therefore, regarding requirements similar to the ones mentioned in Article 8 par 5 (4), (8) and (9), the Venice Commission and the OSCE/ODIHR have stated previously that “[t]he law should not require the inclusion of excessively detailed information in the statute of the religious organisation” and that “[r]efusal of registration on the basis of a failure to provide all information should not be used as a form of arbitrary refusal of registration”.⁸⁵ Generally, “it must be left to the religious organisation to decide in which way internal rules are adopted”.⁸⁶ The Venice Commission took the stance that the legislation “should only require that the religious community be able to present a representative body for the purpose of its contacts with the public authorities and its capacity to operate as a legal entity. Moreover, in order to guarantee legal certainty to the natural and legal persons dealing with other religious communities, it should be made clear which organs of the legal entity can make decisions that are binding on itself and its members”.⁸⁷ Accordingly, **the legal drafters should consider removing from Article 8 of the Draft Law the above-mentioned requirements to be mentioned in the charter of the religious (or belief) organisation or requiring to indicate such information only in a summary form and where applicable to the said religious (or belief) organisation.**

62. While the Draft Law mentions some elements of the registration procedure, it does not provide procedural guarantees for a neutral and impartial application of the provisions pertaining to registration. Among others, it does not **impose an obligation of the Authorised Body to hear the applicants or to motivate a potential refusal. The Draft Law should be supplemented in that respect.**

63. Article 9 provides that state registration of a religious organisation shall be refused within the period of thirty days in case of failure to meet the requirements of registration of a religious organisation prescribed by Article 8 par 1 of the Draft Law or where grounds mentioned by Article 36 of the Law of the Republic of Armenia “On state registration of legal persons, state record-registration of separate subdivisions of legal persons, institutions and individual entrepreneurs” exist.⁸⁸ Pursuant to Article 36 par 2 of the latter legislation, “*the incompatibility of*

⁸² See the 2014 Venice Commission’s Opinion on the Draft Amendments to the Law n° 02/L-31 on Freedom of Religion of Kosovo, par 69.

⁸³ *Op. cit.* footnote 7, par 31 (2014 Joint Legal Personality Guidelines).

⁸⁴ *Ibid.* par 25 (2014 Joint Legal Personality Guidelines).

⁸⁵ *Op. cit.* footnote 3, 66 (2011 Joint Opinion).

⁸⁶ Venice Commission and the OSCE/ODIHR, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan, adopted by the Venice Commission at its 92nd Plenary Session (12-13 October 2012), CDL-AD(2012)022,15 October 2012, par 76, <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)022-e)>.

⁸⁷ *Op. cit.* footnote 71, par 71 (2014 Venice Commission’s Opinion on the Draft Amendments to the Law n° 02/L-31 on Freedom of Religion of Kosovo).

⁸⁸ Article 36 states: “1. *The grounds for refusing the state registration of legal persons shall be as follows:*

- (1) *violation of the procedure defined by law for forming a legal person;*
- (2) *failure to submit the documents defined by this Law and other laws;*
- (3) *incompatibility of the submitted documents with the law or with other documents submitted by the legal person, except for the case referred to in part 2 of this Article;*
- (4) *the founder as well as the head of the executive body of the commercial organisation newly being registered (established) is deprived of the right to engage in entrepreneurial activities as prescribed by law and his or her conviction has not been removed or has not become spent as prescribed by law;*
- (5) *incompatibility of the name with the requirements defined by law, where the registration of the name has been refused, and the person has not submitted another name;*

the charter of the commercial organisation with the law shall not be a ground for refusing the state registration of the legal person". In line with Article 36 par 2, non-compliance of the charter of a religious organisation with the requirements listed in Article 8 of the Draft Act should *a priori* not constitute a ground for refusing state registration.⁸⁹ Furthermore, the failure to meet all the registration requirements prescribed by Article 8 par 1, including *inter alia* the non-violation of Article 4 which lists all the limitation grounds, would imply that each deficiency can be sanctioned by the rejection of the application. Such a blanket limitation does not appear to be necessary or proportionate, and must thus be seen as an excessive interference with the freedoms of religion or belief and of association,⁹⁰ all the more given the importance of legal personality for religious or belief communities.

64. As mentioned in the 2015 Joint Guidelines on Freedom of Association, "*the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body*".⁹¹

65. In light of the above, **the Draft Law should be supplemented in that respect and foresee the possibility for religious (or belief) communities to complete the application and rectify any omission.**

66. Finally, as was explained by the Armenian authorities during the visit, the refusal to register a religious organisation is subject to an appeal to a court under the general procedural legislation, which is not under examination in the present Joint Opinion.

2. Rights and Obligations of Religious Organisations

67. Article 5 par 5 of the Draft Law provides that "[a] religious organisation shall have the status of a non-commercial legal person". In that respect, it is not entirely clear whether or not religious organisations are also governed by general rules applicable to other non-commercial organisations.

68. Article 10 of the Draft Law lists the rights of the religious organisations and its paragraph 16 refers to "*other rights provided for by law*". It is questionable to state that only rights "provided for by law" should be enjoyed by religious organisations as legislation cannot foresee all possible forms of manifestation of religious beliefs. It would be preferable **to provide for a non-exhaustive list while indicating the specific rights which religious or belief organisations have, in addition to the rights enjoyed by informal (unregistered) religious or belief groups (see par 33 *supra*) or ordinary non-commercial organisations.**

69. Moreover, some of the key aspects of the right to freedom of religion or belief are not mentioned under Article 10, such as **the right to internal autonomy and the right to self-government** particularly as regards the appointment of religious organisations' leaders. **It is recommended to supplement Article 10 par 1 in that respect.**

70. According to Article 10 par 6 of the Draft Law, religious organisations have the right to "*conduct religious masses, rites and ceremonies in prayer venues and premises belonging*

(6) re-domiciliation has been filed by a person of a state specified in the list of states defined by the Government of the Republic of Armenia, whose legal persons may not be re-domiciled in the territory of the Republic of Armenia.

2. *The incompatibility of the charter of the commercial organisation with the law shall not be a ground for refusing the state registration of the legal person.*

3. *The refusal of the state registration of a legal person on grounds of inexpediency shall be prohibited. [...]*

⁸⁹ *Op. cit.* footnote 3, par 67 (2011 Joint Opinion).

⁹⁰ See e.g., *op. cit.* footnote 38, par 105 (ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*); par 52 et passim (ECtHR, *Gorzelik and Others v. Poland*); and par 31 et passim (ECtHR, *Sidiropoulos and Others v. Greece*).

⁹¹ *Op. cit.* footnote 8, par 160 (2015 Joint Guidelines on Freedom of Association).

thereto, in places of pilgrimage and other places intended for such purposes, as well as in cemeteries, hospitals, retirement homes, places of imprisonment, military units, at the request of the persons who are there and only in a form accessible to them and observing the requirements of the legislation; in other cases, public masses, religious rites and ceremonies shall be conducted in the manner prescribed for assemblies" (emphasis added). It appears from Article 10 par 6 that any religious activity outside specific facilities (and inside these facilities, only if the "requirements of the legislation" are met), are not allowed except if they are conducted "in the manner prescribed for assemblies". First of all, it is understood that the rules "prescribed for assemblies" should apply to the gatherings in public places, but should not govern the use of private premises (belonging to or rented by a religious/belief group). Furthermore, it is unclear whether this would require a notification of any activity carried out in the public space, however small and undistruptive of public order, or whether this would exempt urgent or spontaneous assemblies.⁹² The Venice Commission and the OSCE/ODIHR would like to emphasise that many types of assemblies do not warrant any form of official regulation and that prior notification of assemblies should only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.⁹³ In any case, religious (or belief) organisations should be subject to the same requirements as any other organisers of peaceful assemblies.

71. Article 11 of the Draft Law sets out the "obligations" of the religious organisations. The question is whether the failure to fulfil those obligations may lead to sanctions pursuant to Article 14 par 2 (1) i.e., whether it amounts to a "gross violation of the law".

72. Article 11 par 1 (2) introduces an obligation to provide, at the request of the Ministry of Justice, as the authorised body, the "*documents necessary for the exercising of the powers of authorised body prescribed by law*". The provision is too broad and too vague and does not contain sufficient safeguards to prevent potential harassment or abuse (see a similar criticism expressed in relation to the obligation provided in Article 8 par 5 (9), in par 61 *supra*). As noted in the 2015 Guidelines on Freedom of Association, all regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum State interference in the operations of an association.⁹⁴ Where associations are required to provide documents, **the type and number of documents should be defined and reasonable and associations should be given sufficient time to prepare them.**⁹⁵ Moreover, the legislation should **specifically define in an exhaustive list the grounds for possible inquiries involving requests for documents, which should not take place unless upon suspicion of a serious contravention of the legislation and should only serve the purpose of confirming or discarding the suspicion.**⁹⁶ It is recommended to supplement the Draft Act accordingly.

73. Finally, Article 11 par 1 (4) also provides for a general duty to "*perform other obligations prescribed by law*". Read together with Chapter 6 of the Draft Law, this *de facto* would confer to the public authorities a nearly unfettered right to suspend/liquidate a religious organisation for failures to eliminate any breach of the law whatsoever. At the very least, there should be a relation of proportionality between the breach of the law and the sanction imposed (see also Section H (5) on Suspension and Dissolution *infra*).

⁹² See the Law on Freedom of Assemblies of the Republic of Armenia (2011), available at <<http://www.legislationline.org/documents/action/popup/id/16523>>.

⁹³ See OSCE/ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly (2010, 2nd edition), Guiding Principle 4.1, <http://www.legislationline.org/download/action/download/id/3256/file/FoA_Guidelines_II_Edition_2010_en.pdf>.

⁹⁴ *Op. cit.* footnote 8, par 228 (2015 Joint Guidelines on Freedom of Association).

⁹⁵ *Ibid.* par 231 (2015 Joint Guidelines on Freedom of Association). See also OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), par 209, <<http://www.osce.org/odihr/119633>>.

⁹⁶ *Ibid.* par 231 (2015 Joint Guidelines on Freedom of Association).

74. According to Article 11 par 2 of the Draft Law, "[r]eligious organisations may not be financed by or finance political parties, nor be financed by or finance their spiritual centres located outside of the territory of the Republic of Armenia". The ECtHR has held that "there is no common European standard governing the financing of churches or religions, such questions being closely related to the history and traditions of each country [... and that] [t]he margin of appreciation left to Contracting States in this regard is thus a wide one".⁹⁷ While states may have a variety of legitimate reasons for regulating fund transfers of various types,⁹⁸ it bears recalling that all OSCE participating States have committed to respect the right of religious communities to "solicit and receive voluntary financial and other contributions",⁹⁹ and that this right should be enjoyed without any unjust restriction.¹⁰⁰ OSCE commitments also affirm the importance of preserving religious organisations' ability to affiliate with and maintain contacts with believers, religious faiths and their representatives from other countries.¹⁰¹ The 2004 Joint Freedom of Religion or Belief Guidelines specify that "although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies" and that "[t]he laws should be established in a non-discriminatory manner".¹⁰²

75. In light of the above, while imposing some reporting or disclosure obligations related to foreign funding may be based on legitimate aims such as combatting money-laundering and financing of terrorist organisations, a *blanket* ban on funding of and on being funded by spiritual centres located abroad would not appear to be necessary or proportionate to achieve this aim. Hence, **the blanket prohibition on foreign funding provided in Article 11 par 2 should be reconsidered.**

3. Reporting Obligations of Religious Organisations

76. Article 11 par 1 (3) of the Draft Law requires religious organisations to publish reports as prescribed by law. Article 13 par 2 further details the content of such reports, which should contain *inter alia* information about public events, publications, trainings etc. (Article 13 par 2 (4)). It is unclear for what reasons the authorities need to have this information. Moreover, the obligation to provide such detailed information will be very burdensome, particularly for large and active organisations. It is also doubtful that reporting of such information could be considered necessary in a democratic society in view of the legitimate aims enumerated in Article 9 par 2 of the ECHR. If a religious organisation is involved in illegal activities, it is up to the competent state authority to prevent and sanction such behaviour. **It is recommended to remove Article 13 par 2 (4) while only requiring the publication of purely statistical information and financial results of religious organisations.**

77. More generally, some of the other requirements listed in Article 13 of the Draft Law seem to be unnecessarily burdensome. For instance, the reasons why the state needs information on the expenditures related to the use of monetary funds and other property, as well as those aimed at the objectives stated in the charter are unclear. Moreover, these requirements are much more demanding than the rules that regulate legal personality and reporting by non-religious organisations stated in the Law on Non-Governmental

⁹⁷ ECtHR, *Klein and Others v. Germany* (Applications nos. 10138/11 and 3 others, judgment of 6 April 2017), par 87, <<http://hudoc.echr.coe.int/eng?i=001-172553>>.

⁹⁸ *Op. cit.* footnote 3, par 76 (2011 Joint Opinion). See also *op. cit.* footnote 6, Part II.H (2004 Freedom of Religion or Belief Guidelines).

⁹⁹ OSCE, *Concluding Document of the Third Follow-up Meeting* (Vienna, 4 November 1986 to 19 January 1989), Principle 16.4, <<http://www.osce.org/mc/40881>>.

¹⁰⁰ *Ibid.* Principle 16.4 (1989 Vienna Document).

¹⁰¹ *Ibid.* par 32 (1989 Vienna Document), which provides that OSCE participating States "will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries".

¹⁰² *Op. cit.* footnote 6, Part II.J on page 20 (2004 Freedom of Religion or Belief Guidelines).

Organisations,¹⁰³ which only require an annual report on their activities and the use of property to be submitted for approval by the assembly of the organisation. Without further justification, **the content of the report required under Article 13 par 1 of the Draft Law appears problematic and should be reconsidered and simplified**, and brought in line with the general requirements applicable to the NGOs.

4. Relations between the State and Religious Organisations (Article 12)

78. Article 12 of the Draft Law determines the relations between the State and religious organisations. It provides *inter alia* that the State shall prohibit bodies or persons executing their tasks from carrying out activities within the structure of religious organisations, and that it may not delegate to religious organisations any function of a state administration or local self-government body. The prohibition for persons executing public tasks to carry out any activity within a religious (or belief) organisation appears very broad if it prohibits every civil servant from taking up any position whatsoever in the religious (or belief) community he or she belongs to or if this means that believers cannot become public officials. Some participation of civil servants in the life of their religious (or belief) communities should be possible and **incompatibilities should only concern leadership positions or other positions which could conflict with the public duties and/or jeopardise the neutrality of the public officials concerned.**¹⁰⁴ **It is recommended to amend Article 12 accordingly.**

5. Suspension and Dissolution of Religious Organisations

79. Chapter 6 of the Draft Law deals with suspension and dissolution of religious organisations. As stated in the 2014 Joint Legal Personality Guidelines, in order to be able to comply with the principle of proportionality, “*legislation should contain a range of various lighter sanctions, such as warning, a fine or withdrawal of tax benefits, which – depending on the seriousness of the offence – should be applied before the withdrawal of legal personality is completed.*”¹⁰⁵ This is also relevant with regards to other sanctions, such as suspension or dissolution. In light of this, **Chapter 6 of the Draft Law should be supplemented to include a system of warnings allowing for the possibility to rectify the violation or omission,¹⁰⁶ and more gradual sanctions that should be applied before the sanction of suspension or dissolution is imposed, or, alternatively, a cross-reference to relevant legislation providing such gradual sanctions should be made in the Draft Law.** At the same time, and as already recommended in the 2011 Joint Opinion, **the Draft Law should detail the type of violation of the Draft Law that might incur these various types of sanctions, while prescribing with greater precision which procedure and time limits the authorised body may impose.**¹⁰⁷

80. Article 14 par 3 (1) of the Draft Law defines “a gross violation of the law” as a failure of religious organisation “*to eliminate any detected violations in the manner and within the time limits prescribed by the Authorised Body*” (emphasis added). Similarly, Article 14 par 4 refers to “*[a]ny violation committed at the time of founding the organisation, which if known at the time of founding or state registration, would have the effect that the organisation would not have been founded or registered*” (emphasis added) to constitute an “essential violation”. In all of these cases, the court may suspend the activities of a religious organisation for not more than one year (Article 14 par 5) or until the Authorised Body or religious organisation submits evidence attesting that the grounds for suspension of the activities of the religious organisation have been eliminated (Article 14 par 6).

¹⁰³ See Article 18 par 1 (7) of the Law of the Republic of Armenia on Non-Governmental Organisations, No. HO-22-N, which entered into force on 4 February 2017, <http://www.legislationline.org/download/action/download/id/7180/file/Armenia_law_on_ngos_2016_en.pdf>.

¹⁰⁴ *Op. cit.* footnote 8, par 144 (2015 Joint Guidelines on Freedom of Association).

¹⁰⁵ *Op. cit.* footnote 7, para. 33-34 (2014 Joint Legal Personality Guidelines).

¹⁰⁶ See *op. cit.* footnote 8, par 238 (2015 Joint Guidelines on Freedom of Association).

¹⁰⁷ *Op. cit.* footnote 3, par 84 (2011 Joint Opinion).

81. Such provisions appear neither reasonable nor justifiable in so far as it covers “failure to eliminate any detected violations” or “any violation committed at the time of founding the organisation”, irrespective of the nature and seriousness of the violation. Potentially, it may concern even minor infringements, for instance a failure to timely report a new address, to pay a fine within the set period, etc. As stated in the Joint Guidelines on Freedom of Association, “*any suspension of the activities of an association can [...] only be justified by the threat that the association in question poses to democracy, and should also only be based on a court order or be preceded by judicial review*”.¹⁰⁸ **Article 14 par 3 should be reconsidered. It is recommended to specify more clearly the very limited cases where the suspension is possible,¹⁰⁹ in line with international standards and to explicitly provide that the principle of proportionality has to be respected in the application of these provisions.**

82. Moreover, nothing is said in Article 14 as to the possibility to contest the legality and reasonableness of the order or decision of the Authorised Body. Indeed, only the failure to follow *lawful* orders of the Authorised Body, which are not contested within a certain time-limit or which are confirmed by a court, should be deemed to amount to a “gross violation”. In any case, the suspension should not affect the rights that are enjoyed by all religious or belief groups, even informal or unregistered ones (see par 33 *supra*). **The effect of suspension should be specified in the Draft Law accordingly.**

83. According to Article 15 par 2 of the Draft Law, a religious organisation can be dissolved when (1) it has committed such gross or systematic violations of the requirements of laws which cannot be eliminated through measures taken by the organisation; (2) it commits the violation prescribed by Article 14 par 3 of the Draft Law more than once within a period of one year; (3) the activities of the organisation have been suspended as prescribed by Article 14 of this Law and no judicial act on permitting resumption of the activities of the organisation has been rendered as per Article 14 par 6 or the time limit prescribed by Article 14 par 5 of the Draft Law has expired; (4) grounds for limitations to the manifestation of the freedom of conscience and religion prescribed by Article 4 of the Draft Law have occurred after the registration of the religious organisation.

84. Article 15 par 2 (1) of the Draft Law prescribes that the Ministry of Justice, as the competent authority, may submit an application to the court for dissolving a religious organisation where “*the religious organisation has committed such gross or systematic violations of the requirements of laws which cannot be eliminated through measures taken by the organisation*”. It is welcome that the Draft Law now refers to “gross or systematic” violations, compared to the earlier 2017 version of the Draft Law as reviewed by the OSCE/ODIHR in its 2017 Opinion, thus allegedly covering only cases where the gravity of violations calls for such a sanction.¹¹⁰ At the same time, the Draft Law fails to define such terms. It is not clear whether the notion of “gross violation” within the meaning of Article 15 par 2 (1) of the Draft Law is the same as the notion of “gross violation” under Article 14 par 3 (1), except for the fact that the former is deemed non-rectifiable. If this is indeed the case, **the same concern regarding the broad and vague scope of the provision as raised in par 81 *supra* applies, and it would be recommended to reconsider this provision and to define in a more specific manner which “gross violation” of the Draft Law could potentially lead to dissolution.**

85. Moreover, it is not clear from this provision under which circumstances the religious organisation as such is deemed to be responsible for having committed the violations that may lead to its dissolution. As mentioned in par 49 *supra*, wrongdoings of individual leaders and

¹⁰⁸ *Op. cit.* footnote 8, par 255 (2015 Joint Guidelines on Freedom of Association).

¹⁰⁹ See, *mutatis mutandis*, OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia*, CDL-AD(2016)038, par 51, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)038-e)>. which states: “The suspension of a political party is a particularly invasive and exceptional measure, and should only be imposed in the most serious cases involving particularly grave violations of the rules on donations or on reporting, if other less invasive measures have proven ineffective.”

¹¹⁰ *Op. cit.* footnote 1, par 80 (2017 OSCE/ODIHR Opinion).

members should not be attributed to the religious or belief community but should only give rise to their personal individual criminal, administrative or civil liability. Otherwise, doing so would impose a collective sanction on the community as a whole for actions that should be attributed to specific individuals.

86. In addition, Article 15 of the Draft Law seems to imply that almost any activity that runs counter to the legal order, including relatively minor infringements, can lead to the dissolution of the religious organisation. The scope of the provision is so broad that it does not comply with the principle of proportionality and cannot be deemed to be necessary in a democratic society. The requisite standard for a dissolution/ban of a religious (or belief) organisation is that there should be grave and repeated violations, that no other sanctions can be applied effectively, and that overall, the measure is necessary in a democratic society and proportionate to a legitimate aim.¹¹¹ The provision, in its current wording is not in compliance with the principle of proportionality, as it prescribes the most severe penalty – the prohibition to operate – for any violation provided in Article 4 of the Draft Law. As noted in the 2014 Joint Legal Personality Guidelines, “*considering the wide-ranging and significant consequences that withdrawing the legal personality status of a religious or belief organisation will have on its status, funding and activities, any decision to do so should be a matter of last resort*”. In this context, it is noted that the provision implying that the dissolution of an organisation is a measure of last resort is no longer included in the Draft Law, as opposed to the 2011 version.¹¹² This article specified that dissolution was permissible only “where other measures for eliminating or preventing the violation are exhausted or the violations may not be eliminated otherwise.” Given that this is an important guarantee to ensure the proportionality of decisions on dissolution, **it is recommended to reintroduce such a statement in the Draft Law.**

87. In light of the above, **the Draft Law should be more specific on the violations of the Draft Law that can lead to dissolution and their authors, set the threshold for dissolution much higher, and should also include a system of warnings and more gradual sanctions that should be applied before imposing the sanction of dissolution, while explicitly providing that the principle of proportionality has to be respected in the application of these provisions.**

88. Finally, as was explained by the authorities during the visit, it is understood that the religious organisations have effective remedies to contest sanctions applied under the Draft Law, including the right of appeal to a higher court, under the relevant procedural legislation, which is not under examination in the present Joint Opinion.

6. Transitional Provisions and the Obligation to Re-register as Religious Organisation

89. The Final and Transitional Provisions provide that “[w]ithin a period of six months following the entry into force of this Law, religious organisations must bring their charters into conformity with the requirements of this Law”. This seems to provide a relatively reasonable time to comply with Article 8 par 5 of the Draft Law. At the same time, the transitional provisions should not be interpreted in effect as requiring re-registration of existing religious organisation. Indeed, in cases where new provisions regulating religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities and should not require reapplication for legal personality according to the newly-introduced criteria unless the state can demonstrate that such restrictions are necessary and proportionate to a legitimate aim.¹¹³ Hence, the new requirements (including the minimal membership) should not be applicable to the currently existing religious

¹¹¹ See *op. cit.* footnote 2, par 99 (2010 Interim Joint Opinion). See also *op. cit.* footnote 86, par 92 (OSCE/ODIHR-Venice Commission 2012 Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan).

¹¹² *Op. cit.* footnote 3, par 86 (2011 Joint Opinion).

¹¹³ *Op. cit.* footnote 7, par 36 (2014 Joint Legal Personality Guidelines).

organisations and there should be a strong presumption of compliance of the existing religious organisations with the provisions of the new law. **This should be specified in the Draft Law.**

I. Supervision over the Activities of Religious Organisations

90. Article 16 of the Draft Law refers to some forms of supervision by the Authorised Body in case of complaints submitted by natural or legal persons regarding the unlawful activities of religious organisations (Article 16 par 1 (1)), “violations committed by a person or religious organisation” reported by a state or local self-governing body (Article 16 par 1 (2)) or where the reports submitted by the religious organisation contains information about violations of legal requirements (Article 16 par 1 (3)).

91. First, it is unclear why Article 16 par 1 (2) refers to the violation committed by a person, as this may imply the violations committed by a leader of a religious organisation or one of its members. As mentioned in par 49 *supra*, wrongdoings of individual leaders and members should not be attributed to the religious or belief community unless they are imputable to the organisation i.e., when they are a direct result of the orders of its leaders, or are specifically prescribed by the doctrine, beliefs or teachings of the religious or belief organisation and its leaders encourage or tolerate such illegal practices. It would be advisable **to refer to the “representative of the religious organisation” instead.**

92. Second, Article 16 contains very little information about procedural rights of religious organisations in that context. As mentioned in par 79 *supra* and as recommended in the 2011 Joint Opinion,¹¹⁴ **religious organisations should be afforded reasonable procedures and time limits for eliminating detected violations and the Draft Law should be supplemented in that respect.** Moreover, it is unclear whether some sanctions may be applied by the Authorised Body independently, or with the approval of a “competent body”, and whether this “competent body” is a court, or another entity. **This should be clarified in the Draft Law.**

93. Article 16 par 2 of the Draft Law refers to the possibility for the Authorised Body to “*apply to the competent body for receiving an opinion on the issues indicated by the Authorised Body*”. It is unclear which body would be competent in that respect and on which subject the Authorised Body could seek its opinion. As mentioned in pars 57 and 59 *supra*, the rights to freedom of religion or belief, and to freedom of expression, exclude any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.¹¹⁵ Hence, such an opinion should not concern the legitimacy of the said beliefs and/or activities.

J. Recommendations Related to the Process of Preparing and Adopting the Draft Law

94. Finally, it is understood that the Minister of Justice has carried out public consultations, both on line¹¹⁶ and in person, when preparing the earlier 2017 version of the Draft Law that was reviewed by the OSCE/ODIHR, which is to be welcomed. In the Rule of Law Checklist the Venice Commission stressed that the public should “have meaningful opportunity to provide input” in the process of law-making.¹¹⁷ In several opinions the Venice Commission also called for “prior appropriate information and communication on the Bill, coupled with consultations with

¹¹⁴ *Op. cit.* footnote 3, par 7, Recommendation R (2011 Joint Opinion).

¹¹⁵ See 2009 OSCE/ODIHR Comments on the Draft Amendments to the Legal Framework on Religious Freedom and Religious Organisations of Kazakhstan, par 60.

¹¹⁶ The Draft Law was subject to online public consultations for two months, from 1 June 2017 to 31 July 2017, see <<https://www.e-draft.am/projects/246>>.

¹¹⁷ CDL-AD(2016)007, par 50 (p. 13)

all the parties concerned”.¹¹⁸ The OSCE commitments require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.¹¹⁹ The contributions that were received during the online consultations concerning the 2017 version of the Draft Law were all published on the website of the Ministry of Justice,¹²⁰ where it is also indicated to which extent the comments/input received on these occasions were taken into consideration and have been reflected in a revised Draft Law¹²¹ – which is positive and represents good practice. At the same time, it is unclear whether the same has been done for comments and input received during in-person consultations.

95. The Armenian legislator is encouraged to continue inclusive, extensive and effective consultations, including with representatives of various religious or belief communities, regarding the Draft Law, at all stages of the law-making process up until adoption.

¹¹⁸ See CDL-AD(2017)022, Hungary - Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education, par 55

¹¹⁹ Moscow Document of 1991, par 18.1

¹²⁰ See <<https://www.e-draft.am/projects/246/digest?page=1>>.

¹²¹ See <<https://www.e-draft.am/projects/246/digest>>.