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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON FREEDOM OF CONSCIENCE AND
RELIGIOUS ENTITIES
OF GEORGIA

and Explanatory Note

Draft

THE LAW OF GEORGIA

ON FREEDOM OF CONSCIENCE AND RELIGIOUS ENTITIES

I. General provisions

Article 1. The scope of application of the law

The present law shall secure freedom of conscience, religion and belief guaranteed by the Constitution of Georgia, shall govern the legal status of religious entities and the relations related to their activities.

Article 2. Legislation on freedom of conscience, religion and belief and religious entities

1. The legislation on freedom of conscience, religion and belief and religious entities shall be composed of the Constitution of Georgia, international treaties and agreements, the constitutional agreement of Georgia, the present law, other legislative acts of Georgia and the normative acts issued in accordance with the present law.
2. The acts issued by a religious entity or its management (leading) bodies (officials), which include the norms deriving from a religious doctrine or those elaborated to the religious end, shall not pertain to the legislation of Georgia and shall not be secured by virtue of the state compulsion.

Article 3. The guarantees for freedom of conscience, religion and belief

The principle guarantees for freedom of conscience, religion and belief shall be:

- a) equality of citizens irrespective their attitude towards religion;
- b) independence of religious entities from the state;
- c) equality of religious entities before the law;
- d) legislation securing freedom of conscience, religion and belief and providing for responsibility for its violation.

Article 4. Freedom of conscience, religion and belief

1. Freedom of conscience, religion and belief shall be guaranteed in Georgia. Each legally capable citizen from the age of 14 shall be free in choice of religion and shall have the right to profess his/her religion either alone or in community with others or not to profess any of the religions, change his/her religion or refuse to profess, manifest freely his/her religion and act in accordance with it.

2. The foreign citizens and stateless persons residing on the territory of Georgia enjoy freedom of conscience, religion and belief in the same manner as the citizens of Georgia and shall bear equal responsibility as determined for the citizens of Georgia for violation of the rules introduced by the legislation in this field.
3. Freedom of conscience, religion and belief shall be subject only to such limitations as are prescribed by the Constitution and law and are necessary for the protection of constitutional structure, public safety and order, equality, life and health and the rights and freedoms and legitimate interests of the citizens of Georgia and other persons.
4. To force an individual to express his/her opinion about his/her attitude towards religion, divine service, religious rites and his/her activities in religious entities shall be impermissible save in the cases prescribed by law.
5. Religious indoctrination of persons aged under 14 and their involvement in religious entities without their wish and the consent of their parents (legal guardians) shall be impermissible.
6. Involvement of persons with limited legal capacity in religious entities without the consent of their legal representative shall be impermissible.
7. Undermining a person's conscience, religion and belief by exerting psychological or physical violence upon him/her or by offering material benefit.
8. Secrecy of confession shall be protected by law. An ecclesiastic shall not be held responsible for refusal to testify on the facts confided to him through confession.

Article 5. Equality of citizens irrespective of their attitude towards religion

1. Citizens of Georgia, foreign citizens and stateless persons residing on the territory of Georgia are equal before the law irrespective their attitude towards religion. This equality refers to all fields of a political, economic, social and cultural life.
2. The documentation due to be issued or received in a mandatory manner, as well as the documentation submission of which to an administrative body is compulsory, shall not include the indication to a person's religious belief.
3. Either granting of any privileges or limitation, persecution or application of any other forms of discrimination on the ground of religious believes shall be impermissible.
4. Instigation of feud and hatred on the religious ground, or affront of individuals' believes, sacred, religious and cult places, items or premises shall be impermissible
5. No one shall be entitled to refuse performance of his/her constitutional obligations on the ground of religious believes save in the cases prescribed by law, when an obligation of a citizen is substituted by another.

Article 6. State and religious entities

1. Religious entities shall be separated from the state. Rendering religious interpretation of a religious doctrine by an act of state or a public official shall be impermissible.
2. Religious entities shall not take part in the activities of the state bodies and the bodies of local self-government, other state institutions and organisations.
3. The state shall not interfere in the activities of a religious entity save these activities contradict the requirements of the legislation.

4. The state shall facilitate introduction of civil tolerance amongst individuals and religious entities of various beliefs, protect the rights and interests of the religious organisations operating in accordance with the law, provide assistance in observance of procedures under laws in terms of restoration and protection of the historical and cultural monuments being in the possession of religious entities.
5. With the view of securing independence and inter-separation of the state and religious entities the latter
 - a) shall be established and shall operate in accordance with its religious principles and institutional, including hierarchical structure, shall elect, appoint, and replace the persons at the service of the religious entity in accordance with its statute;
 - b) shall not exercise the functions of a state body or a body of local self-government.
 - c) shall not participate in the activities of political parties and shall not provide financial or other support to them.
6. Separation of religious entities from the state shall not limit the rights of the individuals professing the relevant religion to take part equally with other citizens in ruling of the state, elections of the state bodies and bodies of local self-government, in the activities of political parties, movements and other entities of citizens.
7. The individuals at service of the religious entities shall have the right to participate in political activities equally with all other citizens.

Article 7. State and the Apostolic Autocephalous Orthodox Church of Georgia

1. The Orthodox Christianity manifests the traditional religion of Georgia. The State recognizes the special role of the Apostolic, independent, Orthodox Church of Georgia in the history of Georgia and its independence from the state.
2. The relations between the state and the Apostolic, independent, Orthodox Church of Georgia shall be determined by the Constitutional Agreement. The Constitutional Agreement shall be compatible with the universally recognized principles and norms of international human rights law.

Article 8. System of education and religious entities

1. The state educational system of Georgia shall be secular.
2. Each person shall be entitled to receive religious education at non-state, non-secular religious establishment.
3. The religious entities shall be entitled in accordance with their statute, the procedure prescribed by law to institute religious educational establishments or establish the groups to teach the religion and to use the premises being in their possession and usage to the aforementioned end.
4. Parents (legal guardians) shall be entitled to ensure with due respect of the law religious and moral upbringing of an under age child in conformity with their own religion and convictions, taking into consideration freedom of conscience and religion of the child.

5. Any person in the service of religious education of citizens shall be obliged to teach his/her students with the spirit of tolerance and respect towards the adherents of other religions and atheists.
6. The disciplines of religious-cognitive, religious-philosophical character and those reviewing religion may, in the form of an optional subject, be added to the educational institution's curriculum approved by the Ministry of Education of Georgia.

II. Religious entities

Article 9. Religious entity

1. A religious entity shall be a voluntary entity of full age citizens or stateless persons permanently residing on the territory of Georgia, holding the same religious beliefs; the entity shall be formed by not less than fifty individuals with the view of common professing and disseminating religion and shall be registered in accordance with the procedure prescribed by this law.
2. Formation and activities of religious entities shall be subject only to such limitations as are prescribed by law and are necessary in the interests of public safety, for the prevention of disorder or crime, for the protection of health or morals, or the rights and freedoms of others.
3. A religious entity registered in accordance with the procedure prescribed by the legislation shall be deemed a legal person of public law.

Article 10. Statute of a religious entity

1. A religious entity shall operate on the basis of its statute, which shall be adopted by the founders indicated in paragraph 1 of Article 9 of the present law.
2. A statute of a religious entity submitted for registration shall include the following requisites:
 - a) the title of the religious entity, the religion it claims to adhere, the domicile, in case of being in the composition of the entity of religious organisations, the title of the latter entity as well;
 - b) the objectives, tasks and the principle directions of the activities of the religious entity;
 - c) Fundamental canonic law norms of the religious entity, with these norms fully stipulated;
 - d) data on the outlines of the doctrine of the religion and the relevant practice, *inter alia*, a brief historical background of the religion and the entity in question, the forms and methods of its activities, the attitude towards the family and marriage issues, education, the peculiarities of the attitude of the adherents towards health, limitation of the civil rights and obligations of those in the service of participating in the entity.
 - e) the structure of the religious entity and the management bodies, the procedure of their formation and competence;
 - f) data on other units being in the composition of the structure of the entity;

- g) the resources for formation of monetary and other pecuniary funds and in case of liquidation the conditions (the procedure of division) for its use.
 - h) the procedure for making changes and addenda to the statute (by-law);
 - i) the procedure for re-organisation and liquidation;
 - j) other data pertaining to the peculiarities of the activities of the religious entity.
3. The title of the religious entity shall include the data on the religion it professes. The religious organisation is obliged to indicate its full title while discharging its activities.

Article 11. Public registration of the religious entities

1. The Ministry of Justice of Georgia shall be in charge of the public registration of the religious entities
2. The citizens forming the religious entities shall apply to the Ministry of Justice within a month after holding a meeting (conference) of the founders (parish).
3. The application shall enclose:
 - a) The minutes of the meeting (conference) of founders of the adherents (parish);
 - b) the statute approved by a notary;
 - c) the list of the founders (with minimum 100 signatures) indicating family name, name, citizenship, date of birth, place of residence;
 - d) documentation proving the fact of composition of the religious organisation within the religious entity issued by the leading centre of the entity.
 - e) the paper proving payment of the registration fee.
4. In case the headquarters of the management body of the entity is abroad, apart from the mentioned documentation the statute of the foreign religious entity shall be submitted as well in due procedure or other constitutional documentation, duly approved by the public body of the country where this entity is.
5. An application for public registration shall be considered within a month after the submission of the whole package of the documentation. The registering body shall be entitled to extend the term for consideration to three months to conduct state religious expertise. In case the decision is not adopted in this term the registration of the religious entity shall be deemed accomplished.
6. A religious entity shall acquire the competence of a legal person from the day of the registration.
7. If it decides to register the religious entity the registering body shall issue a certificate of the established sample on registration of the religious entity in the public register.
8. The registration of amendments or addenda to the statute of the religious entity shall be effected in the same manner as prescribed for the registration of the religious entity.

Article 12. The registration data

1. The data on the registration of a religious entity shall be entered in the register.

2. The following data shall be entered into the registration documentation of a religious entity:
 - a) the title and domicile of the religious entity;
 - b) the identity of the founders;
 - c) the objectives and directions of the activities;
 - d) the data of adoption of the statute;
 - e) the title and domicile of the representation (branch);
 - f) the date of the registration of the legal person.
3. The registration date shall be public except for the personal data on the founders. Any person may have the access to the registration data and request for written extracts. Granting access to personal data on the founders shall be effected in accordance with the legislation on granting access to secret information.

Article 13. The grounds for refusal of registration of a religious entity

1. A religious entity may be refused to grant public registration if:
 - a) the requirements of paragraphs 2 and 3 of Article 11 of the present law are violated by the applicants;
 - b) its objective and activity are in breach of the Constitution of Georgia and other legislative acts;
 - c) the statute and other documentation submitted for registration do not correspond to the requirements of the legislation in force or the information provided for by them is not correct.
 - d) another religious entity is already registered in the public register under the same title.
2. In case of refusal to grant public registration the applicant shall be notified in writing of the motivated refusal within a month after following the date of application.
3. Refusal to grant public registration may be appealed before the court.

Article 14. Representation (branch) of a religious entity

1. A religious entity shall be entitled to establish its representation (branch), which wholly or partially represents or discharges the function of the former.
2. A representation (branch) shall not be a legal person. It conducts its activities on the ground of the statute approved by the religious entity.
3. The Ministry of Justice of Georgia shall be in charge of the registration of a representation (branch) of a religious entity, *inter alia*, foreign entities.
4. Registration of a representation (branch) of a religious entity shall be effected on the ground of a written application of a founder. The application shall enclose:
 - a) the decision of the management body of the religious entity on establishment of the representation (branch);
 - b) a copy of the statute of the religious entity approved by a notary;

- c) a copy of the documentation on registration of the religious entity approved by a notary;
 - d) the statute of the representation (branch);
 - e) the documentation proving the payment of registration fees.
5. The Ministry of Justice of Georgia shall adopt the decision on registration of a representation, branch within a month after submission of the documentation necessary for registration. If the decision is not adopted within this term the registration of the representation shall be deemed effected.

Article 15. Termination of the activities of a religious entity

1. The activities of a religious entity may be terminated:
 - a) by the decision adopted by the general meeting (conference) of the adherents (parish) of the religious entity, in case of its reorganisation or liquidation;
 - b) by the court judgment, if the activities of the religious entity are in breach of the statute or the requirements of the legislation in force.
2. In case of existence of the relevant grounds, the registering body, the Prosecutor's office of Georgia, the bodies of local government and self-government as well as, when so prescribed by law, other persons shall have the right to apply to the court requesting termination of the activities of the religious entity.
3. The legal capacity of a liquidated religious entity as of a legal person shall be terminated and the property of the entity shall be divided in accordance with the statute and the legislation in force.

Chapter III. Conditions of activities of a religious entity

Article 16. Internal structure of a religious entity

The religious entities discharge their activities in accordance with their internal structure, if the aforementioned is not in breach of the legislation in force and the statute of the religious entity.

Article 17. Religious rites and the rituals of divine service

1. Citizens and religious entities shall be entitled to unimpeded administering of divine service in praying houses and the territories belonging to them.
2. The citizens shall be entitled to request for and conduct rituals of divine service in accordance with the procedure prescribed by law in the military units, medical establishments, establishments for the old and invalids, penitentiary establishments and in other places as prescribed by law. The administration of the aforementioned establishments are obliged to facilitate enjoyment of this right by the citizens of Georgia if it does not prevent from normal functioning of the establishments.
3. Divine service in public and other religious rites shall be conducted in accordance with the procedure prescribed by the legislation on assemblies and manifestations.

4. For the purposes of unimpeded administering of divine service, by decision of the religious entity, the list of its servants (representatives) shall be submitted to the Ministry of Justice of Georgia.

Article 18. Religious literature and the cult items

1. A religious entity shall have the right to issue, purchase or disseminate religious literature, printed- audio- and video materials and cult items in accordance with the legislation in force.
2. Issue of periodic and other religious literature, which is not related to the divine service, shall be accomplished in accordance with the legislation.
3. The literature, printed- audio- and video materials issued by a religious entity shall be marked with the full title of the entity.

Article 19. Charitable and cultural activities, international relations of a religious entity

1. The religious entities shall have the right to run charitable activities both directly and through unions (associations) and foundations. They shall have the right to establish cultural-educational bodies and the bodies of mass-media.
2. The religious entities shall be entitled to open up international contacts and participate in international assemblies.

Article 20. Labour activities, social protection and insurance in religious entities

1. The labour activities of citizens in a religious entity, its companies and establishments shall be conducted in accordance with the labour legislation of Georgia.
2. The citizens serving in a religious entity (including the ministers of religion) shall be protected socially in accordance with the legislation in force.

IV. Property of a religious entity and its entrepreneur (economic) activities

Article 21. Entrepreneur (economic) activities of a religious entity

1. A religious entity shall have the right to run subsidiary entrepreneur activities in accordance with a procedure prescribed by law.
2. A religious entity shall have the right to establish companies and non-profit legal persons enjoying the organisational-legal form as prescribed by the legislation.

Article 22. Property of a religious entity

1. A religious entity may own any property, which is not proscribed by law and is necessary to fulfil the tasks provided by the statute.

2. The funds of the religious entity shall be formed by virtue of voluntary contributions and donations, organisations of lectures, exhibitions, income gained from subsidiary entrepreneur activity and other legal means.
3. A religious entity shall be entitled to receive funds, grants and other property from either Georgian or foreign physical/legal persons according to the procedure prescribed by the legislation to fulfil the objectives and tasks determined in its statute.
4. A religious entity shall be obliged to maintain control of financial and economic activities and bookkeeping.
5. Religious entities conduct construction and restoration of the cult premises being historical and cultural monuments of Georgia in agreement with the state body of protection of monuments.

Article 23. Taxation of a religious entity

A religious entity shall pay taxes and duties in accordance with the procedure and amount prescribed by law.

Article 24. Disposal of the property of a religious entity in case of termination of its activities

1. In case of termination of activities of a religious entity the property having been used by it shall be returned to its owners.
2. In case of termination of activities of a religious entity the property owned by it shall be disposed of in accordance with the procedure prescribed by the entity's statute and the legislation in force.

Article 25. Responsibility incurred for violation of the law

The violation of the present law shall entail responsibility in accordance with the legislation in force.

V. Transitional and concluding provisions

Article 26. Implementing normative acts to be adopted

Within a month after promulgation of the present law the Orders of the Minister of Justice of Georgia shall be drafted and issued:

- a) "On Approval of the Procedure of Maintenance of the Registration of Religious Entities and the State Register of Religious Entities";
- b) "On Approval of the Forms of State Register of a Religious Entity and the Registration Certificate of a Religious Entity".

Article 27. Invalid normative acts

In terms of enforcement of the present law the following normative acts shall be considered to be invalid:

- a) The Ordinance of 16 March 1977 passed by the Presidium of the Higher Council of the Soviet Socialist Republic of Georgia “About Approval of the Statute on Religious Entities in the SSR of Georgia”;
- b) Resolution # 683 of 8 September 1980 passed by the Council of Ministers of the Soviet Socialist Republic of Georgia “About Approval of the Statute on the Consultative Council Operated by the Staff Office of the Plenipotentiary of the Soviet Socialist Republic of Georgia of the Council of Religious Affairs of the Council of Ministers of the USSR and Approval of the Composition of this Council”.
- c) Resolution #356 of 18 May 1980 passed by the Council of Ministers of the Soviet Socialist Republic of Georgia “About Approval of the Statute of the Commissions Furthering Control over Observance of the Legislation on Religious Cults, Operating by Executive Committees of the District- and City Councils of People’s Deputies”.

Article 28. Enforcement of the law

1. The present law, except for Article 26, shall enter into force with a month after promulgation.
2. Article 26 of the law shall enter into force upon promulgation.

President of Georgia

Eduard Shevardnadze

EXPLANATORY NOTE

On the Draft Law of Georgia “On Freedom of Conscience and Religious Entities”

Initiation of the draft law has been preconditioned by the existing gap in the legislation and the urgent necessity of legislative regulation of the issue in question with the view of avoiding disregard of the constitutional guarantees of freedom of conscience and belief under the pretext of legislative lacuna. In addition, it was stipulated in order to secure protection of human rights and freedoms as well as public and state interests.

During the soviet period, activities of religious entities were regulated in accordance with the procedure established by the Resolution “On Religious Entities in the Soviet Socialistic Republic of Georgia” that was approved by the Ordinance of 16 March 1977 passed by the Presidium of the Higher Council of the Soviet Socialistic Republic of Georgia. Under the aforementioned Resolution, the Council of Religious Affairs operating within the Council of Ministers of the USSR registered the religious entities. There also existed Staff Office of the Plenipotentiary of the Soviet Socialistic Republic of Georgia of the Council of Religious Affairs of the Council of Ministers of the USSR operated by the Council of Ministers of Georgia. The Staff Office conducted supervision and due control in the Republic over observance of the legislation on religious cults and the process running within the religious organisations. The supervision and control were effected by virtue of a Consultative Council (set up under Resolution #683 of 8 September 1980 passed by the Council of Ministers of the Soviet Socialistic Republic of Georgia) and the Commissions furthering control over observance of the legislation on religious cults, operating by executive committees of the District- and City Councils of People’s Deputies (set up under Resolution #356 of 18 May 1980 passed by the Council of Ministers of the Soviet Socialistic Republic of Georgia).

Due to the nonexistence of the above-mentioned state bodies and factual abrogation of the relevant legislative acts, one can say that the processes in this regard seem to be uncontrollable. Some religious associations, in fact, conduct their activities illegally, that on numerous occasions becomes a ground for controversies between the representatives of different confessions. At the same time, lack of legal status creates a number of problems for the activities of religious confessions themselves: for instance, they do not enjoy the right to property, they can not either buy or rent property. But no subject can exist and function without such fundamental rights and naturally, intentionally or not, provokes them to violate the current legislation in this or that form. Under these circumstances, the state is obliged to provide them with conditions for function by establishing relevant legislative norms.

The present draft law is aimed at setting up fundamental legal basis in the religious field, along with the Constitutional Agreement between the State and the Apostolic Autocephalous Orthodox Church of Georgia, in order to provide every religious confession in the country with the opportunity to exist and function within the bounds of the law.

The fundamental value of the present draft law is the principles of securing freedom of conscience, religion and belief and their legislative realization. In compliance with the constitutional guarantees of freedom of conscience and belief, the draft law establishes equality of citizens and obligation of protection of their rights irrespective of an individual’s attitude towards religion or various religious trends and defines those basic principles that secure realization of the freedom of conscience, religion and believes. The draft law provides

for legal mechanisms of an individual's protection from illegal or forceful influence on the part of some religious representatives.

The draft law grants every citizen freedom to opt for religious belief, which implies the right of an individual to profess his/her religion either alone or in community with others or not to profess any of religions, change his/her religion or refuse to profess, manifest freely his/her religion and act in accordance with it, the right to unimpeded administering of divine service in praying houses and the territories belonging to them. The draft law prohibits instigation of feud and hatred on the religious ground, or affront of individuals' believes sacred, religious and cult places, items or premises.

In accordance with the constitutional provisions, the draft law defines the interrelation between the State and the Orthodox Church of Georgia. The State recognizes the special role of the Georgian Orthodox Church in the history of Georgia and states that the Orthodox Christianity is the religion manifesting the traditional religion of Georgia.

The draft law governs the issues pertaining to formation and functioning of the religious entities, determines the legal status of a religious entity, the procedure of its establishment and registration and the grounds of interrelation between the State and the religious entities.

According to the draft law, a religious entity is a voluntary entity of full age citizens or stateless persons permanently residing on the territory of Georgia, holding the same religious believes established with the object of common professing and disseminating religion. The necessary precondition for the activities of the religious entities is the obligation of registration according to the procedure established by the law. The religious entities undergo the registration in the Ministry of Justice. The requisites for registration of the religious entities are entered on the register, which is public [except the personal data of the founders] and accessible to everybody.

The religious entities are separated from the state. They do not take part in elections of state bodies and the bodies of local self-government as well as in the activities of political parties and do not provide financial support to them. The state promotes introduction of religious tolerance amongst individuals and religious entities of various confessions, protect the rights and interests of the religious organisations operating in compliance with law. It is authorised, in accordance with established legal procedures, to render religious assistance in protecting and restoring historic and cultural monuments the latter are in possession of.

The draft law defines the conditions for activities of religious entities. The religious entities discharge their activities in accordance with their hierarchical and institutional organisation defined in their statute if the aforementioned does not contradict the legislation in force. The religious entities enjoy cultural-educational, social, entrepreneur and other rights in other fields defined by legislation. The right to property is also guaranteed to them, which implies that they may own any property not prohibited by the legislation and necessary for fulfillment of the tasks defined by the statute.

The draft law also provides for the grounds for termination of the activities of the religious entities. A religious entity may terminate its activities on the basis of the decision adopted by the general meeting of the adherents (parish) of the religious entity, as well as in case of its reorganisation or liquidation, or on the basis of a court judgement, if the activities of the religious entity are in breach of its statute and the requirements of the legislation in force.

The draft law attaches particular significance to issues of religious education, educational system and approach of religious entities as well as religious upbringing of the young generation. It is defined that the educational system of Georgia is defined as secular. Religious education may be received at non-state (non-secular) religious educational establishments. The religious entities are enabled to institute religious educational establishments according to the procedure provided by law and to use the premises being in their possession and usage to the aforementioned end.

According to the draft law, parents (tutors, guardians) are entitled to ensure religious and moral education of their children in conformity with their own religion and convictions. The disciplines of religious-cognitive, religious-philosophical character and those reviewing religion might be added as an optional subject to the curriculum of a state educational institution, that is approved by the Ministry of Education. Furthermore, any person being in the service of religious education of citizens is obliged to teach his/her students with the spirit of tolerance and respect towards the adherents of other religions and atheists.

While developing the present draft, the legislative experience and practical problems of solving the issue accumulated by other countries have been studied and analyzed.