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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**PRELIMINARY DRAFT JOINT GUIDELINES**

**ON**

**THE LEGAL PERSONALITY**  
**OF RELIGIOUS OR BELIEF COMMUNITIES**

**by**  
**THE VENICE COMMISSION**  
**and**  
**THE OSCE/ODIHR**

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## Part I. The freedom of religion or belief and permissible restrictions in general

1. The freedom of religion or belief is a fundamental right, recognized in international instruments<sup>1</sup> and in OSCE commitments.<sup>2</sup> International standards specify that everyone will have the right to freedom of thought, conscience and religion.<sup>3</sup> This right includes the freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance.<sup>4</sup>

2. The terms "religion" and "belief" are to be broadly construed.<sup>5</sup> A starting point for defining the application of freedom of religion or belief must be the self-understanding of individuals and organizations in the field of religion or belief, which can be very diverse.<sup>6</sup> The freedom of religion or belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views.<sup>7</sup> The freedom of religion or belief protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.<sup>8</sup>

3. The freedom of religion or belief is closely linked to other human rights and fundamental freedoms, such as, in particular, the freedom of expression,<sup>9</sup> the freedom of assembly and association<sup>10</sup> and the right to non-discrimination.<sup>11</sup>

4. The freedom to have or to adopt a religion or belief of one's choice, which includes the right to change one's religion or belief<sup>12</sup>, may not be the subject of any limitations.<sup>13</sup>

<sup>1</sup> International Covenant on Civil and Political Rights (ICCPR), article 18; European Convention on Human Rights (ECHR), article 9; American Convention on Human Rights (ACHR), article 12; EU Charter of Fundamental Rights, Article 10.

<sup>2</sup> Vienna 1989, para. 11, 16, 17 and 32; Copenhagen 1990, para. 9.4; Budapest 1994, para. 27; Maastricht 2003, para. 9.

<sup>3</sup> ICCPR, article 18 (1); ECHR, article 9 (1); ACHR, article 12 (1), Copenhagen 1990, para. 9.4 ; EU Charter of Fundamental Rights, Article 10.

<sup>4</sup> ICCPR, article 18(1); ECHR, article 9 (1); ACHR, article 12 (1) Copenhagen 1990, para. 9.4.

<sup>5</sup> UN Special Rapporteur Report on Recognition, UN Doc. A/HRC/19/60 ("UN SR Report on Recognition"), , para. 38; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 34.

<sup>6</sup> UN SR Report on Recognition, para. 31.

<sup>7</sup> United Nations Human Rights Committee, General Comment 22 (U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; CDL-AD(2011)028 *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, paras. 22-24; CDL-AD(2010)054 *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 by the Venice Commission and OSCE/ODIHR*, para.43; ECtHR 15 June 2010, *Grzelak v. Poland*, appl. no. 7710/02, para. 85; ECtHR 25 May 1993, *Kokkinakis v. Greece*, appl. no. 14307/88, para. 31, and ECtHR 18 February 1999, *Buscarini and Others v. San Marino* appl. no. 24645/94, para. 34.

<sup>8</sup> United Nations Human Rights Committee, General Comment 22 (U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; *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 by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para.46-47.

<sup>9</sup> See e.g. *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, UN Doc. A/HRC/2/3, paras. 40-43.

<sup>10</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, appl. No. 30985/96, para. 62.

<sup>11</sup> CDL-AD(2012)004 *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, para. 19.

<sup>12</sup> ECHR, article 9 (1); Copenhagen 1990, para. 9.4; United Nations Human Rights Committee, General Comment 22, para. 5; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022 adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 31.

5. The freedom to manifest the freedom of religion or belief may be limited only if each of the following criteria is fulfilled:

- A. The limitation is prescribed by law;<sup>14</sup>
- B. The limitation has the purpose of protecting public safety, (public) order, health, or morals<sup>15</sup> or the fundamental rights and freedoms of others;<sup>16</sup>
- C. The limitation is necessary for the achievement of one of these purposes and proportionate to the intended aim.<sup>17</sup>
- D. The limitation is not imposed for discriminatory purposes or applied in a discriminatory manner.<sup>18</sup>

6. Limitations must not be applied in a manner that would vitiate the freedom of religion or belief.<sup>19</sup> In interpreting the scope of permissible limitation clauses, states should proceed from the need to protect the rights guaranteed under international instruments.<sup>20</sup>

7. For a limitation to be “prescribed by law”, the legal provision outlining this should be both adequately accessible and foreseeable. This requires that it should be formulated with sufficient precision to enable individuals or communities— if need be with appropriate advice – to regulate their conduct. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interference by public authorities with human rights and fundamental freedoms. In matters affecting fundamental rights it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.<sup>21</sup> It also requires that limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, which are so vague that they do not give fair notice of what the law requires, or which allow arbitrary enforcement.<sup>22</sup>

8. Limitations may be applied only for those purposes for which they were prescribed in the provisions with regard to the freedom of religion or belief, and are not allowed on grounds not specified in international instruments, even if these grounds would be allowed as restrictions to other human rights or fundamental freedoms.<sup>23</sup>

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<sup>13</sup> ICCPR, article 18 (2); ACHR, article 12 (2); UN Human Rights Committee, General Comment 22, para. 8; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), paras. 28 & 30.

<sup>14</sup> ICCPR, art. 18 (3); ECHR, art. 9 (2); ACHR, art. 12 (3); Copenhagen 1990, para. 9.4.; ECtHR 30 June 2011, *Association les Témoins de Jehovah v. France*, appl. No.8916/05, para. 66-72.

<sup>15</sup> The United Nations Human Rights Committee has observed that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition” (UN Human Rights Committee, General Comment 22, para. 8).

<sup>16</sup> ICCPR, art. 18 (3); cf. ECHR, art. 9, which limits the number of grounds for limitations to “the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”; cf. ACHR, which limits the number of grounds for limitations to “public safety, order, health, or morals, or the rights or freedoms of others”.

<sup>17</sup> ICCPR, art. 18 (3); art. 12 ACHR; cf. ECHR, art. 9 (2) (“necessary in a democratic society in the interest of...”).

<sup>18</sup> United Nations Human Rights Committee, General Comment 22, para. 8.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> ECtHR 26 October 2000, *Hasan & Chaush v. Bulgaria*, appl. No. 30985/96, para. 84; *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 35.

<sup>22</sup> United Nations, Economic and Social Council (UN-ECOSOC), *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (UN-ECOSOC Siracusa Principles), U.N. Doc. E/CN.4/1985/4, Annex (1985) at paras. B(i) 15-18; CDL-AD(2008)032 *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, para. 6.

<sup>23</sup> United Nations Human Rights Committee, General Comment 22, para. 8.

9. Limitations must be necessary in the light of grounds for restriction specified in the provisions on freedom of religion or belief. For a limitation to be necessary it must be directly related and proportionate to the specific need on which it is predicated:<sup>24</sup> the interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued.<sup>25</sup> The concept of a 'pressing social need' is to be narrowly interpreted, which means that limitations should not just be 'useful' or 'desirable', but 'necessary'.<sup>26</sup> For an interference to be proportionate, there must be a rational connection between a public policy objective and the means employed to achieve it, there has to be a fair balance between the demands of the general interest and the requirements of the protection of an individual's fundamental rights, the justification for the limitation must be relevant and sufficient, and the least intrusive means available must be used.<sup>27</sup>

10. State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and collectivities as rights holders and does not depend on official authorization.<sup>28</sup> This also means that, as will be outlined in more detail below, the legal prohibition and sanctioning of unregistered activity is incompatible with international standards.

## Part II. The freedom to manifest religion or belief in community with others

11. As noted above, individuals enjoy the freedom of religion or belief either alone or acting in community with others. This document will refer to individuals acting in community with others to exercise their freedom of religion or belief as 'religious or belief *communities*.' It will refer to those religious or belief communities recognized as legal persons in their national legal order as 'religious or belief *organizations*'.

12. International human rights law protects a wide variety of community manifestations of religions and beliefs. The freedom to manifest a religion or belief consists of the freedom of worship and the freedom to teach, practice and observe one's religion or belief. There may be considerable overlap between these types of manifestations.

13. The *freedom to worship* includes, but is not limited to, the freedom to assemble in connection with a religion or belief<sup>29</sup> and the freedom of communities to perform ritual and ceremonial acts giving direct expression to religion or belief<sup>30</sup> as well as various practices integral to these, including the building and maintenance of freely accessible places of worship<sup>31</sup>, the use of ritual formulae and objects, and the display of symbols.<sup>32</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> ECtHR 25 November 1996, *Wingrove v. the United Kingdom*, appl. No. 17419/90, para. 53.

<sup>26</sup> ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Appl. no. 77703/01, para. 116; ECtHR 17 February 2004, *Gorzelik and Others v. Poland*, Appl. No. 44158/98, paras. 94-95.

<sup>27</sup> UN-ECOSOC *Siracusa Principles*, paras. A 10-14; *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para.36. See also *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* by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)054, para. 35.

<sup>28</sup> ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, 45701/99, para. 128-130; *Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt*, UN Doc.A/HRC/19/60, paras. 25 and 41.

<sup>29</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (a).

<sup>30</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>31</sup> Vienna 1989, para. 16.4; *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (a).

14. The *freedom to observe and practice* includes, but is not limited to, ceremonial acts, but also such customs as the observance of dietary regulations<sup>33</sup>, the wearing of distinctive clothing or head-coverings<sup>34</sup>, participation in rituals associated with certain stages of life<sup>35</sup>, and the use of the particular language customarily spoken by a group in practicing their religion,<sup>36</sup> as well as the freedom to establish and maintain appropriate charitable or humanitarian institutions and the observance of holidays and days of rest.<sup>37</sup>

15. The *freedom of practising and teaching of religion or belief* includes, but is not limited to, acts integral to the conduct by religious groups of their basic affairs, such as the right to organize themselves according to their own hierarchical and institutional structure<sup>38</sup>, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State<sup>39</sup>; the freedom to establish seminaries or religious schools<sup>40</sup>; the freedom to train religious personnel in appropriate institutions<sup>41</sup>; the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief<sup>42</sup>; the right of religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials<sup>43</sup>; the right of each individual to give and receive religious education in the language of their choice, whether individually or in association with others, in places suitable for these purposes<sup>44</sup> including the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions<sup>45</sup>; the right to solicit and receive voluntary financial and other contributions from individuals and institutions<sup>46</sup> and the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels<sup>47</sup> including through travel, pilgrimages and participation in assemblies and other religious events.<sup>48</sup>

16. As noted above, the freedom to manifest religion or belief in community with others is accorded to human beings as rights-holders and as such, and cannot be made subject to any prior restraint through the use of mandatory registration procedures or similar procedures.<sup>49</sup>

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<sup>32</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (h).

<sup>33</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (b) and 6 (h).

<sup>38</sup> Vienna 1989, para. 16.4.

<sup>39</sup> Vienna 1989, para. 16.4; *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (g); UN Human Rights Committee General Comment 22, para. 4.

<sup>40</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>41</sup> Vienna 1989, para. 16.8.

<sup>42</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (d).

<sup>43</sup> Vienna 1989, para. 16.10; *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (c) and (d).

<sup>44</sup> Vienna 1989, para. 16.6.

<sup>45</sup> Vienna 1989, para. 16.7.

<sup>46</sup> Vienna 1989, para. 16.4; *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (f); CDL-AD(2006)030 *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006)*, para. 34.

<sup>47</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, para. 6 (i).

<sup>48</sup> Vienna 1989, para. 32.

<sup>49</sup> ECtHR 12 May 2009, *Masaev v. Moldova*, appl. no. 6303/05, para. 26; *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 69; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of*

Any limitations to the various forms of manifestation of the freedom of religion or belief described here must therefore meet the strict criteria set out in Part I

### Part III. Religious or Belief Organizations

17. As described in Part II, international human rights law accords protection to religious or belief communities, whether they enjoy legal personality or not. Religious or belief communities may choose, however, to set up religious organizations to ensure that they are able to act in the legal sphere. For the purposes of this document, 'religious or belief organizations' are religious or belief communities which are recognized as independent legal persons in the national legal order. National law may refer to the recognition of legal personality under a number of different names, and may utilize a variety of legal techniques to ensure that religious or belief communities are able to operate as legal persons in the national legal order. Whatever method is chosen to implement the obligation to ensure voluntary access to legal personality for religious or belief communities, states must ensure that the national legal framework which they have in place for doing so complies with the international human rights instruments to which they are parties, and their other international commitments, as well as that gaining access to legal personality should not be made more difficult for religious or belief communities than it is for other types of groups or communities. This section will describe this international legal framework in greater detail, while also taking recourse to good practice from individual states.

In the **United States**, an individual or "associations of individuals united for a special purpose, and permitted to do business under a particular name" may qualify as a "person" under the law (*Pembina Consol. Silver Mining & Milling Co. v. Com. Of Pennsylvania*, 125 U.S. 181, 189, 8 S. Ct. 737, 741, 31 L. Ed. 650 (1888)). As such, legal personality may attach to individuals, organizations, or commercial entities. Thus, religious communities may establish commercial organizations (such as corporations, sole proprietorships, general partnerships, limited liability partnerships, and limited liability companies) or non-profit organizations (typically organized as corporations) to obtain legal personality. Commercial entities and non-profit corporations are governed pursuant to the law of the state in which they are formed. The majority of U.S. faith groups are organized as non-profit corporations pursuant to the applicable state law and the federal Internal Revenue Code (e.g. 26 U.S.C. § 501(c)) in order to secure favourable tax-exempt status and treatment.

In **Estonia**, at the sub-constitutional level, the legal personality of religious and belief communities is regulated by the Non-profit Organisations Act and Churches and Congregations Act (CCA). According to the CCA a religious association is a legal person in civil law. It is a non-profit organization. The CCA contains five different types of religious organizations: (1) churches; (2) congregations; (3) associations of congregations; (4) monasteries; and (5) religious societies. A congregation (or association of congregations) can be an association of natural persons confessing the Christian faith or any other religion (or belief). The same applies to monasteries. There are no major restrictions on religious communities to choose a suitable legal form for their activity.

In **Spain**, there are three interrelated forms of legal personality open to religious communities:

- a) "*Confesiones religiosas*", which is the basic legal personality form for communities, churches and religious communities;
- b) "*Entidades religiosas*", which grant legal personality to specific territorial, associational or structural compounds of recognized "*confesiones religiosas*". A "seminar", "diocese", "local community or church", "territorial subdivision" of a "*confesión religiosa*" may well be an "*entidad religiosa*" under Spanish law in order to simplify legal affairs.

c) “*Federaciones religiosas*”, which are federations comprising a group of “*confesiones religiosas*” that share some characteristics (such as dogma, historical origin, etc.). There are also “*Federaciones de entidades religiosas*”.

In addition, any religious or belief group can register as an ordinary association in the state Registry of Associations.

18. It must be noted that the autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection which the freedom of religion or belief affords.<sup>50</sup> It directly concerns not only the organization of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Were the organizational life of the community not protected by the freedom of religion or belief, all other aspects of the individual’s freedom of religion would become vulnerable.<sup>51</sup> The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. Where the organization of a religious community was in issue, a refusal to recognize it as a legal entity has also been found to constitute interference with the right to freedom of religion under Article 9 of the Convention, as exercised by both the community itself and its individual members.<sup>52</sup> OSCE participating States have therefore promised to “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries”.<sup>53</sup>

19. Under international human rights law, a refusal by the state to accord legal personality status to an association of individuals, based on a religion or belief, amounts to an interference with the exercise of the right to freedom of religion or belief, read in the light of the freedom of association.<sup>54</sup> The authorities’ refusal to register a group, or to withdraw its legal personality, have been found to affect directly both the group itself and also its presidents, founders or individual members.<sup>55</sup> A refusal to recognize the legal personality status of religious or belief communities has therefore been found to constitute an interference with the

<sup>50</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, appl. No. 30985/96, para. 62; ECtHR 9 July 2013, *Sindicatul Păstorul Cel Bun v. Romania*, appl. no. 2330/09, para. 136; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, para. 118, and ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, appl. nos. 412/03 and 35677/04, para. 103.

<sup>51</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, appl. No. 30985/96, para. 62.

<sup>52</sup> ECtHR 1 October 2009, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 84.

<sup>53</sup> Vienna 1989, para. 16.3.

<sup>54</sup> ECtHR 1 October 2009, *Kimlya and Others v. Russia*, appl. nos. 76836/01 and 32782/03, para. 84; ECtHR 10 June 2010, *Jehova’s Witnesses of Moscow and others v. Russia*, appl. No. 302/02, para. 101; ECtHR 17 February 2004, *Gorzelik and Others v. Poland*, Appl. No. 44158/98, para. 52 and ECtHR 1 July 1998, *Sidiropoulos and Others v. Greece*, appl. No. 26695/95, para. 31; *Opinion on Legal Status of Religious Communities in Turkey and the Right of the orthodox Patriarchate of Istanbul to use the adjective “Ecumenical”* (12-13 March 2010), CDL-AD(2010)005, para. 6 & 9; *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 64; 2004 Guidelines, para. 8.

<sup>55</sup> ECtHR 10 June 2010, *Case of Jehova’s Witnesses of Moscow and others v. Russia*, appl. No. 302/02, para. 101; ECtHR 15 January 2009, *Association of Citizens Radko and Paunkovski v. the former Yugoslav Republic of Macedonia*, appl. no. 74651/01, para. 53; ECtHR 19 January 2006, *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, appl. no. 59491/00, para. 53; ECtHR 3 February 2005, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, appl. no. 46626/99, para.27 and ECtHR 31 August 1999, *APEH Üldözötteinek Szövetsége and Others v. Hungary* (Dec.), appl. no. 32367/96.



right to freedom of religion or belief<sup>56</sup> as exercised by both the community itself as well as its individual members.<sup>57</sup>

20. The right to legal personality status is vital to the full realization of the right to freedom of religion or belief. A number of key aspects of organized community life in this area would become impossible or extremely difficult without access to legal personality. These include having bank accounts and ensuring judicial protection of the community, its members and its assets;<sup>58</sup> maintaining the continuity of ownership of religious edifices; 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.<sup>59</sup>

In the **Netherlands**, legal persons have the same rights and obligations under relevant parts of civil law (notably property law) as ‘natural persons’, according to Article 2:5 of the Civil Code (which provides that “as far as the law of property is concerned, a legal person is equal to a natural person, unless the contrary results from law”). Religious denominations, which can easily obtain legal personality – as an association or a foundation - or a *sui generis* church organization– can thus engage in legal acts such as filing law suits, entering into contracts, filing applications for land use permits etc. There are no different categories of legal persons in this respect; accordingly, all religious denominations can carry out such legal acts.

21. Any denial of legal personality to a religious or belief community would therefore need to be justified under the strict conditions set out in Part I of the Guidelines. At the same time, under international human rights law, religious or belief communities should not be obliged to seek legal personality if they do not wish to do so.<sup>60</sup> The choice of whether or not to register with the state may itself be a religious one, and the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status.<sup>61</sup> States have developed a number of practices involving, for example, police control, surveillance, restrictive measures including the closing of places of worship, confiscation of property, financial sanctions, imprisonment<sup>62</sup>, blocking access to chaplaincy services, restricting the dissemination or ownership of religious literature, or restricting the freedom to convince others of one’s religion or belief. These and similar measures are not in line with international standards if imposed merely due to the failure of a religious or belief community to seek or obtain legal personality status.

<sup>56</sup> UN Human Rights Committee 21 October 2005, *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka*, communication 1249/2004, para. 7.2.

<sup>57</sup> ECtHR 10 June 2010, *Jehova’s Witnesses of Moscow and others v. Russia*, appl. no. 302/02, para. 101; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, appl. no. 40825/98 paras.79-80, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, para. 105.

<sup>58</sup> ECtHR 10 June 2010, *Jehova’s Witnesses of Moscow and others v. Russia*, appl. No. 302/02, para. 102; ECtHR, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 85; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, appl. No. 40825/98, para. 66; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, para. 118;; ECtHR 3 April 2008, *Koretskyy and Others v. Ukraine*, appl. no. 40269/02, para. 40 and ECtHR 16 December 1997, *Canea Catholic Church v. Greece*, paras. 30 and 40-41; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania adopted by the Venice Commission at its 64th plenary session* (Venice, 21-22 October 2005), CDL-AD(2005)037-e, para. 23; *Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective “Ecumenical” – Adopted by the Venice Commission at its 82nd Plenary Session* (Venice, 12-13 March 2010), CDL-AD(2010)005, para. 68.

<sup>59</sup> UN SR Report on Recognition, para. 46.

<sup>60</sup> UN SR Report on Recognition, para. 58: “[i]n keeping with the universalistic understanding of human rights, States must ensure that all individuals can enjoy their freedom of thought, conscience, religion or belief on the basis of respect for their self-understanding in this entire area. Respect 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 acts of State approval.”

<sup>61</sup> *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 26.

<sup>62</sup> UN SR Report, para. 58.

In **Italy**, it is possible for religious communities to constitute themselves as non-recognized associations (*associazione non riconosciuta*) in accordance with Art. 36-38 of the Civil Code. This is the simplest model, which is also applied by political parties and trade unions. Although the community does not gain legal personality in this manner, the religious community does attain legal capacity (including independence in property issues, the ability to receive donations, take legal action, etc.) in complete liberty, without their constitutive act or statute being submitted to any form of state control. Creating a non-recognized association is very simple: it requires a minimum of three members, a statute and a notary act.

In **Estonia**, the law does not prohibit the activities of religious associations which are not registered. Rather, the main disadvantage for these unregistered entities is that they cannot present themselves as legal persons, and therefore cannot exercise the rights and protections accorded to a religious legal entity. Nevertheless, they still enjoy their constitutionally protected collective freedom of religion as a religious group. There is no restriction as such for a non-registered religious community to conduct religious meetings or ceremonies at somebody's home or rented premises. According to the law, collective freedom of religion or belief can only be restricted if it is detrimental to public order, health or morals and violates the rights and freedoms of others.

In **Germany**, religious communities – as other legal entities – that are not registered as an association or as any other specific form of a legal entity have the status of non-registered associations (non-registered associations are regulated under Section 54 of the German Civil Code). This kind of association enjoys the same rights as a non-trading partnership (*Gesellschaft bürgerlichen Rechts*) and has partial legal capacity; in practice the courts widely make use of analogies to the provisions for the registered associations.

As a rule, the religious or belief groups and communities present in **Ireland** take the form of voluntary unincorporated associations. An unincorporated association is a group of persons bound together by identifiable rules and having an identifiable membership. The rules determine how the association can be joined and left and who controls the association and its funds, and on what terms (see *O'Keefe v. Cullen* (1873) IR 7 CL 319 and *The State (Colquhoun) v. D'Arcy and Others* [1936] IR 641). In general, the association's property is jointly held by the members, rather than by the association itself. An unincorporated association cannot sue or be sued in its own name. There are no registration requirements for unincorporated associations.

22. There are a variety of ways of ensuring that religious or belief communities who wish to seek legal personality are able to do so. Some national legal systems do so through procedures involving the courts, others through an application procedure with a government agency. Depending on the individual state, a variety of different forms of legal personality may be available to religious or belief communities, such as trusts, corporations, associations, foundations, as well as various *sui generis* types of legal personality specific to religious or belief communities.

In the **United States**, to register as a non-profit corporation, religious associations must establish Articles of Incorporation and by-laws. Articles of Incorporation consist of structural information, including the organization's name, address, registering agent, and nonprofit and tax-exempt purpose. By-laws set forth the organization's rules and procedures, frequently detailing who may serve on the Board of Directors and the length of such service; when and how meetings occur; and the manner in which officers are appointed. In sum, they comprise the organization's operations. To become a non-profit corporation, religious and belief communities must apply for such recognition with the appropriate state agency. They must also file a Form 1023 or 1024 with the federal Internal Revenue Service to obtain federal tax-exempt status. Under most circumstances, once federal tax-exempt status is granted, state and local tax-exempt status is automatic.

In the **former Yugoslav Republic of Macedonia**, the Primary Court Skopje II in Skopje is competent to maintain the Unique Court Registry of churches, religious communities and religious groups. The data recorded in the competent Registry is public. The Minister of Justice prescribes the form and the content of the application form of the competent Registry and the way it is kept. The state authority competent for the relationships between the state and religious communities, the 'Commission for Relationships with Religious Communities and Religious Groups', keeps a file on registered churches, religious communities and religious groups, but has no competence in the process of their registration.

23. Regardless of the system used to govern access to legal personality, and the particular terms which may be used to describe the forms of legal personality open to religious or belief communities, national law in this area must comply with international human rights instruments and OSCE commitments.<sup>63</sup> This means, amongst others, that religious or belief organizations must be able to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities.<sup>64</sup>

24. Considering that a wide variety of legal acts may be performed only by actors recognized as legal persons, access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory.<sup>65</sup>

25. Any procedure which provides religious or belief communities with access to legal personality status should not set burdensome requirements.<sup>66</sup> Examples of burdensome requirements which are not justified under international law include, but are not limited to, the requirement that the registration application be signed by all members of the religious organization and should contain their full names, dates of birth and places of residence<sup>67</sup>; to provide excessively detailed information in the statute of the religious organization<sup>68</sup>; to pay excessively high or unreasonable fees for registration; to have an approved legal address<sup>69</sup> or the requirement that a religious association can operate only at the place identified in its registration documents.<sup>70</sup> Such requirements would not appear to be necessary in a democratic society for the grounds enumerated in international human rights instruments. Also, religious or belief communities interested in obtaining legal personality status should not be confronted with unnecessary bureaucratic burdens or with lengthy or unpredictable waiting periods.<sup>71</sup> Should the legal system for the acquisition of legal personality require certain registration-related documents, these documents should be issued by the authorities.<sup>72</sup>

<sup>63</sup> See for a catalogue the 2004 Guidelines, section II.F (1).

<sup>64</sup> ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, appl. no. 77703/01, para. 123; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004 para.30-35; *Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2009)036 para. 39.

<sup>65</sup> UN SR Report on Recognition, para. 54.

<sup>66</sup> *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 by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 68.

<sup>67</sup> UN SR Report on Recognition, para. 44.

<sup>68</sup> *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 66.

<sup>69</sup> Human Rights Committee views of 26 July 2005, *Sergei Malakhovsky and Alexander Pikul v. Belarus*, Comm. no. 1207/2003, para. 7.6.

<sup>70</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR*, CDL-AD(2012)022, para. 80-82.

<sup>71</sup> UN SR Report on Recognition, para. 55.

<sup>72</sup> ECtHR 17 July 2012, *Fusu Arcadie and others v. Moldova*, Appl. no. 22218/06, para. 37-38.

Apart from associations and foundations, which are open to all types of religious and belief communities, in **the Netherlands** there is one specific type of legal personality open only to churches. Article 2:2(1) of the Civil Code provides legal personality to so-called “*Kerkgenootschappen*” (literally ‘church communities’). The Civil Code has not defined “*Kerkgenootschappen*”: definitions can only be found in case law and legal doctrine. The Court of Cassation has held that religious organizations – *ex lege*, without having to obtain state recognition - are church communities with legal personality if: (i) the organization’s activities revolve around religion, (ii) an organizational structure can be discerned, and (iii) the organization expresses the will to manifest itself as a church. In practice, these minimal conditions do not pose serious obstacles.

26. The process of obtaining legal personality status should be open to as many communities as possible, not excluding any community on the ground that it is not a ‘traditional’ or ‘recognized’ religion, or through excessively narrow interpretations or definitions of ‘religion’ or ‘belief’.

27. Moreover, legislation should not make obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members. States should ensure that they take into account the needs of smaller religious and belief communities<sup>73</sup>, and should be aware of the fact that high minimum number provisions make the operational activities of newly established religious communities unnecessarily difficult.

Under para. 5 of the Non-profit Organisations Act of **Estonia**, only a minimum of two persons are required to establish a ‘religious society’.

The legal system of **Albania** does not foresee any minimum membership requirement for the three forms of legal personality recognized in Albanian law for religious or belief communities (Associations, Centres and Foundations).

The civil law of **Sweden** requires only the number of persons required to form the board of an association, which is usually between three and five persons.

28. Legislation should not necessitate a lengthy existence in the country as a requirement for access to legal personality. Such a requirement has the effect of unnecessarily restricting the rights of religious or belief communities which may be new in a particular state.<sup>74</sup>

29. Since freedom of religion or belief is a right that is not restricted to citizens<sup>75</sup>, legislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign<sup>76</sup>, non-citizens persons or that its headquarters are located abroad.<sup>77</sup>

30. In particular, the legal personality status of any religious or belief community should not be made dependent on the approval or positive advice of other religious or belief communities, as the legal personality status of a particular religious or belief community is not a matter for other religious or belief communities.<sup>78</sup> To request the opinion of one or more religious or belief community on matters relating to applications for such status made by

<sup>73</sup> UN SR Report on Recognition, para. 44.

<sup>74</sup> ECtHR 1 October 2009, *Kimlya v. Russia*, appl. nos. 76836/01 and 32782/03.

<sup>75</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 99; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 93.

<sup>76</sup> ECtHR 5 October 2006, *Moscow Branch of the Salvation Army v. Russia*, appl. no. 72881/01, para. 82.

<sup>77</sup> *Ibid.*, paras. 83-85.

<sup>78</sup> ECtHR 24 June 2004, *Vergos v. Greece*, appl. no. 65501/01, para. 34; UN Special Rapporteur Report on Recognition, para. 56; .

another religious or belief community or organization compromises the neutrality and impartiality of the relevant state bodies or officials.<sup>79</sup>

31. The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality.<sup>80</sup> In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership<sup>81</sup>, its internal rules<sup>82</sup>, the substantive content of its beliefs<sup>83</sup>, the structure of the community and methods of appointment of the clergy<sup>84</sup> and its name and other symbols. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization.<sup>85</sup> Considering the wide range of different types of organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.<sup>86</sup>

The Constitution of **Poland** (article 25.1) and the Polish “Law on Guarantees of freedom of religion” provide that in carrying out their functions religious organizations may, amongst others: determine religious doctrine, dogma and rites; organize and publicly perform religious rites; lead the ministry of chaplains; govern themselves in accordance with their own rules (legal autonomy); establish, educate and employ clergy; acquire and dispose of movable and immovable property and manage it; produce, buy and sell objects of worship; use the mass media; conduct educational activities; conduct charitable activities; create interchurch organizations at the state level and belong to international religious organizations.

32. A decision to deny or withdraw the legal personality status of any religious or belief organization must be justified under the strict criteria described in section I.<sup>87</sup> Decisions to deny access to legal personality to a religious or belief community, or to withdraw it, should

<sup>79</sup> ECtHR 26 September 1996, *Manoussakis v. Greece*, appl. no. 18748/91, para. 47.

<sup>80</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)*, CDL-AD(2012)022 CDL-AD(2012)022, para. 72; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania adopted by the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005)*, CDL-AD(2005)037, para. 20; *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006)*, CDL-AD(2006)030, para.30; 2004 Guidelines, section D.

<sup>81</sup> ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, appl. nos. 412/03 and 35677/04. para. 118-121; see ECtHR 14 March 2003, *Serif v. Greece*, appl. no. 38178/97, paras. 49, 52 and 53; ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, appl. no. 30985/96, paras. 62 and 78; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, paras. 118 and 123; and ECtHR 16 December 2004, *Supreme Holy Council of the Muslim Community*, appl. No. 39023/97, para. 96.

<sup>82</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)*, CDL-AD(2012)022, para. 76.

<sup>83</sup> *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 by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, paras. 54 & 90. *Opinion on the draft law on the legal status of a church, a religious community and a religious group of “The Former Yugoslav Republic of Macedonia”, adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007)*, CDL-AD(2007)005, para. 46.

<sup>84</sup> UN SR Report on Recognition, para. 56.

<sup>85</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 80.

<sup>86</sup> CDL-AD(2012)004 *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, para. 39; CDL-AD(2008)032 *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, para. 33.

<sup>87</sup> ECtHR 10 June 2010, *Case of Jehova’s Witnesses of Moscow and others v. Russia*, appl. no. 302/02, para. 102; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, appl. no. 40825/98 para. 66, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, para. 118; ECtHR 3 April 2008, *Koretsky and Others v. Ukraine*, no. 40269/02, para. 40, and *Canea Catholic Church v. Greece*, 16 December 1997, para. 30 and 40-41; 2004 Guidelines, para. 9.

state the reasons therefore.<sup>88</sup> These reasons should be specific and clear.<sup>89</sup> This also facilitates the right to appeal (see para. 35 below).

In **Estonia**, according to the “Churches and Congregations Act” (CCA), para. 14 (3), upon refusal to enter a religious association in the register, the registrar (Court) has to indicate the reason for the refusal in writing. The types of reasons the Court may give are described in the law.

According to CCA para. 14 (2), a registrar shall not enter a religious association in the register if:

- 1) the statutes or other documents submitted by the religious association are not in compliance with the requirements of law;
- 2) the activities of the religious association damage public order, health, morals, or the rights and freedoms of others.

33. Considering the wide-ranging and significant consequences that withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, any decision to do so should be a matter of last resort.<sup>90</sup> In case of grave and repeated violations endangering the public order, such measures may be appropriate, if no other sanctions can be applied effectively, but only when all conditions described in Part I are fulfilled. Otherwise the principles of proportionality and subsidiarity as a rule would be violated.<sup>91</sup> In order to be able to comply with these principles, legislation should contain a range of various lighter sanctions, such as a 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 contemplated.<sup>92</sup>

In the civil law of the **Netherlands** (Civil Code, ‘Prohibited legal persons’) the dissolution of legal persons, including religious communities with legal personality, is dealt with as follows:

*“Article 2:20: Prohibition of a legal person by the court*

*- 1. Where the activities of a legal person are contrary to the public order, the District Court shall prohibit and dissolve that legal person upon the request of the Public Prosecution Service.*

*- 2. Where the purpose (objective) of a legal person, as defined in its articles of incorporation, is contrary to the public order [that is, ordre public], the District Court shall dissolve that legal person upon the request of the Public Prosecution Service. Before the dissolution, the District Court may grant the legal person for a specific period of time the opportunity to adjust its purpose (objective) in such a way that it no longer is contrary to the public order.”*

*[...]*

*Article 2:21: Dissolution of a legal person by the court [...]*

<sup>88</sup> *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 of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, CDL-AD(2011)028, para. 38.*

<sup>89</sup> *Jehova’s Witnesses and Others v. Russia, Application no. 302/02, 10 June 2010, Para. 175; Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary, CDL-AD(2012)004, para. 38. Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, CDL-AD(2009)036, para. 29.*

<sup>90</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), CDL-AD(2012)022, paras. 93-94.*

<sup>91</sup> *Opinion on the draft law on freedom of Religion, religious organisations and mutual relations with the state of Albania, adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007), CDL-AD(2007)041, para. 48.*

<sup>92</sup> *ECtHR 8 October 2009, Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan, appl. no. 37083/03, para. 82; ECtHR 10 June 2010, Jehova’s Witnesses of Moscow and others v. Russia, Application no. 302/02, para. 159.*

- 2. *The District Court does not dissolve the legal person if the court has granted the legal person for a specific period of time the opportunity to comply with the necessary statutory requirements and the legal person has fulfilled these requirements within that period.*

[...]"

34. The withdrawal of legal personality from a religious or belief *organization* should not in any way imply that the religious or belief *community* in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms. Depriving such communities of their basic rights or even deciding to prohibit them may have grave consequences for the religious life of all their members, and for that reason, care should be taken not to inhibit or terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the community as a whole for actions which in fairness should be attributed to specific individuals. Thus, any wrongdoings of individual leaders and members of religious organizations should be addressed to the person in question through criminal, administrative or civil proceedings, rather than the community and the other members.<sup>93</sup>

35. Overall, it should be possible to secure an effective remedy at the national level for a decision not to recognize, or to withdraw, the legal personality of a religious or belief community which has an arguable claim to such a status.<sup>94</sup> States have a general obligation to give practical effect to the array of standards spelled out in international human rights law, as outlined, for example, in Article 2 (3) ICCPR Article 2 and Articles Articles 6(1) and 13 ECHR, which require that individuals and collectivities should have access to a court that must provide them with an effective remedy. Religious or belief communities therefore have a right to prompt decisions on registration applications (where applicable)<sup>95</sup> and a right to appeal.<sup>96</sup> While there are various different systems to ensure access to legal personality, including those where courts take the initial decision and systems where administrative bodies do so, access to court and a proper and effective review of relevant decisions should always be possible. This principle applies regardless of whether an independent tribunal decides on legal personality directly, or whether such decision is taken by an administrative body, in which case subsequent control of the decision should be exercised by an independent and impartial court, including the right to appeal to a higher instance.<sup>97</sup>

<sup>93</sup> *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 by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 99.

*Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)*, CDL-AD(2012)022, para. 92.

<sup>94</sup> ECtHR 27 February 2007, *Biserica Adevărat Ortodoxă Din Moldova and others v. Moldova*, appl. no. 952/03, para. 49-54.

<sup>95</sup> ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, appl. No. 40825/98, paras. 78-80; CDL-AD(2012)004 *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, para. 44.

<sup>96</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 80.

*Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 31; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 82.

<sup>97</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, paras. 82-83.

In **Spain**, a religious community whose application for registration is denied can seek the following remedies:

(1) an administrative remedy before the Ministry of Justice; (2) a judicial procedure before the “*Audiencia Nacional*” (National Superior Court) (3) a procedure before the Spanish Supreme Court (in case of irregularities attributable to the “*Audiencia Nacional*”); (4) A special procedure for the protection of fundamental rights before the Constitutional Court.

In the **Republic of Moldova**, accordingly to the Code of Civil Procedure, applicants first have to go through a non-judicial procedure to resolve the case against the public authorities. A request must be submitted first of all at the relevant Ministry, and if after 30 days the Ministry does not respond, or the Ministry’s answer does not satisfy the applicant, the applicant can go to court. If the decision of the court of first instance does not satisfy the applicant, they can appeal to the Court of Appeals and after that, to the Moldovan Supreme Court.

36. In cases where new provisions to the system governing access to legal personality of religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities.<sup>98</sup> Where laws operate retroactively or fail to protect vested interests of religious or belief organizations (for example, requiring re-application for legal personality status under newly introduced criteria), the state is under a duty to show that such restrictions are compliant with the criteria set out in section I. In particular, the state must demonstrate what objective reasons would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons. Religious or belief organizations should not be subject to excessively burdensome or discriminatory transfer taxes or other fees if transfers of title to property owned by the prior legal entities are required by new regulations.

37. States should ensure that the above rights and principles are effectively incorporated into their national legal order, whether in their laws, regulations, practices and/or policies.<sup>99</sup> Furthermore, states should ensure that state officials and bodies, dealing with the legal personality of religious or belief communities, are aware of and act in accordance with the principles contained in international standards on the freedom of religion or belief.

In **Latvia**, the Registry Office examines applications for legal personality status in accordance with the rules of administrative procedure. In accordance with the first subparagraph of article 4 of the Administrative Procedure Law, general principles of law are applied, including:

- *The principle of compliance with individuals’ rights*, which requires that, while making a decision, a state institution must act in accordance with the protection of the rights and legal interests of the individual;
- *The principle of justice*, which requires that a state institution shall act under the powers determined in legislation and can use its power only according to its meaning and purpose;
- *The principle of reasonable application of law*, according to which a state institution applies the law using basic methods of legal interpretation in order to achieve the most equitable and useful result;
- *The principle of the prohibition of arbitrariness*, which requires that an administrative act may only be based on facts which are necessary to reach a decision, and on objective and rational legal considerations;
- *The principle of legality*, according to which a state institution may issue a decision only based on the Constitution, the law and/or international law;

<sup>98</sup> UN SR Report on Recognition, para. 57.

<sup>99</sup> Maastricht 2003, para. 9: [the Ministerial Council] “commits to ensure and facilitate the freedom of the individual to profess and practice a Religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies”.



- *The principle of proportionality*, which requires that a state institution, when applying the law, must consider whether an administrative act adverse to the individual is necessary in a democratic society;
- *The principle of procedural fairness*, which requires that a state institution, when making decisions, must do so impartially and give participants in the process a reasonable opportunity to be heard and to present evidence, and that an official whose objectivity in a particular matter may be reasonably doubted does not participate in the decision-making process.

As a matter of administrative law in **Ireland**, it is well established that actual bias on the part of an administrative decision maker renders his or her decision invalid (see *Orange Ltd. v. Director of Telecommunications Regulation (No. 2)* [2000] 4 IR 159). It should also be noted that, in general, the staff controlling access to legal personality for religious and belief communities are civil servants. As such, they are subject to internal disciplinary procedures, such as those established by the Civil Service Regulation Acts 1956-2005. Internal procedures within the civil service prohibit discrimination by civil servants on religious grounds.

#### **Part IV. Privileges of religious or belief communities or organizations**

38. States may choose to grant certain privileges to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system, or membership in public broadcasting agencies.<sup>100</sup> It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory.

In the **United States**, non-profit religious institutions enjoy numerous benefits, including:

- i. All those benefits typically conferred upon corporations, such as the ability to commence lawsuits, engage in contractual relationships and file applications for land use permits.
- ii. Tax-deductibility of donations.
- iii. No corporate income tax.
- iv. No sales tax under most circumstances.
- v. Discounted postage rates for mailings over 250 identical pieces of mail.
- vi. Limited liability for directors and officers for operations of the organization.
- vii. Access to government and private grants.

In **Germany**, according to §3 number 6 Trade Tax Act (*Gewerbesteuer*gesetz), religious communities that are public law corporations are, to a certain extent, exempt from trade tax. Corporations, associations of persons, and estates which in accordance with their statutes, the act of foundation or other constitution, and in accordance with the actual management of business exclusively and directly pursue ecclesiastical ends, are exempt from trade tax. This does not apply to the extent that they operate an economic business establishment – with the exception of agriculture and forestry.

39. It is within the power of the state to grant such privileges, but in doing so, it must be ensured that they are granted and implemented in a non-discriminatory manner.<sup>101</sup> This requires that the treatment has an objective and reasonable justification, which means that it pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized.<sup>102</sup>

<sup>100</sup> UN SR Report on Recognition, para. 59.

<sup>101</sup> UN SR Report on Recognition, para. 61; ECtHR 25 September 2012, *Jehovas Zeugen in Österreich v. Austria*, appl. no. 27540/05, para. 32; 2004 Guidelines, para. F (2).

<sup>102</sup> ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia*, appl. no. 7798/08, para. 86; ECtHR 16 March 2010, *Oršuš and Others v. Croatia*, appl. no. 15766/03, para. 156.

40. In particular, the existence or conclusion of agreements between the state and a particular religious community or legislation establishing a special regime in favor of the latter does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.<sup>103</sup> Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country's history and society.<sup>104</sup> A difference in treatment between religious or belief communities which results in granting a specific status in law – to which substantial privileges are attached, while refusing this preferential treatment to other religious or belief communities which have not acceded to this status – is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status and the criteria established are applied in a non-discriminatory manner.<sup>105</sup>

41. Even the fact that a religion is recognized as a state religion or that it is established as an official or traditional religion or that its followers comprise the majority of the population, may be acceptable, provided however that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, and also not in any discrimination against adherents to other religions or non-believers.<sup>106</sup> In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the state religion or predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection.<sup>107</sup>

42. The rights discussed in the second and third part, including the freedom to manifest religion or belief in community with others and the right to legal personality must not be seen as a privilege, but as a right which forms a fundamental element of the freedom of religion or belief.<sup>108</sup> In particular, as noted above, the right to legal personality must not be abused as a means to restrict the rights of individuals or communities seeking to exercise their freedom of religion or belief by making their ability to do so in any way conditional upon registration procedures or similar restrictions.

<sup>103</sup> ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia*, appl. no. 7798/08, para. 85; ECtHR 10 December 2009, *Koppi v. Austria*, appl. no. 33001/03, para. 33.,

<sup>104</sup> 2004 Guidelines, section II.B (3).

<sup>105</sup> ECtHR 10 December 2009, *Koppi v. Austria*, appl. No. 33001/03, para. 92; *Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 46.

<sup>106</sup> UN Human Rights Committee, General Comment 22, para. 9; *Observations on the final draft Constitution of the Republic of Tunisia, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice 10-11 October 2013)*, CDL-AD(2013)034, para.27.

<sup>107</sup> UN Human Rights Committee, General Comment 22, para. 9 *Observations on the final draft Constitution of the Republic of Tunisia, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice 10-11 October 2013)*, CDL-AD(2013)034, paras. 27-37-; .

<sup>108</sup> UN SR Report, para. 30: "the State has to respect everyone's freedom of religion or belief as an inalienable – and thus non-negotiable – entitlement of human beings, all of whom have the status of right holders in international law by virtue of their inherent dignity."