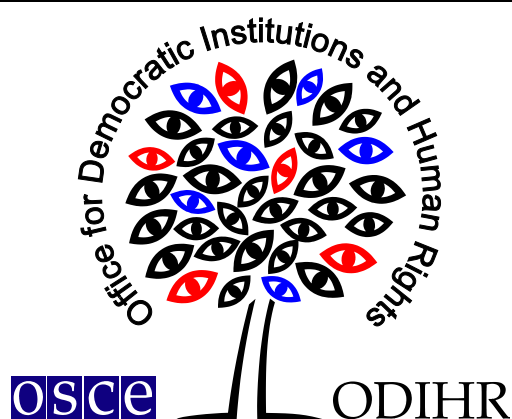


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OPINION

ON THE DRAFT LAW OF THE

REPUBLIC OF ARMENIA AMENDING THE

LAW “ON FREEDOM OF CONSCIENCE AND

RELIGIOUS ORGANIZATIONS”

based on an unofficial English translation of the Draft Amendments provided by the
Human Rights Defender of the Republic of Armenia

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*This Opinion is also available in Armenian.
However, the English version remains the only official version of the document.*

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I. INTRODUCTION

1. *On 20 June 2017, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) received a request from the Human Rights Defender of the Republic of Armenia to review the Draft Law Amending the “Law of the Republic of Armenia on Freedom of Conscience and Religious Organizations” (hereinafter the “Draft Act”).*
2. *On 13 July 2017, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Act with international human rights standards and OSCE human dimension commitments.*
3. *In 2009 and 2010, the OSCE/ODIHR and the European Commission for Democracy through Law (hereinafter the “Venice Commission”) had already reviewed and issued two joint opinions on previous draft amendments to the Law on Freedom of Conscience and on Religious Organisations (hereinafter “2009 Joint Opinion” and “2010 Joint Opinion” respectively).¹ These draft amendments were, however, never enacted into law. In 2011, the Armenian authorities had prepared an entirely new Draft Law of the Republic of Armenia on Freedoms of Conscience and Religion, which was also reviewed by the OSCE/ODIHR and the Venice Commission,² but was in the end not adopted.*
4. *This Opinion was prepared in response to the above-mentioned request.*

II. SCOPE OF REVIEW

5. *The scope of this Opinion covers only the Draft Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the right to freedom of religion or belief in Armenia.*
6. *The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Act. The ensuing recommendations are based on international standards, norms and practices as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field.*
7. *Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women³ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality⁴ and commitments to mainstream a gender*

¹ OSCE/ODIHR and Venice Commission, *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 Amending the Criminal Code of Armenia*, 23 June 2009, <<http://www.legislationline.org/documents/id/15602>>; and *Joint Opinion on the Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organizations and on the Laws (...) of the Republic of Armenia*, 22 December 2010, <<http://www.legislationline.org/documents/id/16086>>.

² OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Freedoms of Conscience and Religion and Draft Amendments to Other Acts of the Republic of Armenia*, 17 October 2011, <<http://www.legislationline.org/documents/id/16663>>.

³ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Armenia acceded to this Convention on 13 September 1993.

⁴ See par 32 of the *OSCE Action Plan for the Promotion of Gender Equality* adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

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perspective into OSCE activities, programmes and projects, the Opinion’s analysis takes into account the potentially different impact of the Draft Act on women and men.

8. This Opinion is based on an unofficial English translation of the Draft Act provided by the Human Rights Defender of the Republic of Armenia, which is attached to this document as an Annex. Errors from translation may result. The Opinion is also available in Armenian. However, the English version remains the only official version of the document.
9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the right to freedom of religion or belief in Armenia in the future.

III. EXECUTIVE SUMMARY

10. At the outset, it should be noted that the Draft Act contains some major improvements in terms of compliance with international human rights standards. If adopted, the Draft Act will reflect some of the key recommendations made in previous OSCE/ODIHR-Venice Commission joint opinions on Armenian legislation pertaining to freedom of religion or belief. At the same time, further amendments are needed to ensure the Draft Act’s full compliance with international standards and OSCE human dimension commitments.
11. In particular, the authors of the Draft Act are to be commended for guaranteeing the right to freedom of religion or belief to every person, and not only Armenian citizens, as currently stated in the existing 1991 Law on the Freedom of Conscience and on Religious Organizations⁵ (hereinafter “the 1991 Law”). Furthermore, the Draft Act now includes guarantees that constitute fundamental aspects of the right to freedom of religion or belief, such as the fact that religious associations may exercise their rights without state registration, the right to change one’s religion or belief and the freedom to manifest one’s religion or belief in public or private, among others (see also par 21 *infra*). The Draft Act also specifies that the rights of parents to ensure religious education and teaching shall apply until children attain the age of 14, thus protecting the mature child’s freedom of religion or belief, as recommended in the *OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Law on Freedoms of Conscience and Religion and Draft Amendments to Other Acts of the Republic of Armenia*⁶ (hereinafter “2011 Joint Opinion”).
12. At the same time, some key recommendations from the Joint Opinions have not been addressed and certain fundamental issues should be considered prior to the adoption of the Draft Act. Moreover, certain provisions of the Draft Act constitute unjustified restrictions to the right to freedom of religion or belief, such as the prohibition on foreign funding, the obligation for religious organizations to keep records of their members and the imposition of administrative sanctions in case of such organizations’ non-compliance with their charter objectives, among others.

⁵ The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations was adopted in 1991 and last amended in 2011, and is available at http://www.legislationline.org/download/action/download/id/5744/file/Armenia_law_freedom_conscience_religious_orgs_1991_am2011_en.pdf.

⁶ *Op. cit.* footnote 2, par 26 (2011 Joint Opinion).

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13. Also, in line with international standards, the Draft Act should cover not only “religion” but also belief and “religious *or belief* organizations”. The provisions pertaining to the limitation of the right to freedom of religion or belief should also be more strictly circumscribed. Specifically, the Draft Act should specify that the limitations that are considered permissible must be set out in law, and be necessary and proportionate to the (legitimate) aim that they pursue. Further, as stated in the 2011 Joint Opinion, international human rights instruments do not recognize “state security” as a ground for imposing such limitations. Moreover, religious or belief communities should be able to register as legal persons in the national legal order, and benefit from ensuing rights, if they so wish, irrespective of the number of their members or believers. The Opinion also provides a number of recommendations to ensure that the provisions of the Draft Act are compliant with the principle of specificity of criminal law.
14. In order to ensure compliance of the Draft Act with international human rights standards and good practices, the OSCE/ODIHR makes the following key recommendations:
 - A. to expressly state that the Holy Armenian Apostolic Church (hereinafter “the HAAC”) is governed by the Draft Act; [par 24]
 - B. to amend the Draft Act to refer not only to “religion” but also to “belief” and to “religious *or belief* organizations”; [par 25]
 - C. to amend Article 5 as follows:
 - removing the reference to “state security” and replacing it with the term “public safety” in line with international standards; [par 37]
 - specifying that the freedom to manifest thought, conscience and religion or belief can only be subjected to such limitations as are set out in a law and are necessary and proportionate to the (legitimate) aims that they pursue; [par 41]
 - detailing the process by which such restrictions may be imposed, including by indicating the person or body competent to take such decisions, the content and modalities of their communications and the need to motivate them, and how the person or organisation affected can engage in the process and be heard; [par 41]
 - circumscribing more clearly and strictly the grounds that lead to restrictions under Article 5 par 2; [pars 42-46]
 - D. to supplement the Draft Act to ensure that parties asserting claims that their rights to freedom of religion or belief have been violated have rights to effective remedies and by expressly including under Article 6 par 1 the right to become a member of religious or belief associations; [pars 34 and 50]
 - E. to reconsider the raising of the threshold to register a religious organization from 50 to 150 members, while ensuring that a religious or belief community can be registered as a legal person in the national legal order, if it so wishes, irrespective of the number of its members or believers; [pars 49 and 54]
 - F. to specify more clearly in Article 9 the very limited cases where state registration of religious organizations may be refused, in line with international standards; [par 63]
 - G. to expressly mention in Article 15 that dissolution is only permissible where other measures for eliminating or preventing the violation are exhausted or the violations may not be eliminated otherwise; [par 81]

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- H. to clarify the definition of “incitement to religious hatred” under Article 226 par 1 of the Criminal Code in line with Article 20 of the ICCPR while providing a robust definition of the term “hatred”, including an explicit requirement of intention or recklessness as well as introducing defences or exceptions, for instance when the statements were intended as part of a good faith discussion or public debate on an issue of public interest or as a form of artistic expression or creation; [pars 86-90] and
- I. to remove from the Draft Act:
- the obligation for religious organizations to keep records of their members in in Article 11 par 2 (1) of the Draft Act; [par 67]
 - the prohibition on foreign funding provided in Article 11 par 4; [par 73]
 - the new Article 205.3 the Code of Administrative Offences on the non-compliance of religious organizations’ activities with their charter objectives; [par 62] and
 - the new Article 2 of the Law on the Relations between the Republic of Armenia and the HAAC, if such provision means that all media coverage of the HAAC’s theology requires its consent and if there is no other way through which the public media may report about facts and opinions related to the HAAC. [pars 93-96]

Additional Recommendations, highlighted in bold, are also included in the text of the Opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards and OSCE Commitments on the Right to Freedom of Religion or Belief

15. This Opinion analyses the Draft Act from the viewpoint of its compatibility with international standards that the Republic of Armenia has undertaken to uphold relating to the freedom of religion or belief and the freedom of association, as well as important OSCE commitments in this field.
16. Key international obligations in this area are contained in the *UN International Covenant on Civil and Political Rights*⁷ (hereinafter “ICCPR”), in particular Articles 18 (freedom of thought, conscience and religion) and 22 (freedom of association) and, in connection with these two rights, Article 2 (obligation to respect and ensure rights without distinction of any kind). Moreover, the *European Convention for the Protection of Human Rights and Fundamental Freedoms*⁸ (hereinafter “the ECHR”) is likewise applicable, in particular Article 9 (freedom of thought, conscience and religion) and Article 11 (freedom of assembly and association) and, in connection to both these

⁷ *UN International Covenant on Civil and Political Rights* (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Armenia acceded to the ICCPR on 23 June 1993.

⁸ The Council of Europe’s *Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Armenia ratified the ECHR on 26 April 2002.

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rights, Article 14 (prohibition of discrimination). Article 2 of the Protocol 1 to the ECHR⁹ also specifically states that “[i]n the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.

17. In addition, the Republic of Armenia has entered into numerous commitments related to the freedom of religion or belief in various OSCE documents, notably the 1989 Vienna Document, which sets out key rights such as the rights of communities of believers to recognition of their legal personality, the right to maintain freely accessible places of worship, and the right to religious education and training (par 16).¹⁰ Furthermore, the 1990 Copenhagen Document refers to each state’s obligation to respect the right 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, and obliges participating States to ensure that the exercise of these rights is subject only to such restrictions as are prescribed by law and are consistent with international standards (par 9.4). Also, the 2003 Maastricht Document emphasizes the obligation to uphold the principle of non-discrimination in the area of religion or belief and the duty of the State to facilitate the freedom of religion or belief through effective national implementation measures (par 9). These commitments were later reaffirmed in a 2013 OSCE Ministerial Council Decision.¹¹
18. The freedom of association is likewise protected in key OSCE commitments (see, *inter alia*, the 1990 Copenhagen Document, par 9.3).¹²
19. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which provide further and more detailed guidance, such as the 2004 OSCE/ODIHR-Venice Commission Joint Guidelines on Legislation pertaining to Religion or Belief¹³ (hereinafter “the 2004 Freedom of Religion or Belief Guidelines”), the 2014 OSCE/ODIHR-Venice Commission Joint Guidelines on the Legal Personality of Religious or Belief Communities¹⁴ (hereinafter the “2014 Legal Personality Guidelines”) and the 2015 OSCE/ODIHR Joint Guidelines on Freedom of Association.¹⁵
20. Other useful reference documents include the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (hereinafter “the 1981 UN Declaration”),¹⁶ the General Comment No. 22 of the UN Human Rights Committee on the right to freedom of thought, conscience and religion,¹⁷

⁹ The Protocol No. 1 to the ECHR, signed on 20 March 1952, entered into force on 18 May 1954. The Republic of Armenia ratified this Protocol on 26 April 2002.

¹⁰ Available at <<http://www.osce.org/mc/40881>>.

¹¹ OSCE, *Ministerial Council Decision No. 3/13 on the Freedom of Thought, Conscience, Religion or Belief* (Kyiv, 2013), <<http://www.osce.org/mc/109339>>.

¹² For an overview of these and other OSCE Human Dimension Commitments, see OSCE/ODIHR, *Human Dimension Commitments (Thematic Compilation)*, 3rd Edition, particularly Sub-Section 3.1.8, <<http://www.osce.org/odihr/76894>>.

¹³ OSCE/ODIHR and Venice Commission, *Guidelines for Review of Legislation Pertaining to Religion or Belief* (2004), <http://www.legislationline.org/download/action/download/id/2283/file/Guidelines_Review_Legislation_Religion_Belief.pdf> (hereinafter “the 2004 Freedom of Religion or Belief Guidelines”).

¹⁴ OSCE/ODIHR and Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities* (2014), <<http://www.osce.org/odihr/139046?download=true>> (hereinafter “the 2014 Legal Personality Guidelines”).

¹⁵ OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), <<http://www.osce.org/odihr/132371>> (hereinafter “2015 Guidelines on Freedom of Association”).

¹⁶ *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN General Assembly 25 November 1981, UN Doc. A/RES/36/55, <<http://www.un.org/documents/ga/res/36/a36r055.htm>>.

¹⁷ UN Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18 of the ICCPR)*, 27 September 1993, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en>.

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the reports of the UN Special Rapporteur on Freedom of Religion or Belief¹⁸ and relevant UN Human Rights Council resolutions.¹⁹

2. General Comments

21. At the outset, the authors of the Draft Act are commended for having addressed many of the recommendations made by the OSCE/ODIHR and the Venice Commission in their Joint Opinions, particularly with respect to:
- specific reference to international treaties (see Article 2 of the Draft Act);²⁰
 - the guarantee of the right to freedom of religion or belief to every person, and not only Armenian citizens, as currently provided in the 1991 Law (see in particular Article 4 par 2 of the Draft Act);²¹
 - the express reference to the right to change one’s religion or belief (Article 4 par 4 of the Draft Act), the freedom to manifest religion or belief in public or private (Article 4 par 4) and the right to act according to one’s religion in daily life (Article 4 par 4), as all of these are fundamental aspects of the right to freedom of religion or belief, which are not mentioned in the 1991 Law;²²
 - the liberty of parents and guardians to ensure the religious education of their children in conformity with their own convictions (Article 4 par 5), while specifying that the right of parents to ensure such education and teaching shall only apply until the children attain the age of 14, thus protecting the mature child’s freedom of religion or belief;²³
 - the expansion of the right to manifest one’s religion or belief to cover not only church ceremonial acts or worship services, but also other practices (Article 4 par 4), thus not limiting the provision to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions;²⁴
 - the possibility for religious associations to exercise rights without state registration (Article 6 par 1 of the Draft Act);
 - the introduction of a simplified registration system for religious (or belief) communities that no longer depends on the association being based on “historically recognized holy scriptures” and forming part of the “international contemporary religious-ecclesiastical communities”; and
 - the removal of the prohibition of proselytism currently provided in Article 8 of the 1991 Law,²⁵ among others.
22. Also, it is important to highlight that Article 1 par 2 of the Draft Act explicitly provides that the relations between the Republic of Armenia and the HAAC shall be governed by

¹⁸ Available at <<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>>.

¹⁹ Available at <http://ap.ohchr.org/documents/dpage_e.aspx?m=86>.

²⁰ *Op. cit.* footnote 2, par 25 (2011 Joint Opinion).

²¹ *ibid.* par 22 (2011 Joint Opinion).

²² *ibid.* par 22 (2011 Joint Opinion).

²³ *ibid.* par 26 (2011 Joint Opinion).

²⁴ *ibid.* par 24 (2011 Joint Opinion).

²⁵ *ibid.* pars 43-60 (2011 Joint Opinion).

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the 2007 Law of the Republic of Armenia “On the Relations Between the Republic of Armenia and the Holy Armenian Apostolic Church” (hereinafter “the 2007 HAAC Law”). At the same time, for all other matters, it remains unclear to which extent the Draft Act will apply to the HAAC and how any potential conflict of norms between the HAAC Law and the Draft Act will be resolved. In addition, the draft amendments to Article 4 of the 2007 HAAC Law²⁶ will remove the reference to the Draft Act as a piece of legislation regulating the relationship between the Republic of Armenia and the HAAC. Thus, this seems to suggest that the HAAC will not be bound by the provisions of the Draft Act.

23. Previous OSCE/ODIHR-Venice Commission Joint Opinions have already acknowledged the special historical role of the HAAC in the Republic of Armenia, commenting that its special status was not *per se* impermissible but should not be allowed to lead to or serve as a basis for discrimination against other religious or belief communities.²⁷ If the Draft Act is not applicable to the HAAC, this means that the HAAC will not be subject to a number of obligations or limitations that are imposed on religious associations and organizations according to the Draft Act.²⁸ This could amount to discriminatory treatment *vis-à-vis* other religious or belief communities and/or potentially interfere with the full enjoyment of the rights of the members of other religious or belief communities.²⁹
24. Hence, and while a radically different legal status for a religious organization is not *per se* in violation of international human rights standards, to avoid any ambiguity and potential discrimination against other religious or belief communities and/or interference with the full enjoyment of the rights of their members, **it is advisable to expressly state that the HAAC is considered to be a religious organization, and is thus governed by the Draft Act, and to explicitly stipulate which legislation shall prevail over the other in case of discrepancies.**
25. Finally, it is worth noting that the Draft Act in general refers to the freedom of thought, conscience, religion and religious organizations but does not seem to contemplate the freedom of *non-religious* belief. **The Draft Act should be amended throughout to ensure that it also encompasses references to non-religious belief and not just “religion”, in line with Article 18 of the ICCPR, Article 9 of the ECHR and relevant OSCE commitments. Similarly, consideration may also be given to changing relevant provisions to refer to religious or belief organizations.**

²⁶ Article 4 of the 2007 HAAC Law on Legislation Regulating the Relationship between the Republic of Armenia and the Holy Armenian Apostolic Church currently reads: “The regulating principles of the relationship between the Republic of Armenia and the Holy Armenian Apostolic Church are delineated by the Constitution of the Republic of Armenia; its general relationship as delineated by the RA law “On Freedom of Conscience and Religious Organizations” and other laws and international agreements; and its special relationship – as a relationship between the state and national church recognized by the state – as delineated by this law.”

²⁷ See *op. cit.* footnote 2, par 20 (2011 Joint Opinion); and *op. cit.* footnote 1, par 10 (2010 Joint Opinion) and pars 20-21 (2009 Joint Opinion). See also *op. cit.* footnote 17, par 9 (1993 UNHRC General Comment No. 22), which states that “[t]he fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the [ICCPR], including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the 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 under Article 26.”

²⁸ See e.g., Article 5 par 2 (3) regarding religious preaching in instructional or nursery or educational establishments where minors under the age of 14 receive instruction or education; Article 7 par 2 on the principle of accountability applicable to religious organizations; Article 8 par 2 regarding the charter of religious organizations; Article 11 pars 2-5 on the obligations and limitations imposed on religious organizations; Article 13 on the reporting requirements applicable to religious organizations; and Article 16 on the supervision over activities of religious organizations.

²⁹ See e.g., ECtHR, *Manoussakis v. Greece* (Application no. 18748/91, judgment of 26 September 1996), particularly par 48, <<http://hudoc.echr.coe.int/eng/?i=001-58071>>.

3. Guarantees for Securing the Right to Freedom of Religion or Belief

3.1. Scope of the Guarantees

26. As mentioned in par 21 *supra*, it is welcome that the right of parents to ensure religious education and teaching shall only apply until children attain the age of 14. At the same time, Article 4 par 6 regarding guardians does not contain such limit to the length of religious education and teaching for their wards, thus failing to protect the mature child’s freedom of religion or belief.³⁰ **The rules for guardians under Article 4 par 6 should be the same as for parents and it is recommended to amend Article 4 par 6 accordingly.**
27. Article 4 par 8 of the Draft Act provides that “[d]irect or indirect limitations of the freedom of thought, conscience and religion, including also direct or indirect limitations of individual or group manifestations of worship, except for cases provided by Article 5 of this Law, coercing a person to convert to another religion by way of violence, deceit or threat, persecution on grounds of religion, incitement of religious hatred shall give rise to liability prescribed by law”.
28. First, it is worth emphasizing here that the right to have, adopt or change a religion or belief (*forum internum*) is absolute and cannot be subject to limitations of any kind.³¹ On the other hand, the *forum externum* i.e., the freedom to manifest one’s religion or belief, either alone or in community with others, in public or private, may be subject to limitations.³² **This should be clarified in the Draft Act and Article 4 par 8 should be amended to refer to direct or indirect limitations to the freedom to *manifest* one’s religion or beliefs.**
29. Additionally, it is doubtful whether the expression “direct or indirect limitations of the freedom of thought, conscience and religion” is sufficiently clear and foreseeable to comply with the principle of legal certainty, whereby legal provisions should be clear and precise so that individuals may ascertain unequivocally which rights and obligations apply to them and regulate their conduct accordingly. Moreover, this provision does not refer to specific laws or clarify whether the said acts will trigger civil, administrative or criminal liability. Any limitation to the right to freedom of religion or belief must be “prescribed by law” and necessary in a democratic society in 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” (Article 18 par 3 of the ICCPR and Article 9 par 2 of the ECHR). As held by the ECtHR, the term “prescribed by law” not only requires that the said measures shall have some basis in domestic law, but also refers to “the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects, that is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct”.³³
30. Particularly, should the said provision entail criminal liability, the proposed formulation may also pose problems with respect to the principles enshrined in Article 7 of the ECHR, in particular those specifying that only the law can define a crime and prescribe

³⁰ *Op. cit.* footnote 2, par 26 (2011 Joint Opinion).

³¹ *Op. cit.* footnote 13, par 1 (page 10) (2004 Freedom of Religion or Belief Guidelines).

³² *ibid.* par 2 (page 10) (2004 Freedom of Religion or Belief Guidelines).

³³ European Court of Human Rights (ECtHR), *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 109, <<http://hudoc.echr.coe.int/eng?i=001-59985>>. See also *op. cit.* footnote 14, par 7 (2014 Legal Personality Guidelines).

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a penalty (*nullum crimen, nulla poena sine lege*).³⁴ This principle implies that criminal offences and the relevant penalties must be clearly defined by law, meaning that an individual, either by himself/herself or with the assistance of a legal counsel, should know from the wording of the relevant provision which acts and omissions will make him/her criminally liable and what penalty he or she will face as a consequence.³⁵ If the acts set out in Article 4 par 8 are intended to trigger criminal liability, then the mere mention of “direct or indirect limitations”, without specifying what kind of concrete behaviour this would entail or the related sanctions, would appear to be too imprecise to satisfy the conditions set out by Article 7 of the ECHR.

31. As to the act of “coercing a person to convert to another religion by way of violence, deceit or threat”, the Explanatory Note to the Draft Act states that this provision aims to prevent “improper proselytism”. The ECtHR jurisprudence has considered certain conducts (i.e., offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need,³⁶ or a certain form of harassment or the application of undue pressure in abuse of power³⁷) as “improper proselytism” not compatible with respect for the freedom of religion or belief of others. At the same time, the draft amendment to Article 160 of the Criminal Code does not provide a clear definition of the types of behaviour that are prohibited nor does it specify the constitutive elements of the offence (see also Sub-Section 6.2 *infra*). It is also not clear whether the term “persecution on grounds of religion”, which appears vague, and open to (potentially different) interpretation, is defined in other pieces of legislation.
32. Regarding the “incitement to religious hatred” specifically, and as already noted in the 2011 Joint Opinion, these types of offences require careful definition. Article 226 of the Criminal Code of Armenia focuses on the incitement to national, racial or religious hatred, while Article 143 of the same Code provides for criminal liability in case of “[d]irect or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen’s [...] religion, political or other views [...] which damaged the citizen’s legal interests”. While a more detailed analysis of the compliance of such provisions with international human rights standards and OSCE commitments would go beyond the scope of this Opinion, it is nevertheless recommended to explicitly refer to the exact provision or legislation that is being breached, to avoid legal uncertainty and discretionary interpretation of what is meant by “incitement to religious hatred”. The *2012 Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence*³⁸ constitutes a useful source of guidance in this area (see also Sub-Section 6.1 *infra*).
33. In light of the foregoing, the wording of Article 4 par 8 would thus appear to be too imprecise to meet the requirements of legal clarity, certainty and foreseeability. **It is recommended to include a cross-reference to the relevant provisions of other**

³⁴ See e.g., ECtHR, *Kokkinakis v. Greece* (Application no. 14307/88, judgment of 25 May 1993), par 52, <<http://hudoc.echr.coe.int/eng?i=001-57827>>.

³⁵ See e.g., ECtHR, *Rohlena v. the Czech Republic* [GC] (Application no. 59552, judgment of 27 January 2015), pars 78-79, <<http://hudoc.echr.coe.int/eng?i=001-151051>>.

³⁶ See e.g., *op. cit.* footnote 34, par 48 (*Kokkinakis v. Greece*, ECtHR judgment of 25 May 1993).

³⁷ See e.g., ECtHR, *Larissis and others v. Greece* (Application no. 140/1996/759/958-960, judgment of 24 February 1998), par 51, <<http://hudoc.echr.coe.int/eng?i=001-58139>>.

³⁸ *2012 Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence*, Conclusions and recommendations emanating from the four regional expert workshops organised by the OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, <http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf>.

legislation which define such terms, if they exist, or alternatively to clarify their meaning, the conduct that they refer to, and the type of liability that such conduct will trigger.

34. Finally, **parties asserting claims that their rights to freedom of religion or belief have been violated are entitled to effective remedies.**³⁹ The Draft Act does not specifically provide for judicial protection of individuals and of religious or belief communities, their members and assets, whereas ensuring such protection is an essential means of enabling the proper exercise of the right to freedom of religion or belief⁴⁰ (see also par 57 *infra*). **It is recommended to supplement the Draft Act in that respect.**

3.2. Limitations on the Freedom to Manifest One’s Religion or Belief

35. Article 5 of the Draft Act deals with limitations to the manifestation of the freedom of thought, conscience and religion. As mentioned in par 28 *supra*, only the freedom *to manifest* one’s religion or belief may be subject to limitations. **Hence, this wording overall reflects one of the recommendations made in the 2011 Joint Opinion regarding the limitations on the freedom to *manifest* thought, conscience and religion or belief.**⁴¹
36. Article 5 of the Draft Act provides that limitations may be imposed “in the cases prescribed by this Article, for purposes of protecting state security, public order, health or morals or the fundamental rights and freedoms of others”.
37. First, it is worth emphasizing in this context that the list of limitation grounds laid out in international instruments⁴² allows limitations on manifestations of religion where these involve, or may lead to a concrete breach of public order or safety, but not where generalized claims of threats to state security are made.⁴³ The *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR*⁴⁴ specify that generally, no limitations or grounds for applying them to rights guaranteed by the ICCPR are permitted other than those contained in the ICCPR itself, a principle which was specifically reiterated by the UN Human Rights Committee with respect to Article 18 of the ICCPR.⁴⁵ Likewise, the ECtHR has expressly held that “the exceptions to freedom of religion listed in Article 9 par 2 must be narrowly interpreted, for their enumeration is strictly exhaustive and their definition is necessarily restrictive” and that Article 9 par 2 of the ECHR “does not allow restrictions on the ground of national security”.⁴⁶ It is therefore recommended **to replace the term “state security” with the term “public**

³⁹ *Op. cit.* footnote 13, Part II.B(9) on page 13 (2004 Freedom of Religion or Belief Guidelines).

⁴⁰ See e.g., ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 118, <<http://hudoc.echr.coe.int/eng/?i=001-59985>>.

⁴¹ *Op. cit.* footnote 2, par 33 (2011 Joint Opinion).

⁴² Article 18 par 3 of the ICCPR reads: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others” and Article 9 par 2 of the ECHR states: “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in 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”.

⁴³ See *op. cit.* footnote 17, par 8 (1993 UNHRC General Comment No. 22). See also *op. cit.* footnote 14, par 8 (2014 Legal Personality Guidelines).

⁴⁴ See UN Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, <<http://www.refworld.org/docid/4672bc122.html>>.

⁴⁵ *ibid.* par 8 (UNHRC’s General Comment No. 22).

⁴⁶ ECtHR, *Nolan and K. v. Russia* (Application no. 2512/04, judgment of 12 February 2009), par 73, <<http://hudoc.echr.coe.int/eng/?i=001-91302>>.

safety”, in line with international standards and the recommendations made in the 2011 Joint Opinion.⁴⁷

38. Second, Article 5 par 1 provides for the possibility to restrict the freedom of thought, conscience and religion based on the above-mentioned grounds, but does not clarify that such restrictions must be set out in law and necessary and proportionate to the (legitimate) aims that they pursue.⁴⁸
39. Additionally, Article 5 implies that certain persons or bodies may invoke any of the above-mentioned grounds to impose restrictions without further justification or motivated reasoning. In principle, relevant legislation must indicate the scope of any discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to adequately protect individuals and the population as a whole against arbitrary interference.⁴⁹
40. Accordingly, legislation should elaborate the process by which such restrictions may be imposed, including by indicating the person or body competent to take such decisions, the content and modalities of their communications and the need to motivate them, and how the person or organisation affected can engage in the process and be heard.⁵⁰ In the absence of such arrangements, state bodies could take arbitrary decisions when restricting a fundamental freedom. The principle of legality requires a clear legal basis for any such decision, and that it is accessible and foreseeable as to its effects, meaning that it is formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct accordingly.⁵¹
41. In light of the foregoing, and as already recommended in the 2011 Joint Opinion,⁵² **Article 5 par 1 of the Draft Act should specify that the freedom to manifest thought, conscience and religion or belief can be subjected only to such limitations as are set out in law, and are necessary and proportionate to the (legitimate) aims that they pursue. The provision should also detail the process by which such restrictions may be imposed, including by indicating the person or body competent to take such decisions, the content and modalities of their communications and the need to motivate them, and how the person or organisation affected can engage in the process and be heard.**
42. As regards the grounds based on which the “exercise of the freedom of thought, conscience and religion” shall be limited (Article 5 par 2), the comments made in pars 28, 35 and 37 *supra*, concerning the limitation to the freedom to manifest one’s religion or belief and the fact that “state security” is not a legitimate aim according to international standards, apply accordingly.
43. Moreover, Article 5 par 2 (2) stipulates that “reliable information that a person or a group of persons is a member of or participates in, organizes the activities of an organization, which aims to threaten the state security of the Republic of Armenia, overthrow its constitutional order, weaken its ability of defense, engage in terrorist

⁴⁷ *Op. cit.* footnote 2, par 39 (2011 Joint Opinion).

⁴⁸ *ibid.* par 34 (2011 Joint Opinion).

⁴⁹ *ibid.*

⁵⁰ *Op. cit.* footnote 2, par 38 (2011 Joint Opinion).

⁵¹ See e.g., ECtHR, *The Sunday Times v. the United Kingdom (No. 1)* (Application no. 6538/74, judgment of 26 April 1979), par 49, <<http://hudoc.echr.coe.int/eng?i=001-57584>>. See also Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, 18 March 2016, par 58, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)>.

⁵² *Op. cit.* footnote 2, pars 34-39 (2011 Joint Opinion).

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activities or coerce a person to convert to another religion” is a compulsory ground justifying limitations to the exercise of the freedom of thought, conscience and religion.

44. First, such wording, particularly the reference to “reliable information” and the participation in or organization of the activities of an organization, is vague and fails to comply with the principle of legal certainty (see par 29 *supra*). Hence, the mere fact of having “reliable information” on membership or participation in a terrorist or similar group appears largely insufficient to reach the threshold of seriousness that would justify a limitation to the freedom to manifest one’s religion or belief. In particular, if the said organization has not been banned for such illegal activities, it is unclear why the fact of being a member, participating in or organizing the activities of this organization could justify a limitation to the “exercise of the freedom of thought, conscience and religion”. As mentioned in the *2004 Freedom of Religion or Belief Guidelines*, laws pertaining to national security and terrorism shall not be used to target religious organizations that do not engage in objectively criminal or violent acts.⁵³ **If an organization is to be banned for threatening state security, planning the violent overthrow of Armenia’s constitutional order or engaging in terrorist activities, then, as for any other association, the decision concerning the prohibition or dissolution of such association should be based on a court order or be preceded by judicial review** (see Sub-Section 5 *infra*).⁵⁴
45. Further, contrary to Article 5 par 2 (1) which refers to the “violent overthrow of the constitutional order”, Article 5 par 2 (2) merely mentions the “overthrow of constitutional order”. It must be emphasized that an association should not be prohibited, dissolved or otherwise penalized simply because it peacefully promotes a change in the law or constitutional order.⁵⁵ Indeed, “[s]imply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes”.⁵⁶ **Article 5 par 2 (2) should be amended to refer to the violent overthrow of constitutional order, which would also ensure consistency with par 1 of the same provision.**
46. Other wording used in Article 5 par 2 to justify limitations of the freedom of thought, conscience and religion, referring to membership or participation in organizations that aim to “weaken [the] ability of defense [of the Republic of Armenia]” or “coerce a person to convert to another religion” (see par 31 *supra* and Sub-Section 6.2 *infra*) are rather general and thus *prima facie* not compliant with the principle of legal certainty. In this context, it is worth noting that pursuant to Article 15 par 2 (3), if one of the grounds listed in Article 5 of the Draft Act emerges, this may ultimately lead to the dissolution of the religious organization. In light of this, it is all the more important for such grounds to be strictly circumscribed, as prohibition or dissolution of an association should always be based on serious, narrowly tailored and specific grounds (see Sub-Section 5 *infra*).⁵⁷

⁵³ *Op. cit.* footnote 13, Part III.B on page 24 (2004 Freedom of Religion or Belief Guidelines).

⁵⁴ *Op. cit.* footnote 15, par 255 (2015 Guidelines on Freedom of Association).

⁵⁵ ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgment of 3 February 2009), pars 41-42, <<http://hudoc.echr.coe.int/eng/?i=001-91046>> (only in French). See also *ibid.* par 90 (2015 Guidelines on Freedom of Association).

⁵⁶ OSCE/ODIHR, *Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism* (Warsaw: ODIHR, 2014), p. 42, <<http://www.osce.org/atu/111438>>.

⁵⁷ *Op. cit.* footnote 15, par 114 (2015 Guidelines on Freedom of Association).

4. Religious Associations and Organizations

4.1. Religious Associations

47. Chapter 3 of the Draft Act introduces a novel classification of religious groups, namely “religious associations”, which may decide to register as “religious organizations” if they have at least 150 adult members (Article 6 par 4 of the Draft Act). It is particularly welcome that Article 6 par 2 of the Draft Act specifies that associations can also operate without state registration in Armenia.⁵⁸
48. While Chapter 3 speaks of religious associations, different provisions within this chapter (e.g., Article 6 pars 4 and 5, Articles 8 and 9) focus on religious organizations. To avoid confusion, the title of the Chapter could be changed to refer to both religious associations and organizations. The same comment applies to Chapter 4 (Articles 10, 11 and 12).
49. The 1991 Law currently requires a religious organization to have at least 50 members, a figure which is raised to 150 members by the Draft Act. As stated in the 2010 Joint Opinion, the higher the number of adherents required for registration (either in real terms or as a percentage of the community), the more difficult a State may find it to provide an adequate justification for this increase.⁵⁹ In this context, it is noted that according to international standards, obtaining legal personality should not be contingent on a religious or belief community having a minimum number of members.⁶⁰ Moreover, a certain minimum number may indirectly discriminate against smaller or newly-established religious or belief communities.⁶¹ Generally, the reason for **raising the threshold from 50 to 150 members** at this point remains unclear. **In the absence of a clear reason linked to one of the permissible grounds for limitation set out in Article 18 par 3 of the ICCPR or Article 9 par 2 of the ECHR, this new threshold appears discriminatory and disproportionate, and should be reconsidered.**
50. Article 6 par 1 refers to the right of everyone “to form religious associations with others for the purpose of professing, teaching, manifesting, through church ceremonial acts or other worship services, practicing and observing in daily life, his/her religion, faith or belief, in public or private, including for the purpose of acting in accordance with his/her own religion, faith or belief in daily life”. However, while quite detailed and extensive, this provision does not refer to **the right to become a member of religious or belief associations and should be supplemented in that respect.**
51. Further, Article 6 par 1 only refers to ceremonial acts or worship services, and thus seems to be limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. **It would be advisable to use the same wording as in Article 4 par 4 or, as already recommended in the 2011 Joint Opinion, to make a reference to other practice and observance,** which would be a more general term that covers not only ceremonial acts

⁵⁸ *Op. cit.* footnote 2, par 60 (2011 Joint Opinion).

⁵⁹ *Op. cit.* footnote 1, par 36 (e) (2010 Joint Opinion).

⁶⁰ *Op. cit.* footnote 13, Part II.F(1) on page 17 (2004 Freedom of Religion or Belief Guidelines); and *op. cit.* footnote 14, par 27 (2014 Legal Personality Guidelines). See also the Venice Commission, *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, 19 March 2012, par 49, <[http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)004-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)004-e.aspx)>.

⁶¹ *ibid.* par 27 (2014 Legal Personality Guidelines). See also UN Special Rapporteur on freedom of religion or belief, *Report on Freedom of Religion or Belief and Recognition Issues*, A/HRC/19/60, 22 December 2011, par 44, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60_en.pdf>.

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or worship services but also other customs and practices such as the observance of dietary regulations, the wearing of distinctive clothing, the participation in rituals and the use of a particular language, among others.⁶²

52. It is also unclear whether religious or belief communities may register an association even if they do not reach the above-mentioned membership threshold, or even if they do, whether they may decide to register not as a religious organization but as a different form of association. If this is possible, it is not certain which legislation would apply in such cases, presumably the Law “On Non-Governmental Organizations” and/or the Law of the Republic of Armenia “On State Registration of Legal Persons, State Record-registration of Separate Subdivisions of Legal Persons, Institutions and Individual Entrepreneurs” (hereinafter Law on State Registration of Legal Persons”) or other legislation. **This point should be clarified.** It is also noted that the draft amendments to Article 1 of the Law on Non-Governmental Organizations state that this legislation “shall cover the relations pertaining to establishment of religious organizations”, which may imply that it may not apply to other forms of religious or belief entities.
53. Article 6 par 5 specifies that “[r]eligious organizations shall have the status of a non-commercial organization”, which implies that religious associations will not. This is confirmed by Article 10 of the Draft Act, which suggests that religious associations will not be able to benefit from certain rights such as opening bank accounts, exercising propriety rights or acting in court under their own name, all things that may generally be enjoyed by entities with legal personality.
54. As already mentioned in the 2011 and 2010 Joint Opinions, a religious group must have access to legal personality status and should be able to form a religious association regardless of how many members it may have.⁶³ It must be reiterated that “[t]he right to legal personality status is vital to the full realization of the right to freedom of religion or belief” and that “[a] number of key aspects of organized community life in this area become impossible or extremely difficult without access to legal personality”.⁶⁴ Consequently, **the Draft Act should clarify how a religious or belief association can be registered to operate as a legal person in the national legal order, if it so wishes, irrespective of the number of its members or believers, while ensuring that, regardless of the system used, access to legal personality and the rights that emanate from this status are quick, transparent, fair, inclusive and non-discriminatory.**⁶⁵
55. Article 10 par 1 of the Draft Act provides a limited list of rights of religious associations, which include the rights to disseminate information on their activities, to present and defend their rights and those of their members in other organizations or before public bodies, to collaborate with domestic or international/foreign non-commercial organizations, to practice religious services, rites and ceremonial acts, to create religious education groups, to engage in research, to acquire and use religious materials and objects and to establish ties with the religious organizations of other countries. Article 10 par 2 provides additional rights for religious organizations, including the right to exercise proprietary and non-proprietary rights in their own name, as well as the right to act as a plaintiff or defendant in a court, the right to seek, receive and dispose of voluntary monetary and other donations, to engage in charity, to open

⁶² *Op. cit.* footnote 2, par 24 (2011 Joint Opinion). See also *op. cit.* footnote 17, par 4 (UNHRC’s General Comment No. 22).

⁶³ *ibid.* par 64 (2011 Joint Opinion); and *op. cit.* footnote 1, par 38 (2010 Joint Opinion).

⁶⁴ *Op. cit.* footnote 14, par 20 (2014 Legal Personality Guidelines).

⁶⁵ *ibid.* par 24 (2014 Legal Personality Guidelines).

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bank accounts, to establish or join other organizations and to collaborate with other organizations, including international or foreign organizations.

56. First, and despite this detailed list of rights, it is noted that this provision does not refer to **the associations’ internal autonomy and right to self-government**, particularly as regards the appointment of their leaders or officials, which is a key component of the right to freedom of religion or belief.⁶⁶ **This should be added to Article 10 par 1 of the Draft Act.**
57. Second, Article 10 appears to deprive religious associations of key aspects connected to legal personality that are vital to the full realization of the right to freedom of religion or belief.⁶⁷ These include e.g., having bank accounts and ensuring judicial protection of the community, its members and assets, maintaining the continuity of ownership of religious edifices, establishing and operating schools, and the employment of staff, among others.⁶⁸ As expressly noted by the ECtHR, “one of the means of exercising the right to manifest one’s religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets”.⁶⁹ Moreover, religious or belief organizations must be able to exercise not only the full range of religious activities but also activities normally exercised by registered non-governmental legal entities, to carry out the full range of their affairs.⁷⁰ **The Draft Act should be amended to ensure that religious or belief communities that chose to register (but not as religious organization – see par 54 supra) can enjoy such rights.**
58. Finally, it is worth emphasizing that Article 10 of the Draft Act fails to encompass the range of freedoms that are key components of the right to freedom of thought, conscience, religion or belief, as laid out in Article 6 of the 1981 UN Declaration⁷¹ and in OSCE commitments (see e.g., 1989 Vienna and 1990 Copenhagen Documents). These include, among others, the freedoms to establish and maintain appropriate charitable or humanitarian institutions; 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; to write, issue and disseminate relevant publications in these areas. The UN Special Rapporteur on Freedom of Religion or Belief also noted with concern cases where religious minorities are not authorized to extend their religious activities into social, health or educational matters, as any restriction in that field must be prescribed by law and be necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.⁷² **Article 10 of the Draft Act should be supplemented in that respect.**

⁶⁶ *Op. cit.* footnote 13, Part II.D on page 15 (2004 Freedom of Religion or Belief Guidelines).

⁶⁷ See *op. cit.* footnote 14, par 20 (2014 Legal Personality Guidelines).

⁶⁸ *ibid.* par 20 (2014 Legal Personality Guidelines). See also *op. cit.* footnote 61, pars 46-51 (2011 Report of the UNSR on Freedom of Religion or Belief and Recognition Issues).

⁶⁹ ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 118, <<http://hudoc.echr.coe.int/eng/?i=001-59985>>.

⁷⁰ See *op. cit.* footnote 14, par 23 (2014 Legal Personality Guidelines). See also ECtHR, *Moscow Branch of The Salvation Army* (Application no. 72881/01, judgment of 5 October 2006), par 74; *Svyato-Mykhaylivska Parafiya v. Ukraine* (Application no. 77703/01, judgment of 14 June 2007), par 123, <<http://hudoc.echr.coe.int/eng/?i=001-81067>>; and *op. cit.* footnote 60, pars 30-36 (2012 Venice Commission’s Opinion on Act CCVI of 2011 of Hungary)..

⁷¹ *Op. cit.* footnote 16 (1981 UN Declaration).

⁷² UN Special Rapporteur on freedom of religion or belief, *Interim Report on Freedom of Religion or Belief*, A/65/207, 29 July 2010, pars 35-36, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/470/47/PDF/N1047047.pdf?OpenElement>>.

4.2. Religious Organizations

59. Article 8 of the Draft Act states that the registration of religious organizations shall be carried out as prescribed by the Law on State Registration of Legal Persons and that a religious organization shall have a charter. The charter requirements set out in this provision involve a substantive amount of information, including the structure of the organization, requirements for members and procedure for membership, the nature of the religious organization, the faith affiliation, the description of the belief or conviction and the sources of financing. These requirements exist in addition to the requirements set out in Articles 10-12 of the Law on Non-Governmental Organizations. As noted in the 2014 Legal Personality Guidelines, requiring religious organizations to provide excessively detailed information in their statutes is considered to be burdensome and not justified under international law.⁷³
60. Article 9 of the Draft Act provides that state registration shall be refused in cases where limitation grounds listed in Article 5 of the Draft Act or in Article 36 of the Law on State Registration of Legal Persons exist.⁷⁴ At the same time, pursuant to Article 36 par 2 of the latter legislation, “the incompatibility of the charter of the commercial organization with the law shall not be a ground for refusing the state registration of the legal person”. Hence, non-compliance of the charter with the requirements listed in Article 8 of the Draft Act should *a priori* not constitute a ground for refusing state registration, which is welcome.⁷⁵
61. However, the draft amendments to the Code of Administrative Offences of the Republic of Armenia do introduce some administrative sanctions in cases where the activities of religious organizations are not compliant with the charter objectives (new Article 205.3 of the Code). In this context, it is noted that the reference to “compliance with objectives” appears to be a rather loose concept. It is difficult to see how this could adequately be assessed by the public authorities, and how potentially arbitrary interpretation could be avoided (see par 39 *supra*).
62. Moreover, in principle, it should be up to the associations themselves to determine whether the activities that they undertake fall within the scope of the objectives prescribed in their charter or statutes.⁷⁶ As stated in earlier opinions by the OSCE/ODIHR and the Venice Commission, oversight powers that amount to securing compliance with an association's goals and objectives should be a matter for its founders, members and participants, and potential (public or private) donors but not the public authorities, in accordance with the general principle of self-governance of

⁷³ See *op. cit.* footnote 14, par 25 (2014 Legal Personality Guidelines).

⁷⁴ Article 36 states: “1. The grounds for refusing the state registration of legal persons shall be as follows:

(1) violation of the procedure defined by law for forming a legal person;

(2) failure to submit the documents defined by this Law and other laws;

(3) incompatibility of the submitted documents with the law or with other documents submitted by the legal person, except for the case referred to in part 2 of this Article;

(4) the founder as well as the head of the executive body of the commercial organization newly being registered (established) is deprived of the right to engage in entrepreneurial activities as prescribed by law and his or her conviction has not been removed or has not become spent as prescribed by law;

(5) incompatibility of the name with the requirements defined by law, where the registration of the name has been refused, and the person has not submitted another name;

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

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

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

⁷⁵ *Op. cit.* footnote 2, par 67 (2011 Joint Opinion).

⁷⁶ *Op. cit.* footnote 15, par 91 (2015 Guidelines on Freedom of Association).

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associations,⁷⁷ as well as the autonomy (or self-determination) of religious and belief groups.⁷⁸ **It is therefore recommended to remove new Article 205.3 from the Code of Administrative Offences.**

63. As regards the grounds listed in Article 5 which may justify a refusal to register (Article 9 of the Draft Act), and as already noted in Sub-Section 3.2 *supra*, any limitation concerning state registration of religious organizations should be necessary and proportionate and should not use vague terminology such as that used in Article 5, which could potentially be subject to discretionary interpretation. **It is recommended to specify more clearly in Article 9 the very limited cases where state registration may be refused, in line with international standards** (see Sub-Section 3.2 *supra*).⁷⁹
64. It is welcome that, as also recommended in the 2011 Joint Opinion,⁸⁰ the Draft Act proposes a simplified system of registration that no longer depends on the association being based on “historically recognized holy scriptures” and forming part of the “international contemporary religious-ecclesiastical communities” (Article 5 of the 1991 Law). The acquisition of legal status is also no longer subject to prior registration by the Committee of Religious Affairs of the Council of Ministers (see Articles 14 of the 1991 Law).
65. At the same time, the state registration of religious organizations shall be carried out as prescribed by the Law on State Registration of Legal Persons (Article 8 par 1 of the draft Act). It should be emphasized, as done in the 2011 Joint Opinion, that the requirements for registration should not oblige organizations to establish organizational structures or create procedures that are inconsistent with the beliefs of particular religious or belief communities, as this is an internal matter, which should not concern state institutions.⁸¹ Indeed, the state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality.⁸² Further, religious or belief communities must enjoy autonomy and self-determination on any matters regarding issues of faith, belief or their internal organization as a group.⁸³ To adequately reflect such aspects of freedom of religion or belief, **the Draft Act should include a provision allowing for the appropriate accommodation of these types of religious or beliefs matters**, as recommended in the 2011 Joint Opinion.⁸⁴
66. Article 11 par 2 of the Draft Act prescribes a number of obligations imposed on religious organizations, including keeping records of their members, undergoing obligatory audit when provided by Article 13, providing documents related to their activities at the request of the Authorized Body,⁸⁵ enabling their members to access a number of documents concerning the religious organizations, registering charter amendments, termination of activities, the establishment of new or termination of sub-

⁷⁷ OSCE/ODIHR-Venice Commission, *Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organizations and other Legislative Acts of the Kyrgyz Republic*, 16 October 2013, par 73, <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Oct%202013_en.pdf>.

⁷⁸ *Op. cit.* footnote 13, Part II.D on page 15 (2004 Freedom of Religion or Belief Guidelines).

⁷⁹ *Op. cit.* footnote 14, par 21 read together with Part I (2014 Legal Personality Guidelines).

⁸⁰ *ibid.* par 67 (2011 Joint Opinion).

⁸¹ *Op. cit.* footnote 2, par 68 (2011 Joint Opinion).

⁸² *Op. cit.* footnote 14, par 31 (2014 Legal Personality Guidelines).

⁸³ See e.g., OSCE/ODIHR-Venice Commission, *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan*, CDL-AD(2012)022, 15 October 2012, par 72, <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)022-e)>.

⁸⁴ *Op. cit.* footnote 2, par 68 (2011 Joint Opinion).

⁸⁵ As per Article 3 par 1 (3) of the Draft Act, the Authorized Body is the State Revenue Committee adjunct to the Government of the Republic of Armenia.

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divisions and change of address with the body for state registration, publishing reports “as provided by law” and “perform[ing] other obligations prescribed by law”.

67. First, the obligation to keep records of their members, beyond creating an administrative burden on religious organizations, is also questionable in terms of the protection of the right to privacy of the members. In that respect, the UN Human Rights Committee specifically stated that no one can be compelled to reveal his/her thoughts or adherence to a religion or belief.⁸⁶ While there may be some exceptions to this principle, these may arise only in specific circumstances, for instance when invoking certain rights or privileges conditioned by religion or belief, and only if prescribed by law and necessary to achieve the above-mentioned legitimate aims.⁸⁷ As also mentioned in the *2015 Guidelines on Freedom of Association*, the right to privacy applies to an association and its members and regulations on inspections must ensure respect for the right to privacy of the clients, members and founders of associations, and must provide redress for any violation in this respect.⁸⁸ Read together with Articles 11 par 2 (3) and 16 on the supervision of the Authorized Body over activities of religious organizations, Article 11 par 2 (1) means that the Authorized Body may have access to such records of members. This provision does not seem to contain any safeguards to ensure the respect of the right to privacy of members of associations. In light of the foregoing, **the obligation to keep records of members in Article 11 par 2 (1) should therefore be reconsidered.**
68. Certain obligations listed in Article 11 par 2 also appear to be quite broadly framed. Article 11 par 2 (3) specifies that the obligation to submit documents related to organizations’ activities to the Authorized Body shall be based on a lawful and reasoned request of the Authorized Body, to allow this body to check compliance with the requirements of the Draft Act. This wording likewise does not contain sufficient safeguards to prevent potential state harassment or abuse. As noted in the *2015 Guidelines on Freedom of Association*, all regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association.⁸⁹ Where associations are required to provide documents, **the number of documents should be defined and reasonable and associations should be given sufficient time to prepare them.**⁹⁰ Moreover, the legislation should **specifically define in an exhaustive list the grounds for possible inspections, which should not take place unless upon suspicion of a serious contravention of the legislation and should only serve the purpose of confirming or discarding the suspicion.**⁹¹ It is recommended to supplement the Draft Act accordingly.
69. Article 11 par 2 (4) provides that “a member of the religious organization, at his/her request, [shall be able to] become familiar with [the religious organization’s] charter, other founding documents within five working days from the day when such request is received” while specifying that “[a] fee may be charged for providing the information, documents specified in this point, which may not exceed the expenses incurred for providing them”. This article appears problematic as it is difficult to assess whether

⁸⁶ See *op. cit.* footnote 17, par 3 (1993 UNHRC General Comment No. 22),

⁸⁷ See, ECtHR, *Kosteski v. the former Yugoslav Republic of Macedonia* (Application no. 55170/00, judgment of 13 April 2006), par 39, <<http://hudoc.echr.coe.int/eng/?i=001-73342>>.

⁸⁸ *Op. cit.* footnote 15, pars 228 and 231 (2015 Guidelines on Freedom of Association).

⁸⁹ *ibid.* par 228 (2015 Guidelines on Freedom of Association).

⁹⁰ *ibid.* par 231 (2015 Guidelines on Freedom of Association). See also OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), par 209, <<http://www.osce.org/odihr/119633>>.

⁹¹ *ibid.* par 231 (2015 Guidelines on Freedom of Association).

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such an obligation is fulfilled. Moreover, the provision is far too detailed and invasive; such a level of detail in a law would not appear to be necessary and the religious organization should be able to regulate such matters itself.

70. It is also not clear in which cases religious organizations will be subject to “obligatory audits when provided by Article 13”, as Article 13 does not mention such cases. Further, Article 11 par 2 (7) obliges religious organizations to publish reports as provided by law. It is unclear what this would entail, and which legal provision is meant. If this refers to the reports mentioned in Article 13, then it would be recommended, for the sake of clarity, **to include in Article 11 par 2 (7) a cross-reference to such provision or to any other relevant and applicable legislation.**
71. Article 11 par 3 further requires religious organizations to “secure the preservation and intended use of the historical and cultural monuments transferred thereto by the state under the right of ownership”. It is welcome that this provision took into account, to a certain extent, the recommendations made in the 2011 Joint Opinion to reconsider the restrictions on the use of *all* property owned by a religious organization.⁹² At the same time, as already noted in the same Opinion, **if a religious organization is required to ensure the preservation of a structure that is a historical monument, some compensatory payment or support from the state may be appropriate.**⁹³
72. Article 11 par 4 of the Draft Act provides that “[r]eligious organizations may not be financed from and may not finance their spiritual centres and political parties located outside of the territory of the Republic of Armenia”. The ECtHR has held that “there is no common European standard governing the financing of churches or religions, such questions being closely related to the history and traditions of each country [... and that] [t]he margin of appreciation left to Contracting States in this regard is thus a wide one”.⁹⁴ While states may have a variety of legitimate reasons for regulating fund transfers of various types,⁹⁵ it bears recalling that all OSCE participating States have committed to respect the right of religious communities to “solicit and receive voluntary financial and other contributions”,⁹⁶ and that this right should be enjoyed without any unjust restriction.⁹⁷ OSCE commitments also affirm the importance of preserving religious organizations’ ability to affiliate with and maintain contacts with believers, religious faiths and their representatives from other countries.⁹⁸ The 2004 Freedom of Religion or Belief Guidelines specify that “although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies” and that “[t]he laws should be established in a non-discriminatory manner”.⁹⁹
73. Any limitations on access to resources from abroad must be prescribed by law, pursue a legitimate aim in conformity with international standards and be necessary in a democratic society and proportionate to the aim pursued.¹⁰⁰ While restricting foreign

⁹² *Op. cit.* footnote 2, par 75 (2011 Joint Opinion).

⁹³ *ibid.* par 75 (2011 Joint Opinion).

⁹⁴ ECtHR, *Klein and Others v. Germany* (Applications nos. 10138/11 and 3 others, judgment of 6 April 2017), par 87, <<http://hudoc.echr.coe.int/eng?i=001-172553>>.

⁹⁵ *ibid.* par 76 (2011 Joint Opinion). See also *op. cit.* footnote 13, Part II.H (2004 Freedom of Religion or Belief Guidelines).

⁹⁶ OSCE, *Concluding Document of the Third Follow-up Meeting* (Vienna, 4 November 1986 to 19 January 1989), Principle 16.4, <<http://www.osce.org/mc/40881>>.

⁹⁷ *ibid.* Principle 16.4 (1989 Vienna Document).

⁹⁸ *ibid.* par 32 (1989 Vienna Document), which provides that OSCE participating States “will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries”.

⁹⁹ *Op. cit.* footnote 13, Part II.J on page 20 (2004 Freedom of Religion or Belief Guidelines).

¹⁰⁰ *Op. cit.* footnote 15, par 220 (2015 Guidelines on Freedom of Association).

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funding may be based on legitimate aims such as combatting money-laundering and financing of terrorist organizations, the blanket ban on funding of and on being funded by spiritual centres located abroad would not appear to be necessary or proportionate to achieve this aim. Also, associations should not be treated less favourably than businesses and other legal entities regarding access to resources.¹⁰¹ Hence, religious organizations should be subject to the same requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and of terrorism.¹⁰² Similarly, and as already noted in the 2011 Joint Opinion, the blanket ban on being funded by and funding political parties appears to be excessive.¹⁰³ **The prohibition on foreign funding provided in Article 11 par 4 should therefore be reconsidered.**

74. As to the relations between the State and religious associations, Article 12 par 1 provides that religious organizations shall be distinct from the State and Article 12 par 2 (3) provides that the state “shall not finance the activities of religious associations”. Article 12 par 3 further states that “[t]he state shall recognize the secrecy of confession”. On this aspect, it is worth reiterating the recommendation made in the 2011 Joint Opinion whereby **the provision should ensure that the State also recognises the confidentiality of other similar communications between adherents of a faith, and ordained confessors or corresponding officers in other denominations.**¹⁰⁴ It may also be advisable to specify what is meant by this provision, for instance by expressly stating that confessors or corresponding officers in other denominations should not be enjoined by judges or other public authorities to give information concerning persons or subjects that they may have obtained in the course of their office.
75. Finally, Article 7 par 2 of the Draft Act provides that when carrying out their activities, religious organizations shall be governed by the “principle of accountability”. Chapter 5 further elaborates the obligations imposed on religious organizations in terms of accountability, particularly reporting requirements. Article 13 par 2 provides that where “public funds [...] have been the source through which property of a religious organization has been generated”, the religious organization shall publish an annual report before 30 May. Article 13 par 3 provides that such reports of religious organizations shall include different types of information, including the total sum of inflows, expenses related to the use of property and source of generation, outcome of implemented projects, number of members, location of the organization and number of meetings of collegial governance bodies. Article 13 par 4 further states that even if a religious organization does not fall within the scope of Article 13 par 2, it “shall be entitled to publish the report provided by Article 13”. It is unclear why such organizations should publish such detailed reports whereas they do not benefit from public funding. **The legal drafters should consider removing this latter obligation.**

¹⁰¹ UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Report on Enabling Environments for Associations and Businesses*, A/70/266, 4 August 2015, par 109, <http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf>.

¹⁰² *Op. cit.* footnote 15, par 192 (2015 Guidelines on Freedom of Association).

¹⁰³ *Op. cit.* footnote 2, par 76 (2011 Joint Opinion).

¹⁰⁴ *ibid.* par 77 (2011 Joint Opinion).

5. Suspension of Activities, Dissolution of Religious Organizations and Supervision over their Activities

76. Article 14 of the Draft Act provides that the suspension of activities of a religious organization may be decided by a court upon the application of the Authorized Body in two situations: in case of “gross violation of the law” by the organization as defined in Article 14 par 3 or in case of “material violation of the law” as defined in Article 14 par 4 committed by the founder at the time of founding the organization. A “gross violation” occurs in case of failure to remedy a violation in the manner and within the time limits mentioned in the written notice sent by the Authorized Body to the organization as per Article 16 par 2 (Article 14 par 3 (1)) or where the organization fails to remedy a violation within 30 days from the imposition of a sanction provided by the Code of Administrative Offences (Article 14 par 3 (2)).
77. As stated in the Guidelines on Freedom of Association, “any suspension of the activities of an association can [...] only be justified by the threat that the association in question poses to democracy, and should also only be based on a court order or be preceded by judicial review”.¹⁰⁵ According to Article 14 par 3 (1), however, suspension seems to be possible irrespective of the nature and seriousness of the violation, and thus potentially even if the violation concerns minor infringements.
78. According to Article 14 par 4, a “material violation of the law” is any violation committed at the time of founding a religious organization that, if known at the time of founding or state registration, would have prevented the founding or registration of the organization. This definition is quite imprecise, and open to (possibly different) interpretation; it thus fails to meet the requirements of legal clarity, certainty and foreseeability (see par 29 *supra*). Moreover, such a violation would need to be quite serious and the response to it should be in line with international standards (see par 77 *supra*). Hence, it would be advisable to list clearly the grounds based on which registration may be refused (as recommended in par 63 *supra*), or to include a cross-reference to applicable legislation. At the same time, if a violation is so serious that it constitutes a ground for refusal to register, it is unclear why this would lead to only suspension and not to the dissolution of an organization.
79. Article 14 par 6 stipulates that where the grounds for suspension of activities of religious organizations no longer exist and evidence of this is submitted to the Authorized Body, the court shall render a decision on the resumption of the activities of the religious organization. At the same time, the provision does not provide for any deadline within which such a decision should be rendered. Read together with Article 15 par 2 (2), should no judicial decision on resumption be issued following the suspension of activities, this may lead to the dissolution of the religious organization based on the application of the Authorized Body. The latter provision also does not specify how much time needs to have elapsed before such an application for dissolution may be submitted to the court. **The Draft Act should be clarified, and supplemented accordingly.**
80. Article 15 provides for the possibility to dissolve religious organizations, including if grounds listed in Article 5 of the Draft Act have emerged (Article 15 par 3). First, and as already emphasized in the 2011 Joint Opinion, dissolution should only be applied in

¹⁰⁵ *Op. cit.* footnote 15, par 255 (2015 Guidelines on Freedom of Association).

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cases where the gravity of violations call for such a sanction, i.e., where a religious or belief organization commits *serious or repeated* violations of laws, which may not be eliminated through measures undertaken by the organization¹⁰⁶ or through any more lenient state interventions. Also, as mentioned in Sub-Section 3.2 *supra*, given the broad scope and vagueness of the wording of Article 5, there are no safeguards in place that would prevent the provision from being abused to pronounce the dissolution of a religious organization. **The grounds for dissolution should thus be defined more clearly in Article 15 and should only cover cases of serious or repeated violations of laws, which cannot be remedied otherwise** (see also par 81 *infra*).

81. In this context, it is noted that the provision implying that the dissolution of an organization is a measure of last resort is no longer included in the Draft Act, as opposed to the 2011 version.¹⁰⁷ This article specified that dissolution was permissible only **“where other measures for eliminating or preventing the violation are exhausted or the violations may not be eliminated otherwise.”** Given that this is an important guarantee to ensure the proportionality of decisions on dissolution, **it is recommended to reintroduce such a statement in the Draft Act.**
82. Additionally, unless provided in another piece of legislation, the Draft Act does not set out a specific dissolution procedure, nor does it specify that the organization is entitled to be served with the relevant documents and to attend and be heard during a court hearing, as recommended in the 2011 Joint Opinion.¹⁰⁸
83. Moreover, the decision on dissolution must be communicated in a timely manner and be subject to review by an independent and impartial tribunal.¹⁰⁹ The procedure for appeal and review should be clear and affordable, and remedies should include compensation for moral or pecuniary loss.¹¹⁰ Further, any appeal against a decision to dissolve an association or to suspend its activities should normally temporarily suspend the effect of the decision, meaning that the decision should not be enforced until the appeal or challenge is decided. Exceptionally, this stay in execution shall not apply in cases where there exists exceptionally strong evidence that a crime has been committed by an association.¹¹¹ **The Draft Act should be supplemented as appropriate to reflect these procedural safeguards, or a cross-reference to relevant provisions of other legislation should be added to Article 15 of the Draft Act.**
84. Finally, Article 16 of the Draft Act provides that the Authorized Body “shall carry out supervision, as prescribed by law, over the compliance with the requirements of the legislation [pertaining to religion or belief]” and in case of violations, shall send “a written notice to the organization, proposing a procedure for and time limits of remedying such violations”. As already noted in the 2011 Joint Opinion, the sending of a written warning constitutes an interference in the autonomy of religious organizations, and should in principle be limited to violations of significance or magnitude.¹¹² Also, the Draft Act does not detail the type of violation that might trigger the issuance of written notices, thus not excluding arbitrary decision-making on the side of the Authorized Body.¹¹³ **As recommended in the 2011 Joint Opinion, to protect**

¹⁰⁶ *Op. cit.* footnote 2, par 88 (2011 Joint Opinion).

¹⁰⁷ *ibid.* par 86 (2011 Joint Opinion).

¹⁰⁸ *ibid.* par 85 (2011 Joint Opinion).

¹⁰⁹ *Op. cit.* footnote 15, par 256 (2015 Guidelines on Freedom of Association).

¹¹⁰ *ibid.* par 116 (2015 Guidelines on Freedom of Association).

¹¹¹ *ibid.* par 120 (2015 Guidelines on Freedom of Association).

¹¹² *Op. cit.* footnote 2, pars 83-84 (2011 Joint Opinion).

¹¹³ *ibid.* par 84 (2011 Joint Opinion).

associations against unfettered executive discretion, the Draft Act should prescribe with greater precision which (serious) violations will lead to the issuance of a notice, and which procedure and time limits the Authorized Body may impose.¹¹⁴

6. Additional Concerns

6.1. “Incitement to Religious Hatred”

85. The Draft Amendments to Article 226 par 1 of the Criminal Code of Armenia aim to replace the words “incitement to religious hostility” with “incitement to religious hatred”.
86. Article 20 par 2 of the ICCPR states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. In principle, the domestic legal framework on incitement should be guided by Article 20 of the ICCPR and should include robust definitions of key terms such as “hatred” or “hostility”.¹¹⁵ Without such clear definitions (which could also be set out elsewhere in the Criminal Code), the wording of Article 226 par 1 would be too vague to meet the requirements of legal certainty, foreseeability and specificity of criminal law (see par 30 *supra*) and may be subject to a variety of interpretations by state authorities. It is recommended to include **a definition of “hatred” in the Criminal Code to ensure compliance with the principle of specificity of criminal law.**
87. According to the case law of the ECtHR, the notion of freedom of expression is also applicable to information or ideas that “offend, shock or disturb”.¹¹⁶ Similarly, the UN Human Rights Committee has considered that Article 19 of the ICCPR also protects “deeply offensive” speech.¹¹⁷ The UN Special Rapporteurs on Freedom of Religion or Belief and on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance stated in a joint report that “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule”.¹¹⁸ This means that the offence of “incitement to religious hatred” must be strictly circumscribed in order to not unduly limit the right to freedom of expression.

¹¹⁴ *ibid.* par 84 (2011 Joint Opinion).

¹¹⁵ OSCE/ODIHR, *Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes relating to Bias-motivated Offences*, 15 March 2016, par 70, <<http://www.legislationline.org/documents/id/19901>>. See also *op. cit.* footnote 38, par 19 (2012 Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence). See also UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation* (10 December 2008), page 3, <<http://www.osce.org/fom/99558?download=true>>, which states that “[r]estrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. See also the criteria considered by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression to determine whether an expression constitutes incitement to hatred (i.e., severity, intent, content, extent, likelihood or probability of harm occurring, imminence and context) in its *2012 Report*, A/67/357, 7 September 2012, pars 46 and 79, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/501/25/PDF/N1250125.pdf?OpenElement>>.

¹¹⁶ See the case of *Bodrožić v. Serbia*, ECtHR judgment of 23 June 2009 (Application no. 32550/05), pars 46 and 56, available at <http://hudoc.echr.coe.int/eng/?i=001-93159>.

¹¹⁷ See UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of Opinion and Expression*, 12 September 2011, par 11, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹¹⁸ Asma Jahangir (Special Rapporteur on Freedom of Religion or Belief) and Doudou Diène (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Joint Report*, U.N. Doc. A/HRC/2/3 (20 Sept. 2006), par 36, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/139/90/PDF/G0613990.pdf?OpenElement>>.

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88. In this context, it should be noted that the ECtHR has acknowledged the “impossibility of attaining absolute precision in the framing of laws” even in cases where a criminal penalty interferes with individuals’ right to freedom of expression, since in this field, the situation may change according to the prevailing views of society.¹¹⁹ At the same time, the ECtHR has taken into account a number of factors to be considered when assessing whether a conviction for calls to violence and “hate speech” constitutes an interference with another person’s exercise of the right to freedom of expression, which could provide valuable guidance for law drafters. These include the following: whether the statements were made against a tense political or social background; whether such statements, being fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made; their capacity – direct or indirect – to lead to harmful consequences; and the proportionality of sanctions.¹²⁰ As it stands, even if absolute precision may not be possible, **these factors may help amend the new Article 226 par 1 of the Criminal Code in such a way as to allow individuals to distinguish between permissible statements or ideas and public expression that would render them criminally liable.**
89. The Venice Commission has generally stated that religious hatred offenses require incitement to religious hatred and **should also introduce an explicit requirement of intention or recklessness.**¹²¹ **Article 226 par 1 should be supplemented in that respect.**
90. Finally, an important additional safeguard in laws addressing religious hatred is often a “fair comment” defense, which considers as harmless speech that is engaged in reasonably and in good faith.¹²² In that respect, artistic expressions and creations should also enjoy specific protection as the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision, should be taken into consideration.¹²³ Consequently, to ensure that the criminal offence under the new Article 226 par 1 is narrowly defined and does not lead to abuse or to discretionary interpretation, **the legal drafters could consider including in this new provision defences or exceptions, for instance when the statements were intended as part of a good faith discussion or public debate on a matter of religion, education, culture, scientific research, politics or some other**

¹¹⁹ ECtHR, *Perinçek v. Switzerland* [GC] (Application no. 27510/08, judgment of 15 October 2015), par 134, <<http://hudoc.echr.coe.int/eng?i=001-158235>>.

¹²⁰ *ibid.* pars 204-208 (*Perinçek v. Switzerland*, ECtHR judgment of 15 October 2015).

¹²¹ Venice Commission, *Report on the Relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, Council of Europe Study no. 406/2006, CDL-AD(2008)026 (23 October 2008), par 89(a), <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e)>.

¹²² See, e.g., *ibid.* par 49 (2008 Venice Commission’s Report), which states “[t]he purpose of any restriction on freedom of expression must be to protect individuals holding specific beliefs or opinions, rather than to protect beliefs systems from criticism [...] It is also worth recalling that an insult to a principle or dogma, or to a representative of a religion, does not necessarily amount to an insult to an individual who believes in that religion. The European Court of Human Rights has made clear that an attack on a representative of a church does not automatically discredit and disparage a sector of the population on account of their faith in the relevant religion and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such”.

¹²³ See UN Special Rapporteur in the Field of Cultural Rights, *Report on the Right to Freedom of Artistic Expression and Creativity*, A/HRC/23/34, 14 March 2013, pars 85 and 89, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>>.

issue of public interest,¹²⁴ or as a form of artistic expression or creation, including in the context of peaceful protests.¹²⁵

6.2. Coercing to Convert to Another Religion by Way of Violence, Deceit or Threat (Article 160 of the Criminal Code)

91. The new Article 160 of the Criminal Code would introduce a new criminal offence for coercing a person to convert to another religion by way of “violence, deceit or threat”. As mentioned in par 31 *supra*, the prohibition of certain conducts amounting to “improper proselytism” is *prima facie* justifiable, but it is nevertheless important to clearly define the related conduct. In that respect, the term “deceit”, unless defined in another provision of the Criminal Code, appears to be quite broad and imprecise, and may be difficult to prove in practice, particularly when dealing with issues pertaining to religion. The 2004 Freedom of Religion or Belief Guidelines specifies, in the context of constraints imposed on missionary work, that “the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved”.¹²⁶ Bearing this in mind, and also to meet the requirements of legal certainty, foreseeability and specificity of criminal law (see par 30 *supra*), **it is recommended to clarify the term “deceit” in the new Article 160 in line with the ECtHR case law** (see par 31 *supra*), unless such a definition is already provided in the Criminal Code.

6.3. Draft Amendments to the Law on the Relations between the Republic of Armenia and the HAAC

92. In the amendments to the Law on the Relations between the Republic of Armenia and the HAAC, a new Article 2 states that “[t]he official coverage of the theology of the [HAAC] through mass media or during mass events may be carried out only upon consent of the [HAAC]”. This constitutes a restriction of the rights to freedom of expression, freedom of peaceful assembly and freedom of the media.
93. A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights.¹²⁷ Media should be free to communicate information and ideas about public and political issues, which presupposes that a free press and other media are able to comment on public issues without censorship or restraint and to inform public opinion.¹²⁸ The proposed amendment to Article 2 thus imposes a restriction which can only be justified if it is necessary out of respect of the rights or reputation of others or for the protection of national security or public order (*ordre public*), of public health or morals (Article 19 par 3 of the ICCPR) or in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of

¹²⁴ See e.g., OSCE Representative on Freedom of the Media, *Legal Analysis of the Proposed Bill C-51, the Canadian Anti-terrorism Act, 2015: Potential Impact on Freedom of Expression* (May 2015), pages 9-10, <<http://www.osce.org/fom/156261?download=true>>.

¹²⁵ See e.g., ECtHR, *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgment of 14 February 2006), pas 62-70, <<http://hudoc.echr.coe.int/eng?i=001-72346>>.

¹²⁶ *Op. cit.* footnote 13, Part II.J on page 20 (2004 Freedom of Religion or Belief Guidelines).

¹²⁷ See UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, 12 September 2011, par 13, <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

¹²⁸ *ibid.* par 13 (2011 UNHRC General Comment No. 34).

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information received in confidence, or for maintaining the authority and impartiality of the judiciary (Article 10 par 2 of the ECHR).

94. While there may arguably be a legitimate aim in protecting the rights and reputation of the HAAC, it is highly questionable whether a blanket restriction of coverage (i.e. allowing it only upon consent of the HAAC) of the HAAC’s theology in the media or during assemblies is necessary and proportionate. Generally, individuals should be free to comment on religious or belief doctrine and/or criticize religious groups and/or their representatives, particularly when the statement is made in a forum in which issues of public interest are expected to be debated openly.¹²⁹ In particular, this is essential when an argument contributes to a wide-ranging and ongoing debate of public interest in a democratic society.¹³⁰ However, according to the ECtHR, the State may interfere in extreme cases where “expressions are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs”.¹³¹ The new provision would *a priori* not allow an individual assessment of each statement concerning the HAAC, but would necessitate that all media coverage of the HAAC’s theology requires its consent. If this is the only way through which the public media report about facts and opinions related to the HAAC, in light of the foregoing, this limitation provided in Article 2 of the HAAC Law appears to be disproportionate. Moreover, such a requirement would *de facto* subject the media to censorship by the HAAC.
95. As regards the coverage of the theology during mass events, it is worth emphasizing that the OSCE representative on Freedom of the Media has specifically noted that “uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech”.¹³² Further, the proposed new provision may lead to some restriction concerning the message that organizers and/or participants to an assembly may wish to convey, thus constituting a limitation to the right to freedom of peaceful assembly. As noted in the *OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly*, restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.¹³³ Hence, the above-mentioned limitation is unjustified.
96. In light of the foregoing, **the draft new Article 2 of the Law on the Relations between the Republic of Armenia and the HAAC should be removed from the Draft Act if such provision means that all media coverage of the HAAC’s theology requires its consent and if there is no other way through which the public media may report about facts and opinions related to the HAAC.**

¹²⁹ ECtHR, *Giniewski v. France* (Application no. 64016/00, judgment of 31 January 2006) pars 50-51, <<http://hudoc.echr.coe.int/eng?i=001-72216>>. See also e.g., Council of Europe, *Human Rights Handbook on Protecting the Right to Freedom of Thought, Conscience and Religion under the ECHR* by Jim Murdoch (2007), pages 70-72, <<https://edoc.coe.int/en/online-resources/5776-protecting-the-right-to-freedom-of-thought-conscience-and-religion-under-the-european-convention-on-human-rights.html>>.

¹³⁰ *ibid.* pars 50-51 (*Giniewski v. France*, ECtHR judgment of 31 January 2006).

¹³¹ ECtHR, *Otto-Preminger-Institut v. Austria* (Application no. 13470/87, judgment of 20 September 1994), par 49, <<http://hudoc.echr.coe.int/eng?i=001-57897>>.

¹³² OSCE Representative on Freedom of the Media, *Special Report: Handling of the Media during Political Demonstrations, Observations and Recommendations* (OSCE, Vienna, June 2007), <<http://www.osce.org/fom/25744>>.

¹³³ OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (2010, 2d edition), Section A par 3.3, <<http://www.osce.org/odihr/73405>>.

7. Legislative Process and Participatory Approach

97. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, par 5.8).¹³⁴ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, par 18.1).¹³⁵ The Guidelines on Freedom of Association also specifically recommend that associations always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.¹³⁶
98. In any case, consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.¹³⁷ According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary, taking into account, *inter alia*, the nature, complexity and size of the proposed draft act and supporting data/information.¹³⁸ To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,¹³⁹ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).
99. Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.¹⁴⁰ Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of laws once adopted.
100. It is understood that the Draft Act was subject to online public consultations for two months, from 1 June 2017 to 31 July 2017,¹⁴¹ which is overall welcome. The contributions that were received (twenty-five, provided by eight contributors) have been published on the website of the Ministry of Justice.¹⁴² The number of contributors appears to be relatively low for such an important piece of legislation and demonstrates that online consultations alone may not be enough. Generally, the authorities should proactively reach out to all interested parties and select modes of consultation that are

¹³⁴ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

¹³⁵ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

¹³⁶ *Op. cit.* footnote 15, par 186 (2015 Guidelines on Freedom of Association).

¹³⁷ See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

¹³⁸ See e.g., OSCE/ODIHR, *Opinion on the Draft Law of Ukraine “On Public Consultations”*, 1 September 2016, pars 40-41, <<http://www.legislationline.org/documents/id/20027>>.

¹³⁹ See e.g., *op. cit.* footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 ODIHR Guidelines on the Protection of Human Rights Defenders).

¹⁴⁰ *ibid.*

¹⁴¹ See <<https://www.e-draft.am/projects/246>>.

¹⁴² See <<https://www.e-draft.am/projects/246/digest?page=1>>.

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most likely to ensure active participation by and quality contributions from all interested parties, especially representatives of religious communities, organizations directly affected by the law, or academia, but also the public at large, including marginalized groups.¹⁴³ At the same time, it is not clear at this stage to which extent the comments/input received on these occasions will be taken into consideration and have been, or will be, reflected in a revised Draft Act.¹⁴⁴ Pursuant to the *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015), state authorities are encouraged to develop a mechanism whereby decision-makers shall report back to those involved in consultations by providing, in due time, meaningful and qualitative feedback on the outcome of public consultations, including clear justifications for including or not including certain comments/proposals.¹⁴⁵

101. In light of the above, **the Armenian legislator is encouraged to continue its efforts to ensure that the Draft Act is made more compliant with international human rights standards and subjected to inclusive, extensive and effective consultations, including with representatives of various religious or belief communities. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Act and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Act, once adopted.**¹⁴⁶

[END OF TEXT]

¹⁴³ *Op. cit.* footnote 138, pars 29 and 51 (2016 OSCE/ODIHR Opinion on the Draft Law of Ukraine “On Public Consultations”).

¹⁴⁴ As of 29 September 2017, the website of the Ministry of Justice does not specify if and to what extent some changes were made to reflect the comments; see <<https://www.e-draft.am/projects/246/digest>>.

¹⁴⁵ *Op. cit.* footnote 137, par 16 (e) (2015 Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes).

¹⁴⁶ See e.g., OECD, *International Practices on Ex Post Evaluation* (2010), <http://www.oecd-ilibrary.org/governance/evaluating-laws-and-regulations/international-practices-on-ex-post-evaluation_9789264176263-3-en>.

ANNEX

DRAFT

**LAW
OF THE REPUBLIC OF ARMENIA
ON MAKING AN AMENDMENT TO THE LAW OF THE REPUBLIC OF
ARMENIA "ON FREEDOM OF CONSCIENCE AND RELIGIOUS
ORGANIZATIONS"**

1. The Law of the Republic of Armenia “On freedom of conscience and religious organizations” No N-0333-I of 17 June 1991 shall be amended as follows:

**"LAW
OF THE REPUBLIC OF ARMENIA
ON FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND RELIGIOUS
ORGANIZATIONS**

CHAPTER 1. GENERAL PROVISIONS

Article 1. Subject-matter of the Law

1. This Law shall govern the relations pertaining to the exercise by every person of his/her freedom of thought, conscience and religion and to the establishment and activities of religious organizations.

2. The relations between the Republic of Armenia and the Holy Armenian Apostolic Church shall be governed by the Law of the Republic of Armenia “On the relations between the Republic of Armenia and the Holy Armenian Apostolic Church”.

Article 2. Legislation on exercise of freedom of thought, conscience and religion and on religious organizations

1. The relations pertaining to the exercise of the freedom of thought, conscience and religion and to the activities of religious organizations shall be governed by the Constitution of the Republic of Armenia, the ratified international treaties of the Republic of Armenia, this Law and other legal acts.

Article 3. Main concepts used in the Law

1. The following main concepts shall be used in this Law:

(1) **religious association:** an association of physical persons established for the purpose of jointly professing and disseminating the belief of the participants as well as meeting other religious needs of the members of the association;

(2) **religious organization:** a religious association registered as a legal person as prescribed by law;

(3) **Authorized Body:** the State Revenue Committee adjunct to the Government of the Republic of Armenia.

Article 4. Guarantees for securing the freedom of thought, conscience and religion

1. The freedom of thought, conscience and religion shall be guaranteed in the Republic of Armenia for everyone.

2. Everyone in the Republic of Armenia shall be equal before the law, irrespective of his/her attitude to religion, religious affiliation or beliefs.

3. Any discrimination on grounds of the religious affiliation of the person or his/her attitude to religion shall be prohibited.

4. The right to freedom of thought, conscience and religion shall include the freedom to profess or not to profess a religion, to have or not to have a belief, to change one’s religion or belief, to manifest one’s religion or belief either individually or in community with others and in public or private through teaching, preaching, church ceremonial acts or worship services or otherwise, including the freedom to observe one’s own religion, faith or belief in daily life.

5. The liberty of parents to ensure the religious education of their children in conformity with their own convictions until they attain the age of 14 shall be guaranteed in the Republic of Armenia.

6. The right of guardians to ensure the religious education of their minor wards in conformity with their own convictions shall be guaranteed in the Republic of Armenia.

7. Every citizen, whose religious faith or beliefs are in contradiction with military service, shall be entitled to substitute it with alternative service as prescribed by law.

8. Direct or indirect limitations of the freedom of thought, conscience and religion, including also direct or indirect limitations of individual or group manifestations of worship, except for cases provided by Article 5 of this Law, coercing a person to convert to another religion by way of violence, deceit or threat, persecution on grounds of religion, incitement of religious hatred shall give rise to liability prescribed by law.

CHAPTER 2.

**LIMITATIONS OF THE MANIFESTATION OF THE FREEDOM OF
THOUGHT, CONSCIENCE AND RELIGION**

Article 5. Grounds for limiting the manifestation of the freedom of thought, conscience and religion

1. The manifestation of the freedom of thought, conscience and religion may only be limited in the cases prescribed by this Article, for purposes of protecting state security, public order, health or morals or the fundamental rights and freedoms of others.

2. The manifestation of the freedom of thought, conscience and religion shall be limited, where:

(1) it is aimed at the violent overthrow of the constitutional order, incitement of national, racial, religious hatred, propagation of violence or war;

(2) there is reliable information that a person or a group of persons is a member of or participates in, organizes the activities of an organization, which aims to threaten the state security of the Republic of Armenia, overthrow its constitutional order, weaken its ability of defense, engage in terrorist activities or coerce a person to convert to another religion;

3) religion is preached or attempts are made to preach religion, without the consent of the parents or other legal representatives, in instructional or nursery or educational establishments, where minors under the age of 14 receive instruction or education.

CHAPTER 3.

RELIGIOUS ASSOCIATIONS

Article 6. Religious associations

1. Everyone shall have the right to form religious associations with others for the purpose of professing, teaching, manifesting, through church ceremonial acts or other worship services, practicing and observing in daily life, his/her religion, faith or belief, in public or private, including for the purpose of acting in accordance with his/her own religion, faith or belief in daily life.

2. Persons and associations shall be free to exercise their rights prescribed by part 1 of this Article without state registration.

3. Religious associations may not enjoy the rights provided for religious organizations.

4. Religious associations with at least 150 adult members may be registered as a religious organization as prescribed by law.

5. Religious organizations shall have the status of a non-commercial organization.

Article 7. Principles of activities of religious associations

1. Principles of activities of religious associations shall be as follows:

(1) legality;

2) good faith;

(3) commonality of interests of the members;

(4) voluntariness of membership;

(5) equality before the law;

(6) autonomy.

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2. When carrying out their activities, religious organizations shall also be governed by the principle of accountability.

Article 8. State registration of religious organizations

1. The state registration of religious organizations shall be carried out as prescribed by the Law of the Republic of Armenia “On state registration of legal persons, state record-registration of separate subdivisions of legal persons, institutions, and individual entrepreneurs”.

2. A religious organization shall have a charter stipulating the following regarding the religious organization:

- (1) name;
- (2) places of location, activities or of worship;
- (3) subject and purposes of activities;
- (4) structure;
- (5) requirements for members and procedure for membership, as well as procedure for leaving the organization;
- (6) rights and obligations of the members;
- (7) cases of and procedure for removing a member from the organization;
- (8) procedure for disposing of and managing the property;
- (9) body competent to determine the amount of membership fee and procedure for charging the fee (where the charter envisages charging of a membership fee);
- (10) procedure for supervising the activities (where the charter envisages a supervisory body);
- (11) procedure for making amendments and supplements to the charter;
- (12) term of activities, where the organization is established for a fixed term;
- (13) nature of the religious organization;
- (14) faith affiliation;
- (15) description of the belief or conviction;
- (16) intent to carry out educational and publishing activities (where available) in compliance with the charter objectives;
- (17) procedure for terminating the activities;
- (18) procedure for disposing of property and other matters in case of termination of the activities;
- (19) sources of financing;

(20) other peculiarities of the activities.

3. Articles 10-12 of the Law of the Republic of Armenia “On non-governmental organizations” shall apply to the relations pertaining to establishment of religious organizations.

Article 9. Grounds for refusing the registration of a religious organization

1. The state registration of a religious organization shall be refused in case where the grounds, prescribed by Article 36 of the Law of the Republic of Armenia “On state registration of legal persons, state record-registration of separate subdivisions of legal persons, institutions, and individual entrepreneurs” as well as by Article 5 of this Law, apply.

CHAPTER 4.

RIGHTS AND OBLIGATIONS OF RELIGIOUS ASSOCIATIONS

Article 10. Rights of religious associations

1. Religious associations shall have the right to:

- (1) disseminate information on their activities;
- (2) present and defend their rights and lawful interests and those of their members in other organizations, state administration and local self-government bodies;
- (3) collaborate with non-commercial organizations, including with international and foreign non-governmental non-commercial organizations;
- (4) practice religious services, rites and ceremonial acts in places of worship and premises belonging thereto, places of pilgrimage and other places intended therefor, as well as in graveyards, houses and apartments of citizens, hospitals, assisted living facilities, places of imprisonment, military units, at the request of the citizens, who are members of that religious organization and are located there. In other cases, public services, religious rites and ceremonial acts shall be conducted in the manner prescribed for assemblies;
- (5) create respective religious education groups for the religious education of their members and the children thereof under the age of 14, at the consent of the parents, using, for such purposes, the premises belonging or allocated thereto;
- (6) engage in theological, religious, historical and cultural research;
- (7) acquire and use materials and objects of religious significance;
- (8) establish ties with the religious organizations of other countries.

2. A religious organization shall, apart from the rights provided by part 1 of this Article, have the right to:

- (1) acquire in its name and exercise proprietary and non-proprietary rights, bear obligations, act as a plaintiff or defendant at court;
- (2) acquire any property not prohibited by law and dispose of, use and possess such property;
- (3) apply to other persons and organizations for voluntary monetary and other donations, receive and dispose of them;
- (4) engage in charity as prescribed by law;
- (5) open bank accounts in dram of the Republic of Armenia and (or) foreign currency in the banks of the Republic of Armenia and of foreign states;
- (6) establish other organizations or join them;

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- (7) establish separate subdivisions or institutions;
- (8) collaborate with other organizations, including international or foreign organizations as well as engage in coordinated activities, establish an organization together with or join an organization established by such organizations for the purpose of presenting and protecting common interests, while maintaining its independence and status of a legal person.

Article 11. Obligations of religious associations

1. Religious associations shall be obliged to observe the Constitution and laws of the Republic of Armenia, respect the freedom of thought, conscience and religion of other religious associations, persons with other religious or faith affiliation.

2. A religious organization shall be obliged to:

- (1) keep records of its members;
- (2) undergo obligatory audit, in the case provided by Article 13 of this Law;
- (3) provide documents, related to its activities, to the Authorized Body within reasonable time limits, at the lawful and reasoned request of the Authorized Body, for the purpose of checking the compliance with the requirements of this Law;
- (4) enable a member of the religious organization, at his/her request, to become familiar with its charter, other founding documents within five working days from the day when such request is received. A fee may be charged for providing the information, documents specified in this point, which may not exceed the expenses incurred for providing them;
- (5) apply to the body for state registration of legal persons as prescribed by law, in cases of charter amendments as well as termination of activities;
- (6) carry out the registration of the new address as prescribed by law, in case of change of the place of location;
- (7) publish reports as provided by law;
- (8) apply to the state registration body within one month from adoption of decisions on establishing and dissolving a separate subdivision, where so provided in the charter, for the purpose of record-registering it or removing it from record-registration;
- (9) perform other obligations prescribed by law.

3. Religious organizations shall be obliged to secure the preservation and intended use of the historical and cultural monuments transferred thereto by the state under the right of ownership.

4. Religious organizations may not be financed from and may not finance their spiritual centers and political parties located outside of the territory of the Republic of Armenia.

5. Funds received in violation of part 4 of this Article shall, if not returned to the person having provided the funds, be transferred to the State Budget.

Article 12. Relations between the state and religious associations

1. Religious organizations in the Republic of Armenia shall be distinct from the state.

2. The state:

- (1) shall not interfere with the activities of religious organizations carried out in compliance with the law and their internal affairs;
- (2) may not delegate to religious associations any functions of a state administration or local self-government body;
- (3) shall not finance the activities of religious associations.

3. The state shall recognize the secrecy of confession.

CHAPTER 5.

ACCOUNTABILITY OF ACTIVITIES OF RELIGIOUS ORGANIZATIONS

Article 13. Accountability of activities of religious organizations

1. Religious organizations shall, in the cases and manner provided by this Article, publish reports on the official website of public notifications of the Republic of Armenia (<http://www.azdarar.am/>).

2. If public funds (funds of state or local self-government bodies and other bodies or legal persons disposing of public funds) have been the source through which property of a religious organization has been generated, then the organization shall be obliged to publish the report provided by this Article on the website envisaged for reports of the organization, each year before the 30th of May following the reporting year.

3. Reports of religious organizations shall include as follows:

- (1) titles and places of the implemented projects;
- (2) sum total of inflow (monetary and proprietary) and source of generation;
- (3) expenses related to use of monetary funds and other property, charter objectives;
- (4) information on generation and disposal of funds provided by part 4 of Article 11 of this Law 11;
- (5) information on outcomes of the implemented projects;
- (6) number of members as well as volunteers (as of the 1st of January of the reporting year), with an indication of use of funds of the organization during the reporting year;
- (7) number of Meetings and meetings of collegial governance bodies;
- (8) place of location of the organization.

5. The religious organizations, whose property has not been generated through public funds provided by part 2 of this Article, shall be entitled to publish both the report provided by this Article and information or materials on any outcome of their activities on the website envisaged for reports published by the organizations.

6. The report provided by this Article shall be kept within a period, defined by the charter of the organization, which may not be less than five years.

CHAPTER 6.

SUSPENSION OF ACTIVITIES AND DISSOLUTION OF RELIGIOUS ORGANIZATIONS

Article 14. Suspension of activities of religious organizations

1. Activities of a religious organization shall be suspended by the court, based on the application of the Authorized Body.

2. The court shall suspend the activities of a religious organization, where:

- (1) the organization has committed a gross violation of the law;
- (2) the founder of the organization or the authorized person has committed a material violation of the law when founding the organization.

3. Within the meaning of part 2 of this Article, a gross violation shall be:

- (1) failure to remedy the violations in the manner and within the time limits prescribed by Article 16 of this Law;

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(2) failure to remedy the violation within a thirty-day period from imposition of a stricter sanction provided by the Code of Administrative Offences of the Republic of Armenia.

4. Within the meaning of part 2 of this Article, a material violation shall be a violation, committed at the time of founding the religious organization, which, if known at the time of founding or state registration, would have the effect that the organization would not have been founded or registered.

5. Activities of a religious organization may be suspended for a period not longer than one year.

6. Where evidence is submitted by the Authorized Body or the religious organization with regard to the fact of elimination of the grounds for suspension of the activities of the religious organization, the court shall render a decision on resumption of the activities of the religious organization.

Article 15. Dissolution of religious organizations

1. Religious organizations shall be dissolved by the court, based on the application of the Authorized Body.

2. Application for dissolving a religious organization may be submitted, where:

(1) such violations of the requirements of laws have been committed by the religious organization as may not be remedied through the measures undertaken by the organization;

(2) activities of the organization have been suspended as prescribed by Article 13 of this Law, and no judicial act on resumption of activities of the organization has been rendered;

(3) grounds, prescribed by Article 5 of this Law, for limiting the exercise of the freedom of thought, conscience and religion have emerged.

CHAPTER 7.

SUPERVISION OVER ACTIVITIES OF RELIGIOUS ORGANIZATIONS

Article 16. Supervision over activities of religious organizations

1. The Authorized Body shall carry out supervision, as prescribed by law, over compliance with the requirements of the legislation governing the relations pertaining to the exercise of the freedom of thought, conscience and religion and to the activities of religious organizations.

2. Where such violations of the requirements of these Laws by a religious organization are detected as may be remedied by the measures undertaken by the organization, the Authorized Body shall send a written notice to the organization, proposing a procedure for and time limits of remedying such violations.”

Article 2. Final and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.

2. If an application for registration of a religious organization has been filed prior to the entry into force of this Law and that organization has not been granted state registration prior

to the entry into force of this Law, such registration shall be carried out in compliance with the requirements of this Law.

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LAW

OF THE REPUBLIC OF ARMENIA

**ON MAKING AN AMENDMENT AND SUPPLEMENTS TO THE LAW OF THE
REPUBLIC OF ARMENIA “ON THE RELATIONS BETWEEN THE REPUBLIC OF
ARMENIA AND THE HOLY ARMENIAN APOSTOLIC CHURCH”**

Article 1. The words “the Law of the Republic of Armenia “On freedom of conscience and religious organizations, other” shall be removed from Article 4 of the Law of the Republic of Armenia HO-80-N of 22 February 2007 “On the relations between the Republic of Armenia and the Holy Armenian Apostolic Church (hereinafter referred to as “the Law”).

Article 2. Part 4 of Article 8 of the Law shall be supplemented with a new sentence, which reads as follows:

“The official coverage of the theology of the Holy Armenian Apostolic Church through mass media or during mass events may be carried out only upon consent of the Holy Armenian Apostolic Church.”

Article 3. Part 1 of Article 8 of the Law shall be supplemented with a new point 5 which reads as follows:

“(5) acquire any property not prohibited by law and dispose of, use and possess such property.”

Article 4. This Law shall enter into force on the tenth day following the day of its official promulgation.

DRAFT

LAW

OF THE REPUBLIC OF ARMENIA

**ON MAKING AN AMENDMENT AND A SUPPLEMENT TO THE LAW OF THE
REPUBLIC OF ARMENIA “ON NON-GOVERNMENTAL ORGANIZATIONS”**

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Article 1. In Article 1 of the Law of the Republic of Armenia HO-22-N of 16 December 2016 “On non-governmental organizations”:

(1) the words “the religious organizations” shall be removed from part 2;

(2) part 3 shall be added, which reads as follows:

“3. This Law shall cover the relations pertaining to establishment of religious organizations.”

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

DRAFT

LAW

OF THE REPUBLIC OF ARMENIA

**ON MAKING AN AMENDMENT TO THE LAW OF THE REPUBLIC OF ARMENIA
“ON LOCAL SELF-GOVERNMENT”**

Article 1. In part 2 of Article 39 of the Law of the Republic of Armenia Ho-337 of 7 May 2002 “On local self-government”:

(1) the words “On freedom of conscience and religious organizations” shall be replaced by the words “On freedom of thought, conscience, religion and religious organizations”;

(2) the figure “7” shall be replaced by the figure “10”.

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

DRAFT

LAW

OF THE REPUBLIC OF ARMENIA

**ON MAKING AN AMENDMENT TO THE LAW OF THE REPUBLIC OF ARMENIA
“ON LOCAL SELF-GOVERNMENT IN THE CITY OF YEREVAN”**

Article 1. In part 2 of Article 56.1 of the Law of the Republic of Armenia HO-5-N of 26 December 2008 “On local self-government in the city of Yerevan”:

(1) the words “On freedom of conscience and religious organizations” shall be replaced by the words “On freedom of thought, conscience, religion and religious organizations”;

(2) the figure “7” shall be replaced by the figure “10”.

Article 2. This Law shall enter into force on the tenth day following the day of its official promulgation.

DRAFT

LAW

OF THE REPUBLIC OF ARMENIA

ON MAKING AMENDMENTS AND A SUPPLEMENT TO THE CODE OF ADMINISTRATIVE OFFENCES OF THE REPUBLIC OF ARMENIA

Article 1. Article 205.1 of the Code of Administrative Offences of the Republic of Armenia of 5 December 1985 (hereinafter referred to as “the Code”) shall be amended as follows:

“Article 205.1. Hindering the exercise of the freedom of thought, conscience and religion

1. Hindering the freedom of professing or not professing any religion, having or not having a belief, changing one’s religion or belief, the freedom of teaching, preaching, manifesting, through church ceremonial acts or other worship services or otherwise, individually or in community with other, in public or private, one’s religion or belief, including the freedom of observing one’s own religion and beliefs in daily life, or hindering the lawful activities of religious organizations:

shall give rise to a fine in the amount of one hundred-fold to two hundred-fold of the minimum salary.”

Article 2. Article 205.2 of the Code shall be amended as follows:

“Article 205.2. Religious preaching with regard to minors

1. Religious preaching or attempts of religious preaching, without the consent of the parents or guardians, in instructional or nursery or educational establishments, where persons under the age of 14 receive instruction or education:

shall give rise to imposition of a fine in the amount of two hundred-fold to four hundred-fold of the minimum salary.”

Article 3. Article 205.3 of the Code shall be amended as follows:

“Article 205.3. Activities of religious organizations not compliant with the charter objectives

1. Activities of religious organizations not compliant with the charter objectives shall give rise to a warning to competent officials of the religious organization.

2. Failure to comply with the lawful requirements of the State Revenue Committee adjunct to the Government of the Republic of Armenia within 30 days from being warned as prescribed by law:

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shall give rise to imposition of a fine against the competent officials of the religious organization in the amount of fifty-fold of the defined minimum salary.

3. Failure of the religious organization to comply or its improper compliance with the requirements of the warning of the State Revenue Committee adjunct to the Government of the Republic of Armenia within 30 days from the day of imposition of the fine:

shall give rise to imposition of a fine against the competent official of the religious organization in the amount of two hundred-fold of the defined minimum salary.”

Article 4. Article 206 of the Law shall be amended as follows:

“Article 206. Violation of the requirements of the law by religious organizations

1. Incomplete publishing of, failure to publish, in the manner and within the time limits prescribed by law, the report subject to obligatory publishing provided by the Law of the Republic of Armenia “On freedom of thought, conscience, religion and religious organizations” shall give rise to a warning against the competent officials of the religious organization.

2. Failure of the religious organization to comply with the requirement of the State Revenue Committee adjunct to the Government of the Republic of Armenia within 30 days from being warned as prescribed by law:

shall give rise to imposition of a fine against the competent officials of the religious organization in the amount of fifty-fold of the defined minimum salary.

3. Failure of the religious organization to comply or its improper compliance with the requirements of the warning of the State Revenue Committee adjunct to the Government of the Republic of Armenia within 30 days from the day of imposition of the fine:

shall give rise to imposition of a fine against the competent official of the religious organization in the amount of two hundred-fold of the defined minimum salary.”

Article 5. The figures “205.1, 205.2, 205.3, 206” shall be removed from the first part of Article 219 of the Code.

Article 6. In Article 224 of the Code:

(1) the figures “, 205.1, 205.2” shall be added after the figure “201” in part 1;

(2) the figures “, 205.1, 205.2” shall be added after the figure “200” in point 1 of part 2;

Article 7. The figures “205.3, 206” shall be added after the figure “169.27” in Article 244.2 of the Code.

Article 8. This Law shall enter into force on the tenth day following the day of its official promulgation.

LAW
OF THE REPUBLIC OF ARMENIA
ON MAKING AMENDMENTS TO THE CRIMINAL CODE OF THE REPUBLIC OF
ARMENIA

Article 1. Article 160 of the Criminal Code of the Republic of Armenia of 18 April 2003 (hereinafter referred to as “the Code”) shall be amended as follows:

“Article 160. Coercing a person to convert to another religion

1. Coercing a person to convert to another religion by way of violence, deceit, or threat:

shall be punished by a fine in the amount of three hundred-fold to five hundred-fold of the minimum salary or by detention for a maximum term of three months or by imprisonment for a maximum term of two years.”

Article 2. The words “incitement to religious hostility” in part 1 of Article 226 shall be replaced by the words “incitement to religious hatred”.

Article 3. This Law shall enter into force on the tenth day following the day of its official promulgation.