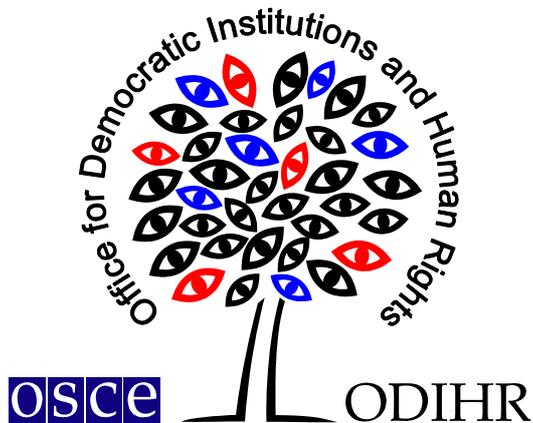


Warsaw, 7 September 2006

Opinion-Nr.: REL– UKR/072/2006 (Adv
Council on FoRB)

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**COMMENTS
ON THE DRAFT LAW OF UKRAINE**

**"ON FREEDOM OF CONSCIENCE AND RELIGIOUS
ORGANISATIONS"**

*prepared by the OSCE/ODIHR Advisory Council
on Freedom of Religion or Belief*

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I. Introduction

1. The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the "Advisory Council") has been asked by the Ministry of Justice of Ukraine through the OSCE Mission in Kiev/Ukraine to review a proposed draft law of Ukraine "On Freedom of Conscience and Religious Organisations" (hereinafter referred to as the draft law) that has been prepared and revised as of July 2006. These comments are based on an unofficial translation completed as of August 2006.

The OSCE/ODIHR Advisory Council consists of several scholars from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning religion and freedom of belief. The Advisory Council is familiar with the broad range of laws that exist among OSCE's participating States. In revising the draft law the members of the Advisory Council who drafted these comments are aware of possible ambiguities that may arise from the difficulties of translation of the draft law into the English language.

II. Executive Summary

The major findings of the comments are summarized here:

1. Basically and in general the draft law meets the requirements of international instruments and best practice concerning freedom of religion or belief.
2. A number of provisions of the draft law are unduly vague and unclear.
3. Participation or non-participation of religious entities and representatives of religious entities in the democratic political process are unclear and appear to be over-restrictive.
4. The provisions concerning the creation and registration of religious entities are partly unclear.
5. A number of provisions unduly restrict the autonomy of religious entities.
6. Some provisions are unclear in their relationship to one another and seem to contradict each other.

III. Comments on the Legislation under Consideration

1. Reference points of review

1.1 The comments are based on OSCE commitments that codify the fundamental right to freedom of religion or belief in international law.¹ Ukraine is one of the OSCE's participating States.

The comments are likewise based on the relevant provisions of international treaties, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms including its First Protocol² and the case law of the European Court of Human Rights, the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights,⁴ the Convention on the Rights of the Child⁵. The comments are further based on United Nation declarations, most notably the Universal Declaration of Human Rights⁶ and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.⁷ They are also based on best practice.

The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.⁸

¹ For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf; last visited on 26 August 2006].

² European Convention for the Protection of Human Rights and Fundamental Freedoms and its First Protocol, opened for signature by the Council of Europe on 04 November 1950, entered into force 03 September 1953 (hereinafter "ECHR"). The ECHR has entered into force for Ukraine on 11 September 1997.

³ International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976 (hereinafter "ICCPR"). Ukraine has ratified the ICCPR on 12 November 1973.

⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). Ukraine has ratified the ICESCR on 12 November 1973.

⁵ Convention on the Rights of the Child, adopted and opened for signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, entered into force 2 September 1990 (hereinafter "CRC"). Ukraine has ratified the CRC on 28 August 1991.

⁶ Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

⁷ Declaration on the Elimination of All Forms of Intolerance and of Discrimination adopted and proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981.

⁸ The Guidelines were adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom

1.2 The OSCE general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act reads:

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

This fundamental commitment has been repeatedly reaffirmed.

Principle 16.4 of the Vienna Concluding Document also has important implications for the law of religious associations. It provides that participating States will

respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly,
- organize themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions.

Principle 17 of the Vienna Concluding Document states that "participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief [as detailed in Principles 16.1 through 16.11] may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments".

of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN. 4/2005/61 para. 57. The major international instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 25 August 2006].

1.3 Of foremost importance for the protection of freedom of religion in Europe is the European Convention for the Protection of Human Rights and Fundamental Freedoms which has entered into force for Ukraine on 11 September 1997.

1.3.1 Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which contains the Convention's key substantive provision on freedom of religion or belief, reads:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. 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.

1.3.2 Limitations on freedom of thought, conscience, religion or belief, to the extent permissible at all, are only allowed with respect to manifestations of religion or belief. These limitations face a number of important qualifications and restrictions. The limitation must be "prescribed by law". The European Court of Human Rights has held that this phrase "does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention".⁹ Accordingly, this test can be referred to as the "rule of law constraint". Rules that are impermissibly vague may fail to meet this test.

The second constraint is the limited set of permissible justifications: limitations must be "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". This list narrows the range of state interests that can justify overriding religious freedom. It is important to note that national security interests are not alone sufficient.

Of specific importance is the third constraint: limitations must also be "necessary in a democratic society". The European Court of Human Rights has found that democratic society necessarily presupposes religious pluralism. In articulating the importance of freedom of religion or belief, the European Court has noted that it is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the

⁹ European Court of Human Rights, Case of Malone v. the United Kingdom, 82 Eur. Ct. H.R. (ser. A) at 32 (1984).

centuries, depends on it".¹⁰ Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society".¹¹

The Court has recognized the importance of a margin of appreciation of cultural difference that State authorities have in this area. This is vital to the gradual process of European integration while maintaining respect for difference in relation to religious and cultural matters. Nonetheless, the Court has made it clear that in delimiting the margin of appreciation that applies to religious freedom issues, it "must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society".¹² With this background in mind, the Court has construed the "necessary in a democratic society" requirement to mean that the limitation in question must be "justified in the circumstances of the case by a pressing social need" and that the contested measure must be "proportionate to the legitimate aim pursued".¹³ Moreover, in assessing whether a restriction is proportionate to the legitimate aim pursued, "very strict scrutiny" must be applied.¹⁴

1.3.3 Often times, freedom of religion or belief is closely linked with the freedom of association.

Article 11 of the ECHR, dealing with freedom of association reads:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

¹⁰ See European Court of Human Rights *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31, see also *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I.

¹¹ European Court of Human Rights, *Manoussakis and Others v. Greece*, case no. 59/1995/565/651 paragraph 41.

¹² *Ibid*, paragraph 44.

¹³ *Kokkinakis*, cited above A 260-A (1993), paragraph 50.

¹⁴ *Manoussakis*, cited above paragraph 44.

The European Court's 1998 decisions in *United Communist Party of Turkey v. Turkey*¹⁵ and *Sidiropoulos & Others v. Greece*¹⁶ have further elaborated on freedom of association and have significant implications for the law of religious associations. In the *Sidiropoulos* case the Court stated categorically that "the right to form an association is an inherent part" of the right to freedom of association and that

citizens should be able to form a legal entity in order to act collectively in a field of mutual interest which is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveals the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.¹⁷

As with limitations on manifestations of religion, the Court emphasized that in assessing the right to association, exceptions in ECHR (article 11(2))

are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.¹⁸

Moreover, since religious communities traditionally exist in the form of organised structures, ECHR (article 9) must be interpreted in the light of ECHR (article 11), which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which ECHR (article 9) affords.¹⁹

¹⁵ 30 January 1998.

¹⁶ 10 July 1998.

¹⁷ *Sidiropoulos*, paragraph 40.

¹⁸ *Ibid.*

¹⁹ See *Hasan and Chaush*, cited above, § 62.

1.3.4 Depending on their structure, religious association laws may also violate non-discrimination provisions of the ECHR (articles 1, 14).

1.4 One of the predominant and most relevant provisions of international law protecting the right of freedom of religion or belief is ICCPR (article 18).

1.4.1 ICCPR (article 18) reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. 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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 1993, the U.N. Human Rights Committee issued its General Comment No. 22 (48) which provides a detailed official interpretation of the meaning of ICCPR (article 18). The General Comment begins by noting that "[t]he right to freedom of thought, conscience and religion ... is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others". It notes that "the fundamental character of these freedoms is ... reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2)".

The General Comment further notes that limitations on freedom of religion, to the extent permissible at all, are only allowed with respect to manifestations of religion:

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or adherence to a religion or belief.

Similarly, "[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be re-

stricted". This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in article 18(2).

The General Comment pays particular attention to the permissible restrictions on manifestations of religion:

In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. ... [P]aragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

It is important to note that thus any limitations to the right to manifest one's religion or belief must be prescribed by law, serve one of the purposes listed in ICCPR (article 18(3)), and be necessary for attaining this purpose. This means that interference with this right must be set down in formal legislation or an equivalent norm in a manner adequately specified for the enforcement organs. There must be adequate certainty of the scope of the limitations.

Furthermore, the interference must be necessary to attain one of the purposes listed in the ICCPR (article 18(3)). The restrictions must thus be proportional in severity and intensity to the purpose being sought and may not become the rule. This also means that the restriction must be proportionate in the given case.²⁰

1.4.2 The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR makes it very clear that State parties are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (ICCPR article 2(1)). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties "to take the necessary steps ... to adopt

²⁰ For these rules on the permissible restrictions cf. Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd revised edition, 2005, pp. 425-426; Sarah Joseph, Jenny Schultz, and Melissa Castan, The International Covenant on Civil and Political Rights, 2nd edition, 2004, pp. 507-508.

such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant" (ICCPR article 2(2)) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (ICCPR article 2(3)). Further, ICCPR (article 26) provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The U.N. Human Rights Committee has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights". While the Covenant itself does not define discrimination, the Human Rights Committee states, consistent with the general usage of this term in international law, that

"discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

General Comment No. 18 (37) also stresses that the Covenant is not limited in its reach to discrimination with respect to the protection of the substantive rights it enunciates.

While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in

Article 26 is not limited to those rights which are provided for in the Covenant.

1.5 The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, though not formally binding as a treaty obligation, distills many of the principles articulated in the ICCPR.

Article 2(2) of the 1981 Declaration defines "intolerance and discrimination based on religion or belief" as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3 of the 1981 Declaration underscores the significance of the anti-discrimination norm established by article 2, noting that "Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights...".

Article 6 of the 1981 Declaration spells out the implications of the foregoing religious freedom norms for a variety of recurrent and practical contexts that are vital to religious freedom. Article 6 provides:

In accordance with article 1 of the Declaration, and subject to the provisions of article 1(3), the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) 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;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

1.6 In the following, some issues that figure in the draft law are highlighted and related to various international instruments and other international standards.

1.6.1 Political activities of religious groups are sometimes a matter of government concerns.

1.6.1.1 ICCPR (article 25) states

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

As the Human Rights Committee has outlined no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of religion. It also has made clear that citizens also take part in the conduct of public affairs by exerting influence through public debate.²¹

1.6.1.2 Article 3 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedom states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The European Court of Human Rights has continuously ruled and has reiterated in the Case of Sukhovetsky v. Ukraine²² that any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Pro-

²¹ Cf. Human Rights Committee, General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), No. 3 and 8.

²² See European Court of Human Rights, Case of Sukhovetsky v. Ukraine, judgement of 28 March 2006, no. 13716/02.

tolocol No. 1²³. Also the European Court of Human Rights has repeatedly seen free elections in the context of freedom of expression as guaranteed by ECHR (article 10).

In the Case of *Bowman v. the United Kingdom*, the European Court of Human Rights has stated that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other: for example, as the European Court of Human Rights has observed freedom of expression is one of the conditions necessary to ensure the free expression of the opinion of the people in the choice of the legislature. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.

At the same time the European Court of Human Rights has accepted that in certain circumstances the two rights may come into conflict and it may be considered necessary in the period preceding or during an election, to place certain restrictions of a type which would not usually be acceptable, on freedom of expression, in order to secure the free expression of the opinion of the people in the choice of the legislature. The European Court of Human Rights recognises that, in striking the balance between these two rights, the contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems.²⁴

1.6.1.3 The Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief indicates that States have a variety of approaches towards the permissible role of religious and belief organizations in political activities. These can range from the prohibition of religious-political parties, to preventing religious groups from engaging in political activities, to eliminating tax exemptions for religious groups engaging in political activities. While such issues may be quite complicated, and although a variety of differing but permissible laws is possible, such laws should not be drafted in a way either to prohibit legitimate religious activities or to impose unfair limitations on religious believers.

The leading case of the European Court of Human Rights is *Refah Partisi v. Turkey* (2003), in which the Turkish courts had dissolved one of the largest Turkish political parties because of its alleged support for Islamic fundamentalism, including advocating the introduction of *Shariah* law in Turkey. The European Court held that although “a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy” (§ 100), it could be appropriate for a State to dissolve a political party if it appears that the party may be on

²³ Ibid. § 52, see also European Court of Human Rights, Case of *Hirst v. the United Kingdom* (no. 2) [GC] no. 74025/0, § 60; Case *Lykourazos v. Greece*, judgement of 15 June 2006, no. 33554/03.

²⁴ See European Court of Human Rights, Case of *Bowman v. The United Kingdom*, no. 141/1996/760/961, §§ 42, 43, judgement of 19 February 1998; Case of *Mathieu-Mohin and Clerfayt v. Belgium*, judgement of 2 March 1987, Series A no. 113, §§ 47, 52, 54.

the verge of obtaining political power (§ 108) and if some of its proposals are against the State's constitutional order (§§ 59-60, 67, 93) or fundamental democratic principles (§ 98).²⁵

1.6.1.4 Today, it appears to be best practice among OSCE participating States to allow political activity of religious groups and individuals to a very far-reaching extent.

In some countries, e.g. the United Kingdom, representatives of many religious organisations are explicitly called into parliamentary bodies like the House of Lords. In many countries, religious organisations make statements in political questions, e.g. in Germany. Here, it is left to the wisdom of religious organisations themselves whether they should engage in political campaigning or not. In the United States, according to Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended), a religious entity endangers its tax-exempt status if it engages in "substantial" legislative activities. However, this does not prohibit political activities of a religious entity, but only refers to its tax-exempt status.

1.6.2 Sometimes there seem to be clashes between requirements to perform duties imposed by the State and the requirements of the conscience of individual believers.

1.6.2.1 The Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief indicates that there are many circumstances where individuals and groups, as a matter of conscience, find it difficult or morally objectionable to comply with laws of general applicability. Some people have religious objections to eating certain types of food and others insist on wearing particular clothing. For some, military service violates deeply held religious beliefs. Certain days of the week, and certain calendar days, have a vital religious significance that requires that rituals be performed or that work must not be undertaken. Most modern democracies accommodate such practices for popular majorities, and many are respectful towards minority beliefs.

The laws governing possible exemption from laws of general applicability are in two basic forms. The first are in the form of general constitutional provisions or human rights instruments that defend generally rights of religion and belief and imply that exemptions should be provided when matters of conscience are implicated. The second form is much more specific and provides exemptions for particular actions, such as a statutory provision that exempt conscientious objectors from military service (usually with a requirement to perform alternative service). It is important that laws affecting religion and belief be drafted in a way that is cognizant of the general guiding principles of constitutional norms and human rights standards, and that specific statutory exempti-

²⁵ Cf. Guidelines for Review of legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 25 August 2006], p. 25-26.

ons be drafted and applied in a way that is fair to those with conscientious objections but without unduly burdening those who do not have such objections.

Of the many issues that are likely to raise questions about exemptions from laws of general applicability, some of the most frequent are:

- *Conscientious objection to military service.* Although there is no controlling international standard on this issue, the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service. In any case, State laws should not be unduly punitive for those who cannot serve in the military for reasons of conscience;
- *Food.* There are several foods that are prohibited by many religious and ethical traditions, including meat generally, pork, meat that is not prepared in accordance with ritual practices, and alcohol. In a spirit of promoting tolerance, the State could encourage institutions that provide food – particularly schools, hospitals, prisons, and the military – to offer optional meals for those with religious or moral requirements;
- *Days for religious activities.* The two types of day that raise questions of exemptions are, first, days of the week that have religious significance (for example, for Friday prayers and Saturday or Sunday worship), and, second, calendar days of religious significance (such as Christmas, Yom Kippur, Ramadan). To the extent possible, State laws should reflect the spirit of tolerance and respect for religious belief;
- *Medical.* Some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and that States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that is sought;
- *Other.* In addition to issues that have been noted elsewhere, other places in which objections may arise are in regard to refusing to take oaths or to perform jury service. To the extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population.²⁶

1.6.2.2 Today, it appears to be best practice among OSCE participating States to allow for conscientious objection to a rather far-reaching extent. In most of these states conscientious objection concerns especially four activities: military service; the celebration

²⁶ Cf. Guidelines for Review of legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 25 August 2006], p. 22-23.

of weddings, in particular in which one of the persons has divorced from a previous marriage, same-sex marriage or unions such as registered partnerships between two persons of the same sex; and the provision of health services, in particular abortion, euthanasia, artificial fertilisation and medically assisted contraception. In order to evaluate best practice among OSCE participating, most notably European States, a variety of issues is highlighted here. It is important to note that these issues represent only a selection from States as well as from matters relating to possible conscientious objection.

In Austria, Article 97 para. 2 of the Criminal Code states that no physician, nurse or paramedic is obliged to perform or to assist in a legal voluntary abortion. A similar exemption exists with respect to artificial and assisted fertilization, which is permitted under Austrian law in certain conditions according to Article 6 of the Reproductive Medicine Act 1992.²⁷ In Belgium, the right to conscientious objection has been explicitly recognized in the context of abortion and euthanasia.²⁸ France, Art. L.2212-8 of the Code of Public Health (Code de la santé publique) allows medical physicians to invoke a ‘conscience clause’ on the basis of which they may refuse to perform an abortion. The constitution in Germany guarantees freedom of conscience unconditionally. Pursuant to Article 4 para. 1 of the German Basic Law, ‘freedom of faith and of conscience ... shall be inviolable’. Accordingly no one can be obliged by State powers to act against his or her conscience. In Italy, conscientious objection by health workers in certain medical practices is guaranteed by Article 9 of Law 194 of 22 May 1978 as to the procedures correlated with voluntary abortion, and by Article 16 of Law 40 of 19 February 2004 as to medically assisted conception. The Portuguese Constitution, Article 41(6), guarantees ‘the right to conscientious objection, as in accordance with the law’. Article 12 of Law n° 16/2001 (Law of Religious Freedom) has further specified this right providing:

1. Freedom of conscience includes the right to object to the compliance of laws that contradict the imperative commands of one’s own conscience, within the limits of the rights and duties imposed by the Constitution and under the terms of the law that may regulate the exercise of the conscientious objection.
2. The commands of conscience that are considered as imperative are those whose infringement involves a serious offence to one’s moral integrity and, consequently, make any other behaviour as not mandatory.
3. Conscientious objectors to military service, without excluding those who also invoke a conscientious objection to civil service, have the right to a civil service system, which respects the commands of their conscience, as long as it is compatible with the principle of equality.

²⁷ Fortpflanzungsmedizingesetz, BGBl. No. 275/1992, as amended.

²⁸ Art. 348, al. 2, 6^o of the Penal Code and Article 14 of the Law of 28 May 2002.

In the United Kingdom, the right to religious conscientious objection is recognized in specific laws relevant for areas where the right to conscientious objection might be invoked. The British Abortion Act 1967 permits doctors and nurses in general to refuse to participate in terminations. The right to conscientious objection also is recognized by the Human Fertilisation and Embryology Act 1990, which provides a right of conscientious objection to participation in procedures to achieve contraception and pregnancy. Conscientious objection in the United Kingdom is also guaranteed by the Gender Recognition Act 2004, which provides that an Anglican clergyman or a clerk in Holy Orders of the Church of Wales are not obliged to solemnise the marriage of a person if it is reasonably believed that the person's gender has been changed. Finally, the Education Reform Act 1988 allows the parents of a child at a state funded school to withdraw the child from the school's acts of collective worship and from any day exclusively set apart for religious observance by the religious body to which the parents belong.

2. Analysis and recommendations in general

In this part some of the points are highlighted that run through the draft law as whole. It is important to note that many provisions of the draft law do meet highest standards of international law and best practice in protecting the freedom of religion or belief and that the draft law does a lot to ensure religious freedom and tolerance, and to provide positive conditions for manifesting religion or belief. However, there are some provisions and principles that remain problematic. Since the comments are not a comprehensive review, further issues may be included in the draft law that can give rise to concern, but are not addressed here.

1. A number of provisions of the draft law remain – at least in translation – vague and unclear. Some leave too wide a margin of discretion to state authorities.
2. Participation of religious groups and some individuals in the democratic political process appears to be unduly and vaguely restricted.
3. The provisions concerning registration of religious entities appear to be over-restrictive in certain aspects.
4. The right to autonomy of religious entities appears to be unduly restricted.

3. Analysis and recommendations per article

In this part points are raised as they arise per article of the draft law. Some of the points of concern that run through several or all articles have been highlighted above (cf. 2). Since these comments are not a comprehensive review, further issues may be included in the draft law that can give rise to concern, but are not addressed here. Also, the following analysis does not address each article of the draft law explicitly; rather it highlights those provisions that most openly and directly solicit special comments.

3.1 Article 1(1) states that one of the objectives of the law is to create a legislative basis for everyone to enjoy the right to freedom of belief and religion as provided for in the Constitution of Ukraine. In contrast to that Article 1(2) states that another objective of the law is to ensure equality of everyone before the law regardless of their belief and religion as provided for in the Constitution of Ukraine, Convention for the Protection of Human Rights and Fundamental Freedoms and other international treaties ratified by the Verkhovna Rada of Ukraine.

It is not clear why Article 1(1) does not – other than Article 1(2) – make reference to the Convention for the Protection of Human Rights and Fundamental Freedoms and other international treaties ratified by the Verkhovna Rada of Ukraine. This omission could lead to an interpretation such as if the right to freedom of belief and religion other than equality should not be based also in the Convention of the Protection of Human Rights and Fundamental Freedoms and other international treaties ratified by the Verkhovna Rada of Ukraine. It is not clear why such a difference should occur.

It is recommended to clarify the relationship.

3.2 Article 2(1) states that legislation on freedom of belief, religion and religious organisations includes the Constitution of Ukraine, the Civil Code of Ukraine, this law and other legislative acts.

It is not clear how this relates to Article 2(2). Article 2(2) states that if an international treaty ratified by the Verkhovna Rada of Ukraine provides for the rules different from those contained in this law or other legislative acts of Ukraine on freedom of belief, religion and religious organisations, provisions of a respective international treaty will apply. Since Article 2(2) refers in relation to international treaties only to "this law or other legislative acts" it seems that international treaties ratified by the Verkhovna Rada of Ukraine do not prevail over the Constitution of Ukraine nor over the Civil Code of Ukraine.

It is recommended to clarify the issue.

3.3 Article 3(2) includes "public security" among the interests for which freedom to express one's belief and to practice religion may be restricted. Although this may be due to the translation of the draft law it is noteworthy that "public security" does not figure among the limitations to the freedom to express one's belief and practice religion that are legitimate under international law. ICCPR (article 18(3)) allows limitations to protect "public safety". ECHR (article 9(2)) allows limitations to manifest one's religion or belief that are necessary in a democratic society in the interest of "public safety".

It is recommended to substitute in Article 3(2) the words "public security" by "public safety".

3.4 Article 3(4) states that parents, adoptive parents, foster parents and caregivers have a right to raise a child in accordance with their belief and religion provided they do not harm the child's mental or physical health and proper development.

The term "proper development" is unduly vague. It is not clear what "proper" development of a child could mean. ECHR (article 9) prohibits legislative language that is not sufficiently clear.

It is recommended to use a sufficiently clear term or to omit this part of the provision.

3.5 Article 3(4) sentence 3 provides that minors may participate in religious education and training only upon their consent. This provision could be understood as providing that parents may provide for religious education and training of their children only upon the consent of the children even when the children are very young.

It is questionable whether very young minors can at all times develop a sufficiently clear and responsible will on the matter. It is important to note that ICCPR (article 18(4)) states that States Parties to the Convention undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Similar provisions are entailed in CRC (article 14(1 and 2)).

It also is good practice in many countries to explicitly state a certain age from when onwards parents and comparable persons may not determine the religion and religious practice of their children without the consent of the child. Likewise it is often explicitly stated from which age onwards the child can freely and without consent of its parents decide on its religious affiliation and practice. These age limits can be lower than the age of majority.

Thus in Austria, Paragraphs 3 and 5 of the Austrian Federal Law about Religious Education of Children²⁹ provide that the child has to be heard from the age of 10 years onwards about a change of his or her religion, the child can object to that change from the age of 12 years onwards; and he or she can freely decide about the change from the age of 14 years onwards. In Switzerland a child can decide independently about his or her religion from the age of 16 years according to Article 303 section 3 Swiss Civil Code.³⁰ In Germany, Paragraph 5 of the Law on Religious Education of Children³¹ provides that the child can freely decide about his or her religion from the age of 14 years onwards, and a change of his or her religion against the will of the child is prohibited from the age of 12 years onwards.

²⁹ Österreichisches Bundesgesetz über die religiöse Kindererziehung, BGBl. Nr. 1985/155.

³⁰ Schweizerisches Zivilgesetzbuch of December 10, 1907 AS 1977 237 264; BBl. 1974 II 1.

³¹ Gesetz über die religiöse Kindererziehung of July 15, 1921 as amended on September 12, 1990, BGBl. I S. 2002.

It is recommended to clarify the issue.

3.6 Article 4(3) provides that any distinction, exclusion or preference granted on the basis of individual's belief or religion shall entail liability provided for in law. This provision could be understood as prohibiting religious organisations to attribute offices or employment on the ground of membership in its own religion. Autonomy of religious organisations entails the right to freely attribute offices and employment. It would be contrary to the religious freedom of religious organisations if they would be compelled to attribute offices such as Imam, Rabbi or Priest regardless of the individual belief of the person in question. Such distinctions or preferences must be possible.

It is recommended to rephrase the provision.

3.7 Article 4(4) provides that religious organisations and their representatives are prohibited from any form of advocating enmity or intolerance to anyone having different belief or religion.

In its present wording the provision is vague. It could be understood as prohibiting any form of advocating enmity or intolerance only to those who have different belief or religion whereas it would not be prohibited to advocate enmity or intolerance to those who have the same belief or religion. The provision may well want to prohibit advocating enmity or intolerance to anyone *because of* his or her having different belief or religion. In its present wording the provision prohibits advocating enmity or intolerance for any reason.

It is recommended to clarify the meaning of the provision.

3.8 Article 4(5) seems to restrict conscientious objection only to the military. However, today, it is best practice to accept conscientious objection also in other fields. Conscientious objection could entail a medical doctor's refusal to participate or assist in abortion or assist in suicide.

It is recommended to clarify the provision and to allow for conscientious objection in other fields than only in the military.

3.9 Article 5(3) provides that the state does not interfere with legitimate activities of religious organisations. Although this may be due to the translation, the term "legitimate" appears to be problematic. The term "legitimate" can be wider but can also be narrower than the term "legal". The term "legitimate" entails an evaluation of the activities of religious organisations beyond the sphere of the law. Limitations to freedom of religion or belief, however, are possible under international law only if these limitations are prescribed by law.

It is recommended to rephrase the provision.

3.10 Article 5(6) through Article 5(11): These provisions regulate the status of religious organisations in the political sphere. Seen in their context these provisions are not clear. These provisions also could unduly exclude religious organisations from the democratic process.

3.10.1 Article 5(6) is unclear in as far as this provision states that religious organisations shall not interfere with their (state authorities or bodies of local self-government) activities. It is not clear what the term "interfere" means. Since Article 5(7) provides that religious organisations have a right to participate in social life, engage in business activities and advertise their ideas in media and by other means religious organisations may well be active in the process of political decision-making when they propagate their ideas e.g. for social care-taking, the right to life, warfare and peace-making, etc. All these topics are intensive and traditional fields of religious ideas and activities.

3.10.2 Article 5(8) provides that religious organisations shall not take part in activities of political parties (blocs) and shall not provide financial or other support or assistance to political parties (blocs). Again, "other support" or "assistance" could be seen in advertising ideas in media and by other means when these ideas coincide with political programmes of political parties.

3.10.3 The same applies to Article 5(9).

3.10.4 Article 5(10) provides that it is disallowed to involve religious organisations or their official representatives into election campaigns. This provision could be interpreted as excluding individual official representatives from standing for elections themselves. It is not clear how that relates to Article 5(11) which states that clergymen have a right to participate in political activities, including the right to vote and to be elected. It is also not clear what the meaning of the term "representative of a religious organisation" is in relation to the term "clergymen" as used in Article 5(11) and of "individuals who have a right to act and are acting on behalf of religious organisations" as used in Article 5(9). It is important to note that ICCPR (article 25) provides that every citizen has a right to take part in the conduct of public affairs, and to vote and to be elected, and that no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of religion.

3.10.5 Article 5(11) is not clear. The provision states that clergymen have a right to participate in political activities taking into consideration the provisions of this article. Since this article prohibits individuals who have a right to act and are acting on behalf of religious organisations may not campaign in any form at elections in favour or against candidates both provisions seem to contradict each other.

It is against best practice to exclude representatives of religious organisations from the political sphere and from political office.

3.10.6 It is recommended to clarify the meaning of the article.

3.11 Article 6(3) provides that imposing restrictions on scientific research, including religious and religion-related studies, dissemination of their results based on its compliance or non-compliance with any belief or religion is prohibited. It is not clear who is the addressee of this prohibition. The provision could be understood as prohibiting a religious entity which runs a research institution for theology or other relevant internal teaching to ensure that the research performed in that institution remains in line with its own doctrinal teaching. Such an understanding could unduly infringe upon the right of religious communities to freely teach their religion or belief. It would thus violate the right to autonomy of religious entities.

It is recommended to clarify the meaning of the provision.

3.12 Article 7(2) states that religious organisations may not interfere – except in certain enumerated circumstances – with activities of other religious organisations. It is not clear what the term "interfere" exactly means. It must be clear that religious organisations have a right to make statements about the truth or the value of the teaching or activities of other religious organisations. Otherwise, the right to freedom of speech and the right to freedom of religion would be unduly limited.

It is recommended to rephrase the provision.

3.13 Article 9(2): The draft law has not decided yet whether religious societies need three or ten members at minimum to obtain the status of a legal entity. Both minimum numbers would be in line with international requirements. In the case that other associations of individuals need only three members to be recognized as legal entities special reasons would have to apply if religious societies need a higher number of members. It would not be sufficient to request a higher minimum number for religious societies just because they are religious.

3.14 Article 9(3) provides that the same individuals may create only one religious society. It is not clear why this should be necessary in a democratic society. Throughout the countries of the world there are many examples that individuals are members in more than one religious group. It is a matter of theology and of the doctrine of the specific religious groups at stake whether such double or more membership is tolerated or perhaps even supported from a religious point of view.

The provision also could be interpreted as allowing an individual to create only one religious society during his or her lifetime. Such a provision would violate the right of a person to change his or her religion. There is no visible reason why such a prohibition should be necessary in a democratic society for the protection of any of the interests guaranteed by international instruments.

It is recommended to eliminate the provision.

3.15 Article 9(4) provides that the highest body of a religious society is a general assembly of its participants. Furthermore, Article 9(6) provides for exclusive powers of a general assembly of participants of a religious society.

It is not clear why such a provision should be necessary in a democratic society. The provision unduly interferes with the autonomy of religious societies. The European Court of Human Rights has repeatedly stated that the autonomy or religious communities (societies) is an important factor of freedom of religion or belief as guaranteed in ECHR (article 9). The OSCE commitments require participating states to guarantee and respect the autonomy of religious communities. The internal organisation of a religious society is a matter of autonomy of such groups. Quite a number of religious societies would – from their theological doctrine – not be able to accept a general assembly of its members as being the highest decision-making body. This would apply to at least a number of Orthodox churches for which the draft law (Article 9(4)) appears to be difficult to reconcile with the status and function of the Holy Synod. Similar problems would occur to the hierarchy of the Roman Catholic Church and other Catholic churches. It is important to note that Principle 16.4 of the Vienna Concluding Document provides that participating States will respect the right of religious communities to organize themselves according to their own hierarchical and institutional structure. Similar obligations follow from other pertinent international instruments. It is not clear how the limitations set out in draft law (Article 9(4)) should be necessary in a democratic society for the protection of the legitimate interests set out in the relevant international instruments.

It is recommended to eliminate the provision.

3.16 Article 11(3) provides that a local religious association may be created by two or more religious societies. It is not clear how this provision relates to Article 8(4). Article 8(4) seems to provide that a religious association can consist of religious societies and religious institutions. It is not clear why religious institutions then could not create or take part in the creation of a local religious association.

It is recommended to clarify the relationship.

3.17 Article 11(3) also provides that a local religious association may be created by two or more religious societies practicing the same religion. It is not clear why the requirement to practice the same religion should be necessary in a democratic society. In its present wording the provision could be understood as excluding inter-religious and inter-confessional religious associations. However, Article 11(8) and Article 12 speak of at least international and foreign inter-religious associations.

It is recommended to clarify or to suppress the provision.

3.18 Article 11(4) provides that an all-Ukrainian religious association may be created by religious societies or local religious associations registered on the territory of a majority of Ukrainian oblasts, cities of Kyiv and Sevastopol. It is not clear how that provision relates to Article 16(4). Article 16(4) sentence 2 provides that the application to be registered is to be signed by authorized representatives of religious societies or local religious associations registered on the territory of not less than half oblasts of Ukraine, cities of Kyiv and Sevastopol. "Half" is less than "a majority".

It is recommended to clarify those requirements.

3.19 Article 11(5) provides that every religious organisation (probably: society) or institution may become a member of only one local and one all-Ukrainian religious association. It is not clear why this provision should be necessary in a democratic society.

It is not clear what the function and nature of a religious association is. If a religious association is an entity formed for specific purposes like inter-religious dialogue, inter-confessional dialogue or cooperation of religious societies in specific fields it is hard to see why religious societies or institutions may become only a member of one such religious association. If, on the other hand, a religious association is seen to be something like a national church or religious community or a local one it is not clear why it should be necessary in a democratic society to provide for the internal structure and organisation of such religious associations. Autonomy of religious communities is guaranteed by the European Convention of Human Rights. Also, the OSCE commitments require that the internal organisation of religious communities should be basically free.

It is also not clear why in the case of smaller religious societies only local religious associations and organisations should be allowed and not all-Ukrainian ones. It would be an undue obstacle to smaller religious communities to require the existence of religious societies in a majority of oblasts, cities of Kyiv and Sevastopol to form a national entity.

It is recommended to clarify function and the nature of a religious association.

3.20 Article 11(8) provides for religious associations registered in Ukraine to have a right to adopt independent decisions on their relations with international and foreign religious and inter-religious associations and centres, including a right to canonical and organisational subordination to international and foreign religious centres and a right to become a member of international religious and inter-religious associations. This wording differs from the wording of Article 9(7) for religious societies. Article 9(7) provides that religious societies independently decide on their subordination in canonical and other organisational spheres to religious associations registered in Ukraine and international and foreign religious associations and centres. Religious societies have a right to freely withdraw or change their subordination. It is not clear how these two provisions

relate to each other. It is not clear why and whether international relationships of religious societies should differ from those of religious associations.

It is recommended to clarify the issue.

It is not clear whether or why religious institutions should not enjoy the right to contacts abroad.

It is recommended to clarify the issue.

3.21 Article 16(3) provides that in order to register a local religious association an application has to be submitted and to be signed by authorized representatives of not fewer than three religious societies. It is not clear how this provision relates to Article 11(3). Article 11(3) provides that a local religious association can be created by two religious societies. It is not clear how authorized representatives of not fewer than three religious societies should sign the application if only two religious societies create a religious association.

It is recommended to clarify the issue.

3.22 Article 16(4) provides that the application to register an all-Ukrainian religious association is to be signed by authorized representatives of religious societies or local religious associations registered on the territory of not less than half oblasts of Ukraine, cities of Kyiv and Sevastopol. As stated above, it is not clear how that relates to Article 11(4). Article 11(4) requires "a majority" of oblasts of Ukraine, cities of Kyiv and Sevastopol.

It is recommended to clarify the issue.

3.23 Article 18(1.6) provides that registration of religious organisations may be refused if a comprehensive examination establishes discrepancies between Ukrainian legislation and religious doctrine or practice of a religious organisation practicing a religion not represented in Ukraine. This provision is vague. It is not clear what the term "discrepancies" exactly means. It would be an undue requirement to expect a religious organisation to organise and to follow a doctrine exactly matching the very same structures, values and rules in the Ukrainian legislation.

It is recommended to clarify the meaning of "discrepancies" or to apply a more precise term.

3.24 It is also not clear whether or why such examination and possible refusal of registration as provided for in Article 18(1.6) should apply only to a religion not represented

in Ukraine. It would be an undue discrimination if such refusal would only apply to foreign religions just because they are foreign.

It is recommended to clarify the issue.

3.25 Article 19(2.1) provides that a religious organisation with a status of legal entities may be terminated in case false information was detected in documents submitted for registration by a religious organisation. This provision is vague and too wide. The provision could be understood in a way that any false information could lead to a termination of a religious organisation regardless of the specific nature and impact of the information. Such an understanding would be disproportionate if there would be a minor error in the minutes of the founding conference or an error in the names of participants which could easily be corrected and has no implication of the basic issue.

The same applies to Article 19(3.3).

It is recommended to reformulate the provision on the basis of proportionality.

3.26 Article 19(4) provides that activities of a religious organisation may be prohibited by court if a religious organisation or its representatives authorized to act and acting on behalf of a religious organisation: 1) perform actions that threaten human life, health, freedom, dignity or safety or 2) encroach upon constitutional human rights and freedoms. It would be unproportionate if in all such cases all activities of a religious organisation could be prohibited.

It is recommended to make clear that only the specific activity at stake can be prohibited.

However, it may be proportionate to prohibit all activities of a religious organisation if the illegal acts described should occur continuously and persistently.

It is recommended to clarify the provision according to the requirements of proportionality.

3.27 Article 23(3) provides that foreigners and stateless persons legally staying in Ukraine have no right to interfere with activities of religious organisations without their invitation or consent. The term "interfere" is vague. It must be clear that any person may publicly express his or her opinion about the truth or value of any religious creed or activity.

It is recommended to clarify the provision.

It is also not clear whether and why such a prohibition should only apply to foreigners and stateless persons. Freedom of religion or belief is guaranteed for everybody regardless of citizenship.

It is recommended to adjust the provision.

3.28 Article 26 provides that religious organisations may engage in entrepreneurial activities if the latter is in line with their objective and facilitate its achievement. It is not clear whether such a provision is necessary in a democratic society. It must be in the discretion of the religious organisation whether its activities are in line with their objectives and whether they facilitate their achievement.

It is recommended to reformulate the provision taking the autonomy of religious organisation into due account.

Appendix

DRAFT

Law of Ukraine

On the Insertion of Amendments to the Law of Ukraine “On Freedom of Conscience and Religious Organisations”

The Verkhovna Rada of Ukraine hereby **resolves**:

To amend the Law of Ukraine “On Freedom of Conscience and Religious Organisations” (*Vidomosti Verkhovnoi Rady URSR*, 1991, #25, p. 283; *Vidomosti Verkhovnoi Rady Ukrainy*, 1992, #20, p. 277, 30, p. 418; 1993, #26, p. 277; 1994., #13, p. 66; 1996, #3, p.11; 1997, #8, p. 62; 2003, ##10-11, p. 87) stating it in the following wording:

“LAW OF UKRAINE

On Freedom of Belief, Religion and Religious Organisations

Section I

GENERAL PROVISIONS

Article 1. Objectives of the Law

1. Objectives of this Law are as follows:

1) to create a legislative basis for everyone to enjoy the right to freedom of belief and religion as provided for in the Constitution of Ukraine;

2) to ensure equality of everyone before the law regardless of their belief and religion as provided for in the Constitution of Ukraine, Convention for the Protection of

Human Rights and Fundamental Freedoms and other international treaties ratified by the Verkhovna Rada of Ukraine;

3) to identify rights and obligations of the state and religious organisations in the sphere of protection of freedom of belief, religion and religious activities;

4) to facilitate tolerance and mutual respect for persons having different beliefs or religions as well as religious organisations practicing different religions;

5) to prevent emergence of conflicts between religious organisations.

Article 2. Legislation on Freedom of Belief, Religion and Religious Organisations

1. Legislation on freedom of belief, religion and religious organisations includes the Constitution of Ukraine, the Civil Code of Ukraine, this Law and other legislative acts.

2. If an international treaty ratified by the Verkhovna Rada of Ukraine provides for the rules different from those contained in this Law or other legislative acts of Ukraine on freedom of belief, religion and religious organisations, provisions of a respective international treaty will apply.

Article 3. Right to Freedom of Belief and Religion

1. Every person has a right to freedom of belief and religion. This right includes freedom to have, accept and change belief or religion at one's discretion as well as freedom to practice any religion or not to practice any; to freely conduct religious rites or ceremonies individually or together with other persons in private or in public; to engage in religious activities; to openly express and freely circulate one's beliefs.

2. Freedom to express one's belief and to practice religion may be restricted by law only in the interests of public security, protection of public order, health and morality or in order to protect rights and freedoms of other individuals in the cases and to the extent to which such restriction is necessary in a democratic society.

3. No religion or belief may be declared mandatory. Exercising compulsion to make an individual choose a religion to worship or reject a religion, participate or not to participate in acts of worship, religious rites and ceremonies or religious education is disallowed.

4. Parents, adoptive parents, foster parents and caregivers have a right to raise a child in accordance with their belief and religion provided they do not harm the child's mental or physical health and proper development. Religious education or training of children without consent of their parents or persons acting as parents is disallowed. Minors may participate in religious education and training only upon their consent.

5. The secret of confession is guaranteed by law. No one has a right to demand a clergyman to provide information received during confession.

Article 4. Unacceptability of Discrimination Based on Belief or Religion

1. Everyone is equal before the law regardless of his/her belief and religion. No identification documents may contain indication of the individual's attitude to religion.

2. Discrimination on the basis of belief or religion is disallowed.

3. Any distinction, exclusion or preference granted on the basis of individual's belief or religion as well as related to that incitement of enmity, hatred or offence of feelings shall entail liability provided for in law.

4. Religious organisations and their representatives are prohibited from any form of advocating enmity or intolerance to anyone having different belief or religion.

5. No one may be relieved from performing their civil duties or refuse to obey the laws because of their religious or other beliefs. In the event when performance of military duties contradicts individual's religious or other beliefs, the state guarantees a right of such individual to serve in alternative (non-military) units according to the procedure established by law.

Article 5. State and Religious Organisations

1. Relations between the state and religious organisations in Ukraine are based on the principle of separation of church (religious organisations) from the state.

2. The state protects the rights of religious organisations, respects their traditions and internal regulations that do not run contrary to national legislation.

3. The state does not interfere with legitimate activities of religious organisations.

4. All religious organisations are equal before the law. Any advantages or restrictions for one or several religious organisations when compared to others are disallowed.

5. The state may fully or partly finance socially beneficial projects implemented by religious organisations.

6. Religious organisations shall not perform any functions of state authorities or bodies of local self-government and shall not interfere with their activities.

7. Religious organisations have a right to participate in social life, engage in business activities and advertise their ideas in media and by other means like other non-profit organisations.

8. Religious organisations shall not take part in activities of political parties (blocs) and shall not provide financial or other support or assistance to political parties (blocs).

9. Religious organisations or individuals who have a right to act and are acting on behalf of these organisations shall not nominate candidates for positions in state authorities or bodies of local self-government, provide any kind of financial support or campaign in any form and by any means at elections in favour or against can-

didates to the aforementioned bodies, in favour or against political parties (electoral blocs).

10. It is disallowed to involve religious organisations or their official representatives into election campaigns of political parties (blocs), candidates for a village, town or city mayors, members of parliament or local deputies, candidates for the President of Ukraine or individuals acting on their behalf.

11. Clergymen have a right to participate in political activities, including a right to vote and to be elected to state authorities or bodies of local self-government like other citizens taking into consideration the provisions of this article.

12. Religious organisations are obliged to adhere to requirements of Ukrainian legislation.

Article 6. Education, Science and Religious Organisations

1. The state system of education in Ukraine is separated from church (religious organisations) and is secular. Everyone has a right to education in state and municipal educational institutions regardless of their beliefs and religion.

2. The academic and educational process in state and municipal educational institutions is based on the principles of pluralism of beliefs and detachment from any confession.

3. Imposing restrictions on scientific research, including religious and religion-related studies, dissemination of their results based on its compliance or non-compliance with any belief or religion is prohibited.

4. Teaching spiritual and moral as well as religious disciplines that are not accompanied by religious ceremonies and are purely informative may be conducted in state and municipal educational institutions provided that attendance of such courses is optional.

5. Religious organisations have a right, pursuant to their internal regulations, create institutions and groups for respective religious education of children and adults and to organise other forms of study.

6. Religious organisations like other private law legal entities have a right to establish pre-school, secondary and higher educational institutions for the purposes of religious education in accordance with the procedure established by law.

7. Pedagogues and researchers have to conduct their courses on the basis of principles of tolerance and respect for everyone regardless of his/her belief or religion.

Section II

RELIGIOUS ORGANISATIONS

Article 7. Religious Organisations

1. Religious organisations in Ukraine are associations of individuals without the status of legal entities and private law legal entities created for the purposes of common practicing of religion and engaging into religious activities.

2. Religious organisations may not interfere with activities of other religious organisations except for the cases when religious associations, governing bodies or leaders participate in activities of religious organisations that are members of such associations as provided for in their statutes.

Article 8. Organisational and Legal Forms of Religious Organisations

1. Regardless of their name, religious organisations may be created in the form of religious societies, religious institutions and religious associations.

2. A religious society is a voluntary association of individuals (participants) regardless of whether a legal entity status is acquired by such an association. Participants of a religious society are directly involved into the society's work and management.

3. A religious institution is an organisation with a legal entity status. A religious institution is created by another religious organisation, which is a legal entity (founder), to achieve a goal identified by the founder.

4. Religious associations consist of religious societies and religious institutions. They are created and acquire the status of a legal entity pursuant to the procedure established by this Law.

5. The fundamental principles determining the status of religious organisations as private law legal entities are provided for in the Civil Code of Ukraine. They are subject to the provisions of the Civil Code of Ukraine concerning non-profit societies and institutions if otherwise not provided for in this Law.

Article 9. Specific Characteristics of Legal Status of a Religious Society

1. Religious societies not having the status of a legal entity may carry out their activities without notifying the state authorities and bodies of local self-government on their establishment. These societies also have a right to submit information about themselves to the local departments of the Ministry of Justice.

2. Religious societies that have three / ten* or more members with full civil capability have a right to attain the status of a legal entity pursuant to the procedure established by this Law.

3. The same individuals may create only one religious society.

* In accordance with the Parliamentary Assembly of the Council of Europe recommendations, the discrimination of religious organisations with regard to the registration procedure should be eliminated, which means unifying requirements as to the number of founders necessary to register an organisation. The Orthodox and Catholic churches as well as Muslim religious associations insist that the minimum number of ten members of a religious society required to receive the status of a legal entity be preserved. The Protestant churches believe that the minimum number of founders of a religious organisation must be equal to the minimum number of founders of a public organisation since a religious organisation from a point of view of a secular state is one of the forms of associations of individuals.

4. The highest body of a religious society is a general assembly of its participants.

5. Religious societies have a right to independently set the rules for admission of new participants and compile a registry of its participants. A participant of a religious society may leave it at any time, and a religious society may exclude a participant from the society in accordance with the procedure provided for in its statute.

6. Exclusive powers of the general assembly of participants of a religious society include:

1) approving or amending the statute;

2) electing or giving consent to appointment of the society's governing and executive bodies;

3) adopting decisions on religious affiliation and canonical subordination of a society and possible changes;

4) adopting decision on the establishment of a religious association, joining or leaving a religious association;

5) adopting decisions on alienating real estate property owned by a religious society;

6) adopting decision on the termination of the religious society.

7. Religious societies independently decide on their subordination in canonical and other organisational spheres to religious associations registered in Ukraine and to international or foreign religious associations and centres. Religious societies have a right to freely withdraw or change their subordination.

Article 10. Specific Characteristics of Legal Status of a Religious Institution

1. Religious institutions are established only with the status of a legal entity.
2. A founder of a religious institution has a right to form or give consent to the formation of an executive body of such institution pursuant to the procedure established by the institution's statute.

Article 11. Religious Associations

1. Legal societies with the status of legal entities have a right to create religious associations.
2. Religious associations are created and act with a local or an all-Ukrainian status.
3. A local religious association may be created by two or more religious societies practicing the same religion and having the status of a legal entity registered on the territory of one oblast, the Autonomous Republic of Crimea, cities of Kyiv or Sevastopol.
4. An all-Ukrainian religious association may be created by religious societies or local religious associations practicing the same religion and registered on the territory of a majority of Ukrainian oblasts, cities of Kyiv and Sevastopol, which in accordance with the procedure established by their statutes decided to create an all-Ukrainian religious association.
5. Every religious organisation or institution may become a member of only one local and one all-Ukrainian religious association.
6. Religious associations have a right to independently decide on their hierarchy in accordance with requirements of their religion.
7. Management and other bodies of religious associations may function in the form of religious institutions.

8. Religious associations registered in Ukraine have a right to adopt independent decisions on their relations with international and foreign religious and inter-religious associations and centres, including a right to a canonical and organisational subordination to international and foreign religious centres and a right to become a member of international religious and inter-religious associations.

Article 12. International and Foreign Religious and Inter-Religious Associations and Centres

1. International and foreign religious and inter-religious associations and centres have a right to establish their missions and religious institutions in Ukraine subject to mandatory registration with Ukrainian state authorities pursuant to the procedure established by this Law.

2. Missions of international and foreign religious and inter-religious associations and centres function in Ukraine without the status of a legal entity.

3. Institutions established by an international or foreign religious or inter-religious association or centre function in Ukraine with the status of a legal entity.

Article 13. Legal Capacity and Active Capacity of Religious Organisations

1. Religious organisations acquire the status of a legal entity after registration with respective state authorities as provided for in this Law.

2. Religious organisations with the status of legal entities have general legal capacity.

3. Religious organisations acquire civil rights and responsibilities that they fulfil through their bodies created and acting in accordance with the statute and provisions of this Law.

4. Religious organisations have a right to create subsidiaries and missions.

Article 14. Name of a Religious Organisation

1. A full name of a religious organisation must contain an indication of its organisational and legal form and religious affiliation.

2. Apart from their full names, religious organisations have a right to use an abbreviated name.

3. Only religious associations having an all-Ukrainian status may use the words “Ukrainian” and “all-Ukrainian” as well as their derivatives in their names.

4. If a religious organisation is a member of a religious association, it must indicate the name of such religious association in its full name. After leaving a religious association, a religious organisation has to change its name excluding the name of such religious association and amending its statute.

5. Institutions established by international and foreign religious and inter-religious associations and centres in Ukraine must indicate the name of a respective association or centre in their full name.

6. There may not be created different religious organisations with the same names. In the event when there are two or more religious organisations claiming one and the same name, the name in question must be given to the organisation that as of the moment of enactment of this Law already had the name. In the future, the name will be given to an organisation that was the first to submit its registration documents.

7. Only the names of registered religious organisations and religious organisations without the status of a legal entity that submitted information about themselves to respective local departments of the Ministry of Justice will enjoy legal protection.

Article 15. Statutes of Religious Organisations

1. Participants of a religious society adopt the statute at the general assembly meeting. The statute of a religious institution is to be approved by the founder. The stat-

ute of a religious association is adopted at the general assembly meetings, conferences, congresses, convocations, etc. by representatives of religious societies that create a religious association or by representatives of local religious associations that create an all-Ukrainian religious association.

2. In the event when a religious society is a member of a religious association, the statute of such religious society must be endorsed by a respective body of this religious association.

3. The statute of a religious organisation has to contain the following information:

- 1) full name of a religious organisation;
- 2) religious affiliation of a religious organisation;
- 3) address of a religious organisation;
- 4) management bodies of a religious organisation, procedure for their creation, description of their terms of reference and decision-making procedure;
- 5) for religious societies and religious associations – procedure for admitting new members, leaving and excluding its members;
- 6) procedure for amending the statute of a religious organisation;
- 7) procedure for adopting a decision to terminate a religious organisation;
- 8) procedure for settling property-related and other disputes in the event of termination of a religious organisation.

4. The statute may contain other provisions related to specific characteristics of activities of a religious organisation.

5. Documents that define the religious doctrine or regulate other internal issues related to functioning of a religious organisation are not subject to registration with state authorities.

6. The statute of a religious organisation may not contradict legislation. In the event when there are discrepancies between provisions of the statute of a religious organisation and legislative norms, the legislative norms will apply.

Article 16. Documents to be Submitted for Registration of Religious Organisations and Missions of International and Foreign Religious and Inter-Religious Associations and Centres

1. The registration of religious organisations and missions of international and foreign religious and inter-religious associations and centres is carried out by the Ministry of Justice and its local departments.

2. In order to register a religious society a standard application has to be submitted to a rayon department of justice or a district department of justice in the cities of Kyiv and Sevastopol signed by not fewer than three persons with full legal competence who created a religious society. The following documents shall be attached to the application:

1) two copies of the statute of a religious society;

2) information about participants of a religious society: last name, first name and patronymic, year of birth and place of residence;

3) minutes of the general assembly meeting that adopted the statute of a religious organisation.

3. In order to register a local religious association an application has to be submitted to the Main Department of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, oblast department or Kyiv or Sevastopol city department of justice. The application is to be signed by authorised representatives of not fewer than three religious societies located on the territory of a respective territorial administrative unit

and stamped with the seals of these religious societies. The following documents are to be attached to the application:

1) two copies of the statute of a religious association;

2) a list of religious societies that create a religious association stating their full names, code in the United State Registry of Enterprises and Organisations of Ukraine and their addresses;

3) minutes of the general assembly meeting, conference, congress, convocation etc. of representatives of religious societies that create a religious association at which the statute of this religious association was approved.

4. In order to register an all-Ukrainian religious association an application has to be submitted to the Ministry of Justice. The application is to be signed by authorised representatives of religious societies or local religious associations registered on the territory of not less than half oblasts of Ukraine, cities of Kyiv and Sevastopol and stamped with the seals of these religious societies or local religious associations. The following documents are to be attached to the application:

1) two copies of the statute of an all-Ukrainian religious association;

2) a list of religious societies or local religious associations that create an all-Ukrainian religious association stating their full names, code in the United State Registry of Enterprises and Organisations of Ukraine and their addresses;

3) minutes of the general assembly meeting, conference, congress, convocation etc. of representatives of religious societies or local religious associations that create an all-Ukrainian religious association at which the statute of this all-Ukrainian religious association was approved.

5. In order to register a religious institution a standard application has to be submitted to the Ministry of Justice or its local department that registered the statute of a religious organisation that establishes the religious institution. The application is to be signed by an authorised representative of this religious organisation and stamped with the seal of this organisation. The following documents are to be attached to the application:

1) two copies of the statute of a religious institution;

2) information about a religious organisation that establishes the religious institution: its full name, code in the United State Registry of Enterprises and Organisations of Ukraine and address;

3) a copy of the statute of a religious organisation;

4) a decision on the establishment of a religious institution adopted in accordance with the procedure established by the statute of a religious organisation.

6. In order to register a religious institution established in Ukraine by an international or foreign religious or inter-religious association or centre a person duly authorised to represent such association or centre has to submit a standard application signed by the authorised representative of this association or centre to the Ministry of Justice. The following documents are to be attached to the application:

1) two copies of the statute of a religious institution;

2) statute or regulations of a foreign or international religious or inter-religious association or centre that creates a religious institution in Ukraine;

3) decision to establish a religious institution (if such a decision is in foreign language a translation with notary validation has to be provided as well);

4) document certifying the person's authority to act on behalf of a foreign or international religious or inter-religious association or centre.

7. In order to register a mission of a foreign or international religious or inter-religious association or centre a person duly authorised to represent such association or centre in Ukraine has to submit a standard application signed by the authorised representative of such association or centre to the Ministry of Justice. The following documents are to be attached to the application:

1) statute or regulations of a foreign or international religious or inter-religious association or centre that establishes a mission in Ukraine;

2) decision to establish a mission;

3) document certifying the person's authority to act on behalf of a foreign or international religious or inter-religious association or centre.

8. Documents mentioned in this article that are to be submitted to register a religious organisation or a mission of a foreign or international religious or inter-religious association or centre has to be drawn up in the state language of Ukraine. Statutory documents of a foreign or international religious or inter-religious association or centre have to be legalised in accordance with effective Ukrainian legislation with due regard to the procedure established by national legislation of a state where such foreign or international religious or inter-religious association or centre is registered. Documents in foreign language shall be submitted for registration together with a translation validated by a notary.

Article 17. Procedure and Timelines for State Registration of Religious Organisations and Missions of International and Foreign Religious and Inter-Religious Associations and Centres

1. An application on registration of a religious society or a religious institution (except for a religious institution established in Ukraine by international and foreign religious and inter-religious associations and centres or religious organisations that practice religions not represented in Ukraine) shall be considered within 10 days from the day of receipt of all documents mentioned in this Law by the Ministry of Justice of Ukraine or its local department.

2. An application on registration of a religious association shall be considered within a month from the day of receipt of all documents mentioned in this Law by the Ministry of Justice of Ukraine or its local department.

3. An application on registration of an institution or a mission established in Ukraine by international and foreign religious and inter-religious associations and centres, except for the cases when such associations and centres practice religions not rep-

resented in Ukraine, shall be considered within three months from the day of receipt of all documents mentioned in this Law by the Ministry of Justice of Ukraine.

4. Religious organisations that practice religions not represented in Ukraine and missions of international and foreign religious and inter-religious associations and centres that practice religions not represented in Ukraine shall be registered within the period of up to six months.

5. An applicant has to be notified on a decision on registration or a refusal within three days from the day of adoption of such decision.

6. The Ministry of Justice of Ukraine and its local departments shall examine the documents submitted for registration of a religious organisation or a mission of an international or foreign religious or inter-religious association or centre with regard to their compliance with requirements of active Ukrainian legislation. They also have a right to inquire into veracity of data provided in these documents.

7. Before granting registration to a religious organisation that practices religion not represented in Ukraine or a mission of an international or foreign religious or inter-religious association or centre that practice religion not represented in Ukraine, the Ministry of Justice organises a comprehensive examination of compliance of a religious doctrine and practice of a religious organisation practicing this religion to the legislation of Ukraine. The procedure and timelines for carrying out such comprehensive analysis is set by the Cabinet of Ministers of Ukraine.

8. Violation of timelines for consideration of applications for registration of a religious organisation or a mission of an international or foreign religious or inter-religious association or centre as provided for in this Law may be appealed against in court.

9. If the Ministry of Justice or its local department decides to register a religious organisation, they provide a respective religious organisation with a certificate on state registration issued by a state registrar in a respective city council executive committee of a city with oblast status or of a rayon state administration or district state administrations in cities of Kyiv and Sevastopol at a respective place of location of a legal entity.

10. The Ministry of Justice of Ukraine or its local departments that registered a religious organisation or a mission of an international or foreign religious or inter-religious organisation or centre add information about them to the State Registry of Religious Organisations. Data to be included into the State Registry of Religious Organisations and the procedure for keeping the registry is defined by the Cabinet of Ministers of Ukraine. State authorities and bodies of local self-government shall not demand from religious organisations other information than provided for in this Law for the purposes of registration.

11. In the event of amendments to the documents submitted for registration of a religious organisation as provided for in this article, religious organisations and missions of foreign and international religious and inter-religious associations and centres have to notify the Ministry of Justice of its local departments on such amendments in writing within a month.

12. Amendments to the statute of a religious organisation are to be registered in accordance with the same procedure and within the same periods as set forth for registration of the statute.

Article 18. Refusal to Register Religious Organisation or Mission of Foreign or International Religious or Inter-Religious Association or Center

1. Refusal to register a religious organisation or a mission of a foreign or international religious or inter-religious association may be based exceptionally on the following grounds:

1) objectives of a religious organisation declared in its statutory documents or objectives of an international or foreign religious or inter-religious association or centre willing to establish a mission or a religious institution in Ukraine declared in its statutory documents contradict the Constitution and laws of Ukraine;

2) failure to submit the documents necessary for registration as provided for in Article 16 of this Law;

3) documents submitted for registration contradict Ukrainian legislation;

4) documents submitted for registration contain false information;

5) persons who created a religious organisation were not entitled to create it in accordance with Ukrainian legislation;

6) conclusions of a comprehensive examination established discrepancies between Ukrainian legislation and religious doctrine or practice of a religious organisation practicing religion not represented in Ukraine.

2. A refusal to register a religious organisation shall not prevent a respective organisation from repeat application for registration after elimination of the grounds for refusal.

3. A refusal to register a religious organisation may be appealed against in court.

Article 19. Termination of a Religious Organisation with the Status of Legal Entities or Termination of Activities of a Mission of Foreign or International Religious or Inter-Religious Association or Centre; Official Prohibition of Activities of Religious Organisation

1. Religious organisations with the status of legal entities may be terminated (re-organised or liquidated) in accordance with the procedure established by the Civil Code of Ukraine upon a decision of a body authorised by the statute of a religious organisation to adopt decisions on terminating organisation's activities or upon a court decision.

2. A religious organisation – legal entity may be terminated by court only on the following grounds:

1) false information was detected in documents submitted for registration by a religious organisation;

2) systematic or grave violation of the Constitution or laws of Ukraine by a religious organisation.

3. Activities of a mission of a foreign or international religious or inter-religious association or centre shall be terminated:

1) after liquidation of a foreign or international religious or inter-religious association or centre that established the mission;

2) upon a decision of a foreign or international religious or inter-religious association or centre that established the mission;

3) upon a court decision - in the event of detecting in registration documents of false data or in the event of systematic or grave violation of Ukrainian legislation.

4. Activities of a religious organisation may be prohibited by court if a religious organisation or its representatives authorised to act and acting on behalf of a religious organisation:

1) perform actions that threaten human life, health, freedom, dignity or safety;

2) encroach upon constitutional human rights and freedoms;

3) systematically violate the procedure for conducting public religious activities (divine services, rituals, ceremonies, processions, etc.) as provided for by law;

4) call upon other persons not to perform their constitutional duties or to gravely violate public order or to trespass on property belonging to individuals or legal entities;

5) perform actions prohibited by Articles 4 and 5 of this law or incite religious, racial or inter-ethnic enmity;

6) prevent participants of a religious organisation or other persons from receiving mandatory education;

7) persuade participants of a religious organisation or other persons to commit suicide;

8) illegally prevent participants of a religious organisation from leaving the organisation.

5. A court considers a case on terminating a religious organisation with the status of a legal entity or a mission of a foreign or international religious or inter-religious association or centre and on prohibiting activities of a religious organisation upon an application submitted by a body that registered the religious organisation or the mission of a foreign or international religious or inter-religious association or centre, or by a prosecutor pursuant to the procedure established by the Code of Administrative Justice of Ukraine.

6. Prohibition of activities of a religious organisation with the status of a legal entity entails its liquidation.

Section III

RIGHTS OF INDIVIDUALS AND RELIGIOUS ORGANISATIONS RELATED TO FREEDOM OF BELIEF AND RELIGION

Article 20. Religious Rites and Ceremonies

1. Divine services, religious rites, ceremonies and processions may be freely conducted in hieratic premises and on adjacent territories as well as in premises belonging to religious organisations or legitimately used by these organisations, at places of pilgrimage, cemeteries, places of individual burials and crematoria.

2. Divine services, religious rites and ceremonies may be held in premises occupied by state authorities and bodies of local self-government, institutions, organisations and enterprises upon consent of their management bodies, and in military units and other subdivisions of military formations created in accordance with Ukrainian legislation – upon consent of commandership.

3. Divine services, religious rites and ceremonies may be held in apartments, houses and buildings belonging to individuals upon consent of the owner or a person authorised to represent the owner.

4. Divine services and religious rites may be held in hospitals, nursery institutions of social support (care), institutions for the elderly and disabled individuals as well

as penitentiary institutions upon a request from individuals dwelling in these institutions or upon the initiative of a religious organisation. Administration of the aforementioned institutions has to facilitate organisation of religious activities and set the time and other conditions for conducting divine services, religious rites and ceremonies.

5. Commandership of military units and other subdivisions of military formations created in accordance with Ukrainian legislation have to provide opportunities for the soldiers to participate in divine services, pilgrimages, religious rites and ceremonies in accordance with their religion provided such participation does not violate provisions of the Disciplinary Statute of the Armed Forces of Ukraine.

6. In other cases, public divine services, religious rites, ceremonies and processions shall be conducted in accordance with the procedure for holding gatherings, meetings, marches and demonstrations.

7. Upon a request of an employee, a student or a pupil's parents, the management of an enterprise, institution or an organisation has to provide an opportunity for him/her to participate in divine services or time off work/study for divine services or holidays required by his/her religion except for the cases when specific characteristics of a working cycle prevent them from enjoying this right. An employee has to work outside normal working hours to make up for the time spent on participation in divine services or holidays.

Article 21. Social Work of Religious Organisations

Religious organisations have a right to engage in charity, education, cultural and other social activities either directly or by means of creating new legal entities in accordance with the procedure established by law.

Article 22. Religious Educational Institutions

1. Religious organisations have a right to create educational institutions both in the form of religious institutions and in other forms provided for in the legislation.

2. Religious educational institutions created in the form of religious institutions have a right to act without a license for providing educational services and preparing

specialists of various qualification levels and without adhering to the national educational standards.

3. Other educational institutions established by religious organisations are created and act pursuant to the procedure provided for by Ukrainian legislation on education.

4. Individuals attending higher and secondary religious educational organisations enjoy all rights and benefits provide for in Ukrainian legislation for the students of non-governmental educational institutions.

5. Professors and staff of religious educational institutions have social rights and guarantees equal to those of respective categories of employees of non-governmental educational institutions.

Article 23. International Relations and Contacts of Believers and Religious Organisations

1. The believers individually or collectively and religious organisations have a right to establish and maintain international contacts as well as direct personal contacts, including organising and carrying out pilgrimages abroad and participation in religious events held outside Ukraine.

2. Religious organisations have a right to send believers abroad to study at religious educational institutions and invite foreign and stateless persons for the same purposes.

3. Foreigners and stateless persons legally staying in Ukraine may engage in preaching or other religious activities like citizens of Ukraine. They have no right to interfere with activities of religious organisations without their invitation or consent, to advocate religious intolerance in any form, insult human feelings related to their religious or other beliefs.

Article 24. Specific Characteristics of Property Status of Religious Organisations

1. Religious organisations have a right to possess, use and dispose of any property not excluded from civil circulation, including monetary funds, currency values and security papers in and outside Ukraine like other private property legal entities.

2. Religious organisations have a right to produce, export, import and disseminate religious property, including religious literature, audio-, video- and other religious informative materials.

3. Religious organisations have a right to create and maintain freely accessible places for divine services and religious meetings as well as places of worship of certain religions (pilgrimage sites).

4. Religious organisations have a right to build cult buildings provided they adhere to the national construction requirements.

5. Religious organisations that use cult buildings and other property classified as cultural, architectural or other heritage protected by law shall observe provisions of legislation on the protection of such heritage.

6. Cult property belonging to a religious organisation may not be subject to creditors' claims.

7. Religious organisation may use land in accordance to the procedure and conditions provided for in the Land Code of Ukraine and other legislative acts of Ukraine.

8. Religious organisations have a right to ask for and receive voluntary donations from individuals and legal entities.

9. Religious organisations have no right to impose mandatory taxes on believers or introduce mandatory financial charges.

10. The state returns the previously nationalised cult buildings and other property to religious organisations in accordance with the procedure established by law.

11. Transition of the state-owned or municipal cult property to subjects other than religious organisations is disallowed.

12. The Cabinet of Ministers of Ukraine determines the procedure for creation and maintenance of the State Registry of Cult Property.

Article 25. Specific Characteristics of Status of Religious Organisations as Users of State-Owned or Municipal Property

1. Religious organisations have a right to use state-owned or municipal cult buildings and other property for their needs.

2. Before the state returns to a religious organisation previously nationalised cult buildings and other cult property or cult property restored by the state or local communities after its complete or partial destruction, the bodies authorised to dispose of it grant a right to use such state-owned or municipal property free of charge to a religious organisation.

3. A religious organisation that claims a right to use state-owned or municipal cult buildings and other property free of charge has to submit its application to a body authorised to dispose of such property. The body authorised to dispose of state owned or municipal cult property has to consider this application within a month and notify the applicant in writing within 10 days after adoption of a respective decision.

4. Bodies authorised to dispose of state-owned or municipal property have to grant a right to use such property free of charge to a religious organisation within a reasonable time necessary to provide for lawful interests of legitimate users of this property except for property not liable to be used by religious organisations.

5. Cult buildings and constructions located on the territory of military units of the Armed Forces of Ukraine are considered state property and may not be alienated.

6. A list of cult property not liable to be used free of charge on permanent basis by religious organisations shall be approved by the Cabinet of Ministers of Ukraine.

7. If two or more religious organisations claim a right to use one and the same cult property item, a body authorised to dispose of such property adopts a decision on applications submitted by such organisations based on the principle of restoring histori-

cal justice and taking into consideration the proofs of historical legacy provided by the applicant religious organisations that used to have or use this property before it was nationalised. In such an event, the period for consideration of applications of such organisations may be extended to three months.

8. Decisions of executive bodies and bodies of local self-government concerning possession, use and disposal of cult buildings, constructions and other cult and non-cult property may be appealed against in court.

Article 26. Entrepreneurial Activities of Religious Organisations

1. Religious organisations apart from their primary activities may engage in entrepreneurial activities if the latter is in line with their objective and facilitate its achievement.

2. Religious organisations have a right to found companies and other economic subjects in accordance with the procedure established by law.

Article 27. Staff and Elected Persons of Religious Organisations

1. In accordance with the procedure established in their statutes, religious organisations have a right to employ and elect to office citizens of Ukraine, foreign nationals and stateless persons legally staying in Ukraine.

2. Conditions of work of hired employees shall be set forth in a written labour agreement.

3. Persons working for religious organisations on a contractual basis and elected individuals, including clergymen and church officers, are subject to provisions of legislation on pensions, labour, social insurance and taxation of individual incomes.

Section IV

STATE POLICIES IN THE SPHERE OF FREEDOM OF BELIEF AND RELIGION

Article 28. Ensuring Implementation and Observance of Legislation on Freedom of Belief, Religion and Religious Organisations

The implementation and observance of legislation on freedom of belief, religion and religious organisations is ensured by the Ministry of Justice of Ukraine and its local departments, other central executive bodies, prosecutors, local executive bodies and bodies of local self-government within their competence.

Article 29. Authorities of the Ministry of Justice to Ensure Implementation and Observance of Legislation on Freedom of Belief, Religion and Religious Organisations

1. The main state authority responsible for ensuring implementation of state policies in the sphere of freedom of belief and religion is the Ministry of Justice of Ukraine.

2. The main tasks of the Ministry of Justice in this sphere are:

1) to ensure everyone's right to freedom of belief and religion;

2) to carry out registration of religious organisations;

3) to establish and to keep the State Registry of Religious Organisations and the State Registry of Cult Property;

4) to organise comprehensive examination of compliance of religious doctrine and practice of religious organisations practicing religions not represented in Ukraine with the Ukrainian legislation;

5) to provide official interpretation of effective legislation on the freedom of belief and religion, to analyse practices of its implementation and international experience in this sphere, to elaborate proposals on improving national legislation;

6) to provide consultations to executive bodies and bodies of local self-government, legal entities and individuals as to applying legislation on the freedom of belief, religion and religious organisations;

7) to ensure within its competence implementation and observance of legislation on the freedom of belief, religion and religious organisations.

Article 30. Liability for Violating Legislation on Freedom of Belief, Religion and Religious Organisations

Violation of legislation on the freedom of belief, religion and religious organisations entails disciplinary, civil, administrative or criminal liability as provided for in law.

Section V

FINAL AND TRANSITIONAL PROVISIONS

1. This Law comes into force on 1 January 2007, except for its Article 25 which comes into force on 1 July 2007.

2. Resolution of the Verkhovna Rada of the USSR “On the Procedure for Enactment of the Law of Ukraine “On Freedom of Conscience and Religious Organisations”” of 23 April 1991 (*Vidomosty Verkhovnoi Rady URSR* 1991, #25, p. 284; *Vidomosty Verkhovnoi Rady Ukrainy*, 1994, # 13, p. 67) shall be recognized null and void.

3. To amend the Land Code of Ukraine (*Vidomosty Verkhovnoi Rady Ukrainy*, 2002, ##3-4, p. 27; 2004, #7, p. 48; 2004, #35, p. 416) as follows:

1) to add a following new paragraph after paragraph 3 of Article 82:

“4. Religious organisations registered in Ukraine have a right to acquire land plots to construct cult buildings and engage in other activities in accordance with the procedure and on the grounds established in this Code for Ukrainian legal entities”.

In view of this, paragraph 4 is to be considered paragraph 5.

2) to add sub-paragraph “c” in paragraph 2 of Article 92:

“c) religious organisations registered in Ukraine”.

4. In paragraph 4 of Article 3 of the Law of Ukraine “On Registration of Legal Entities and Individual Entrepreneurs” (*Vidomosty Verkhovnoi Rady Ukrainy*, 2003, ##31-32, p. 263; *Ofitsiynyi Visnyk Ukrainy*, 2006, #15, p. 1071) to add the words “and religious” after the word “charity”.

5. Until the statutes of religious organisations are brought in compliance with provisions of this Law, religious communities as well as religious fraternities and monasteries created in accordance with paragraph 2 of Article 10 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” of 23 April 1991 shall be considered religious societies, and other religious organisations shall be considered religious institutions. The aforementioned organisations retain their names.

6. Religious organisations registered as of the moment of enactment of this Law may continue to engage in their activities on the basis of the previously registered statutes without re-registering them.

7. Religious associations represented by religious authorities and centres having the words “Ukrainian” and “all-Ukrainian” as well as derivatives in their names have a right to preserve the names at registration.

8. The Cabinet of Ministers of Ukraine shall:

1) prepare and submit the following documents to the Verkhovna Rada of Ukraine within three months after publication of this Law:

- draft Law of Ukraine on Returning the Previously Nationalised Property to Religious Organisations;

- proposals on bringing legislative acts of Ukraine in compliance with this Law;

2) within six month from the day of enactment of this Law:

- adopt normative legal acts necessary to implement this Law;

- bring its normative legal acts in compliance with this Law;

- organise revision and cancellation of respective normative legal acts running contrary to provisions of this Law by ministries and other central executive bodies;

9. This Law applies to relations that emerged after its enactment.”.