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

**AND**

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

**JOINT GUIDELINES**

**ON**

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

**Adopted by the Venice Commission**  
**At its 99<sup>th</sup> Plenary Session**  
**(Venice, 13-14 June 2014)**

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## Introduction

OSCE participating States promised in paragraph 16.3 of the 1989 Vienna Document, to “grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries”.

This commitment is a reality for many religious and belief communities in the OSCE region. There are, however, still challenges in its implementation in a number of OSCE participating States, both at the legislative and practical level. In particular, the use of mandatory registration systems, as well as significant practical and legal obstacles to acquiring legal personality continues to negatively affect the rights of a wide range of religious or belief communities.

In 2004, ODIHR and the Venice Commission sought to deal with these and a range of other topics related to these rights in the *Guidelines for Review of Legislation pertaining to Religion or Belief*.<sup>1</sup> Since then, other regional and universal international human rights bodies have provided a range of statements, opinions and judgments on this issue. It appeared logical, therefore, to update the guidance provided by ODIHR and the Venice Commission in this area. This decision was reinforced by the 2013 Kyiv Ministerial Council Decision on the freedom of thought, conscience, religion or belief, which called on OSCE participating States to “[r]efrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities.”

The purpose of these Guidelines is to ensure that those involved in drafting and applying legislation in the area of the freedom of religion or belief, including civil society representatives, have at their disposal a benchmark document containing minimum international standards in the area of recognition of religious or belief communities. The document does not seek to challenge established agreements between states and religious or belief communities but, rather, to delineate the legal framework that would ensure that communities wishing to do so have a fair opportunity to be granted legal personality, and that the criteria established are applied in a non-discriminatory manner. This document elaborates on the issues of registration and recognition of religious and belief organizations, and supplements section II.F on “Laws governing registration of religious/belief organizations” of the 2004 Guidelines. The 2004 Guidelines do, however, remain valid in their entirety.

The current Guidelines are the product of extensive consultations with civil society and government officials. Four roundtable events were held to obtain feedback to draft versions of this document, including in Kyiv (3 September 2013), Warsaw (26 September 2013), Astana (10 October 2013) and Brussels (24 October 2013), bringing together over 90 participants from a wide range of different backgrounds. In addition, advice on the document was sought from ODIHR’s Advisory Panel of Experts on Freedom of Religion or Belief, a 12-person body of independent experts from across the OSCE region appointed in February 2013. The Guidelines also rely on the important work done in this area by the UN Special Rapporteur on freedom of religion or belief, Professor Heiner Bielefeldt. We would like to thank all the civil society representatives, academics, government officials and others who have provided their expertise and commented on this document.

These Guidelines were published on the Venice Commission website on 16 June 2014.<sup>2</sup> While we have the privilege of presenting the edited version of this resource, gratitude is due

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<sup>1</sup> Available at <<http://www.osce.org/odihr/13993>>.

<sup>2</sup> Edited by ODIHR following their adoption by the Venice Commission at its 99<sup>th</sup> Plenary Session on 13-14 June 2014.

to the former ODIHR Director, Ambassador Janez Lenarčič, for the guidance he provided in ensuring its publication.

It is our firm hope that this document will be used widely and will assist all religious and belief communities in obtaining the status that they seek, thereby ensuring that everyone can enjoy the freedom of religion or belief fully and with the dignity that they deserve.

Michael Georg Link  
ODIHR Director

Dr. Gianni Buquicchio  
President, Venice Commission

### **Glossary of abbreviations**

ACHR	American Convention on Human Rights
CCA	Churches and Congregations Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
UN	United Nations
UN-ECOSOC	United Nations Economic and Social Council
UN SR	United Nations Special Rapporteur on freedom of religion or belief

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

1. The freedom of religion or belief is a fundamental right, as recognized in international instruments<sup>3</sup> and OSCE commitments.<sup>4</sup> International standards specify that everyone has the right to freedom of thought, conscience and religion.<sup>5</sup> This right includes the freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance.<sup>6</sup>

2. The terms "religion" and "belief" are to be broadly construed.<sup>7</sup> A starting point for defining the application of freedom of religion or belief must be the self-definition of religion or belief, though of course the authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case. There is a great diversity of religions and beliefs.<sup>8</sup> The freedom of religion or belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views.<sup>9</sup> The freedom of religion or belief protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.<sup>10</sup>

3. The freedom of religion or belief is closely linked to other human rights and fundamental freedoms, such as, in particular, the freedom of expression,<sup>11</sup> the freedom of assembly and association<sup>12</sup> and the right to non-discrimination.<sup>13</sup>

<sup>3</sup> The International Covenant on Civil and Political Rights (ICCPR), art. 18; the European Convention on Human Rights (ECHR), art. 9; the American Convention on Human Rights (ACHR), art. 12; and the EU Charter of Fundamental Rights, art. 10.

<sup>4</sup> Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference), Vienna, (hereafter: Vienna 1989), para. 11, 16, 17 and 32; 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (hereafter: Copenhagen 1990), para. 9.4; CSCE Budapest Document 1994: Towards a Genuine Partnership in a New Era (hereafter: Budapest 1994), para. 27; Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 2003 (hereafter: Maastricht 2003), para. 9.

<sup>5</sup> ICCPR, art. 18 (1); ECHR, art. 9 (1); ACHR, art. 12 (1); Copenhagen 1990, para. 9.4; EU Charter of Fundamental Rights, art. 10.

<sup>6</sup> ICCPR, art 18(1); ECHR, art. 9 (1); ACHR, art. 12 (1) ; Copenhagen 1990, para. 9.4.

<sup>7</sup> UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief*, 22 December 2011, A/HRC/19/60 (hereafter: UN SR Report on Recognition), para. 38; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 34.

<sup>8</sup> UN SR Report on Recognition, para. 31.

<sup>9</sup> United Nations Human Rights Committee, General Comment 22 (UN Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), paras. 22-24; *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, adopted by the Venice Commission at its 85th Plenary Session (Venice, 18-18 December 2012), para.43; ECtHR 15 June 2010, *Grzelak v. Poland*, Application no. 7710/02, para. 85; ECtHR 25 May 1993, *Kokkinakis v. Greece*, Application no. 14307/88, para. 31; and ECtHR 18 February 1999, *Buscarini and Others v. San Marino* Application no. 24645/94, para. 34.

<sup>10</sup> United Nations Human Rights Committee, General Comment 22 (UN Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para.46-47.

<sup>11</sup> See, for example, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, 20 September 2006, UN Doc. A/HRC/2/3, paras. 40-43.

<sup>12</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, para. 62.

<sup>13</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), para. 19.

4. The freedom to have or to adopt a religion or belief of one's choice, which includes the right to change one's religion or belief,<sup>14</sup> may not be subject to any limitations.<sup>15</sup>

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

A. The limitation is prescribed by law;<sup>16</sup>

B. The limitation has the purpose of protecting public safety, (public) order, health or morals,<sup>17</sup> or the fundamental rights and freedoms of others;<sup>18</sup>

C. The limitation is necessary for the achievement of one of these purposes and proportionate to the intended aim;<sup>19</sup> and

D. The limitation is not imposed for discriminatory purposes or applied in a discriminatory manner.<sup>20</sup>

6. Limitations must not be applied in a manner that would vitiate the freedom of religion or belief.<sup>21</sup> In interpreting the scope of permissible limitation clauses, states should proceed from the need to protect the rights guaranteed under international instruments.<sup>22</sup>

7. For a limitation to be "prescribed by law", the legal provision outlining the limitation should be both adequately accessible and foreseeable. This requires that it should be formulated with sufficient precision to enable individuals or communities— if need be with appropriate advice – to regulate their conduct. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interference by public authorities with human rights and fundamental freedoms. In matters affecting fundamental rights, it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.<sup>23</sup> It also requires that limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but which are so vague that they do not give fair notice of what the law requires or which allow for arbitrary enforcement.<sup>24</sup>

<sup>14</sup> ECHR, art. 9 (1); Copenhagen 1990, para. 9.4; United Nations Human Rights Committee, General Comment 22, para. 5; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 31.

<sup>15</sup> ICCPR, art. 18 (2); ACHR, art. 12 (2); UN Human Rights Committee, General Comment 22, para. 8; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), paras. 28 and 30.

<sup>16</sup> ICCPR, art. 18 (3); ECHR, art. 9 (2); ACHR, art. 12 (3); Copenhagen 1990, para. 9.4; ECtHR 30 June 2011, *Association les Témoins de Jehovah v. France*, Application No.8916/05, para. 66-72.

<sup>17</sup> The United Nations Human Rights Committee has observed that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition" (UN Human Rights Committee, General Comment 22, para. 8).

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

<sup>19</sup> ICCPR, art. 18 (3); art. 12 ACHR; cf. ECHR, art. 9 (2) ("necessary in a democratic society in the interest of...").

<sup>20</sup> United Nations Human Rights Committee, General Comment 22, para. 8.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> ECtHR 26 October 2000, *Hasan & Chaush v. Bulgaria*, Application no. 30985/96, para. 84; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 35.

<sup>24</sup> United Nations, Economic and Social Council (UN-ECOSOC), *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (UN-ECOSOC Siracusa Principles), UN Doc. E/CN.4/1985/4, Annex (1985) at paras. B(i) 15-18; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR*

8. Limitations may be applied only for those purposes for which they were prescribed in provisions with regard to the freedom of religion or belief, and are not allowed on grounds that are not specified in international instruments, even if these grounds would be allowed as restrictions to other human rights or fundamental freedoms.<sup>25</sup>

9. Limitations must be necessary in accordance with the grounds for restriction specified in provisions on freedom of religion or belief. For a limitation to be necessary, it must be directly related and proportionate to the specific need on which it is predicated,<sup>26</sup> while the interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued.<sup>27</sup> The concept of a “pressing social need” is to be narrowly interpreted, which means that limitations should not just be useful or desirable, but must be necessary.<sup>28</sup> For an interference to be proportionate, there must be a rational connection between a public policy objective and the means employed to achieve it. In addition, there has to be a fair balance between the demands of the general interest and requirements to protect an individual's fundamental rights, the justification for the limitation must be relevant and sufficient and the least intrusive means available must be used.<sup>29</sup>

10. State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization.<sup>30</sup> This also means that, as will be outlined in more detail below, the legal prohibition and sanctioning of unregistered activities is incompatible with international standards.

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

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

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

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*Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, adopted by the Venice Commission at its 76<sup>th</sup> Plenary Session (Venice, 17-18 October 2008), para. 6.

<sup>25</sup> United Nations Human Rights Committee, General Comment 22, para. 8.

<sup>26</sup> *Ibid.*

<sup>27</sup> ECtHR 25 November 1996, *Wingrove v. the United Kingdom*, Application no. 17419/90, para. 53.

<sup>28</sup> ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, para. 116; ECtHR 17 February 2004, *Gorzelik and Others v. Poland*, Application no. 44158/98, paras. 94-95.

<sup>29</sup> UN-ECOSOC *Siracusa Principles*, paras. A 10-14; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para.36. See also *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 35.

<sup>30</sup> ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, 45701/99, para. 128-130; *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, UN Doc.A/HRC/19/60, paras. 25 and 41.

13. The *freedom to worship* includes, but is not limited to, the freedom to assemble in connection with a religion or belief<sup>31</sup> and the freedom of communities to perform ritual and ceremonial acts giving direct expression to their religion or belief,<sup>32</sup> as well as various practices integral to these freedoms, including the building and maintenance of freely accessible places of worship,<sup>33</sup> the use of ritual formulae and objects and the display of symbols.<sup>34</sup>

14. The *freedom to observe and practise* includes, but is not limited to, ceremonial acts, but also such customs as the observance of dietary regulations,<sup>35</sup> the wearing of distinctive clothing or head coverings,<sup>36</sup> participation in rituals associated with certain stages of life<sup>37</sup> and the use of a particular language customarily spoken by a group in practising their religion,<sup>38</sup> as well as the freedom to establish and maintain appropriate charitable or humanitarian institutions and the observance of holidays and days of rest.<sup>39</sup>

15. The *freedom to practise and teach religion or belief* includes, but is not limited to, acts integral to the conduct by religious groups of their basic affairs, such as the right to organize themselves according to their own hierarchical and institutional structures<sup>40</sup> and the right to select, appoint and replace their personnel in accordance with their respective requirements and standards, as well as with any freely accepted arrangement between them and their state;<sup>41</sup> the freedom to establish seminaries or religious schools;<sup>42</sup> the freedom to train religious personnel in appropriate institutions;<sup>43</sup> the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;<sup>44</sup> the right of religious communities, institutions and organizations to produce, import and disseminate religious publications and materials;<sup>45</sup> the right of each individual to give and receive religious education in the language of their choice, whether individually or in association with others, in places suitable for these purposes,<sup>46</sup> including the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;<sup>47</sup> the right to solicit and receive voluntary financial and other contributions from individuals and institutions;<sup>48</sup> and the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels,<sup>49</sup> including through travel, pilgrimages and participation in assemblies and other religious events.<sup>50</sup>

<sup>31</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, para. 6 (a).

<sup>32</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>33</sup> Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (a).

<sup>34</sup> UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (h).

<sup>35</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (b) and 6 (h).

<sup>40</sup> Vienna 1989, para. 16.4.

<sup>41</sup> Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (g); UN Human Rights Committee General Comment 22, para. 4.

<sup>42</sup> UN Human Rights Committee General Comment 22, para. 4.

<sup>43</sup> Vienna 1989, para. 16.8.

<sup>44</sup> UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (d).

<sup>45</sup> Vienna 1989, para. 16.10; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (c) and (d).

<sup>46</sup> Vienna 1989, para. 16.6.

<sup>47</sup> Vienna 1989, para. 16.7.

<sup>48</sup> Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (f); *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine*, CDL-AD(2006)030, adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006), para. 34.

<sup>49</sup> UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (i).

<sup>50</sup> Vienna 1989, para. 32.



16. As noted above, the freedom to manifest religion or belief in community with others is accorded to human beings as rights-holders, and cannot be made subject to any prior restraint through the use of mandatory registration procedures or similar procedures.<sup>51</sup> Any limitations to the various forms of manifestation of the freedom of religion or belief described herein must, therefore, meet the strict criteria set out in Part I.

### Part III. Religious or belief organizations

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

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

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

<sup>51</sup> ECtHR 12 May 2009, *Masaev v. Moldova*, Application no. 6303/05, para. 26; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 69; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 89.

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

- a) “*Confesiones religiosas*”, which is the basic form of legal personality for communities, churches and religious communities;
- b) “*Entidades religiosas*”, which grant legal personality to specific territorial, associational or structural compounds of recognized “*confesiones religiosas*”. A “seminar”, “diocese”, “local community or church” or “territorial subdivision” of a “*confesión religiosa*” can be an “*entidad religiosa*” under Spanish law in order to simplify legal affairs; and
- c) “*Federaciones religiosas*”, which are federations comprising a group of “*confesiones religiosas*” that share some characteristics (such as dogma, historical origin, etc.). There are also “*Federaciones de entidades religiosas*”.

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

18. It must be noted that the autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection that the freedom of religion or belief affords.<sup>52</sup> It directly concerns not only the organization of these communities as such, but also the effective enjoyment of the right to freedom of religion by all their active members. When the organizational life of the community is not protected by the freedom of religion or belief, all other aspects of the individual’s freedom of religion become vulnerable.<sup>53</sup> The ability to establish a legal entity to act collectively in a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. As regards the organization of a religious community, a refusal to recognize it as a legal entity has also been found to constitute an interference with the right to freedom of religion under Article 9 of the ECHR as exercised by both the community itself and its individual members.<sup>54</sup> OSCE participating States have therefore promised to “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries”.<sup>55</sup>

19. Under international human rights law, a refusal by the state to accord legal personality status to an association of individuals based on a religion or belief amounts to an interference with the exercise of the right to freedom of religion or belief, read in the light of the freedom of association.<sup>56</sup> The authorities’ refusal to register a group, or to withdraw its legal personality, have been found to affect directly both the group itself and also its presidents, founders or individual members.<sup>57</sup> A refusal to recognize the legal personality

<sup>52</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, para. 62; ECtHR 9 July 2013, *Sindicatul Păstorul Cel Bun v. Romania*, Application no. 2330/09, para. 136; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, para. 118, and ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, Application nos. 412/03 and 35677/04, para. 103.

<sup>53</sup> ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, para. 62.

<sup>54</sup> ECtHR 1 October 2009, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 84.

<sup>55</sup> Vienna 1989, para. 16.3.

<sup>56</sup> ECtHR 1 October 2009, *Kimlya and Others v. Russia*, Application nos. 76836/01 and 32782/03, para. 84; ECtHR 10 June 2010, *Jehova’s Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 101; ECtHR 17 February 2004, *Gorzelik and Others v. Poland*, Application no. 44158/98, para. 52 and ECtHR 1 July 1998, *Sidiropoulos and Others v. Greece*, Application no. 26695/95, para. 31; *Opinion on Legal Status of Religious Communities in Turkey and the Right of the orthodox Patriarchate of Istanbul to use the adjective “Ecumenical”*, CDL-AD(2010)005, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), para. 6 & 9; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 64; OSCE/ODIHR and Venice Commission, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, 2004 (hereafter: 2004 Guidelines), para. 8.

<sup>57</sup> ECtHR 10 June 2010, *Case of Jehova’s Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 101; ECtHR 15 January 2009, *Association of Citizens Radko and Paunkovski v. the former Yugoslav Republic of Macedonia*, Application no. 74651/01, para. 53; ECtHR 19 January 2006, *The United Macedonian*

status of religious or belief communities has, therefore, been found to constitute an interference with the right to freedom of religion or belief<sup>58</sup> as exercised by both the community itself as well as its individual members.<sup>59</sup>

20. The right to legal personality status is vital to the full realization of the right to freedom of religion or belief. A number of key aspects of organized community life in this area become impossible or extremely difficult without access to legal personality. These include having bank accounts and ensuring judicial protection of the community, its members and its assets;<sup>60</sup> maintaining the continuity of ownership of religious edifices; the construction of new religious edifices; establishing and operating schools and institutes of higher learning; facilitating larger-scale production of items used in religious customs and rites; the employment of staff; and the establishment and running of media operations.<sup>61</sup>

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

21. Any denial of legal personality to a religious or belief community would, therefore, need to be justified under strict conditions, as set out in Part I of the Guidelines. At the same time, under international human rights law, religious or belief communities should not be obliged to seek legal personality if they do not wish to do so.<sup>62</sup> The choice of whether or not to register with the state may itself be a religious one, and the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status.<sup>63</sup> States have developed a number of practices involving, for example, police control, surveillance, restrictive measures including the closing of places of

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*Organisation Ilinden and Others v. Bulgaria*, Application no. 59491/00, para. 53; ECtHR 3 February 2005, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, Application no. 46626/99, para.27 and ECtHR 31 August 1999, *APEH Üldözötteinek Szövetsége and Others v. Hungary* (Dec.), Application no. 32367/96.

<sup>58</sup> UN Human Rights Committee 21 October 2005, *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka*, communication 1249/2004, para. 7.2.

<sup>59</sup> ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 101; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98 paras.79-80, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, para. 105.

<sup>60</sup> ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 102; ECtHR, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 85; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98, para. 66; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, para. 118;; ECtHR 3 April 2008, *Koretskyy and Others v. Ukraine*, Application no. 40269/02, para. 40 and ECtHR 16 December 1997, *Canea Catholic Church v. Greece*, paras. 30 and 40-41; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania adopted by the Venice Commission at its 64th plenary session* (Venice, 21-22 October 2005), CDL-AD(2005)037-e, para. 23; *Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical"*, CDL-AD(2010)005, para. 68.

<sup>61</sup> UN SR Report on Recognition, para. 46.

<sup>62</sup> UN SR Report on Recognition, para. 58: “[i]n keeping with the universalistic understanding of human rights, States must ensure that all individuals can enjoy their freedom of thought, conscience, religion or belief on the basis of respect for their self-understanding in this entire area. Respect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as freedom of religion or belief has the status of a human right, prior to and independent from any acts of State approval.”

<sup>63</sup> *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 26.

worship, the confiscation of property, financial sanctions, imprisonment,<sup>64</sup> blocking access to chaplaincy services, restricting the dissemination or ownership of religious literature or restricting the freedom to convince others of one's religion or belief. Obviously, these and similar measures are not in line with international standards if they are imposed merely due to the failure of a religious or belief community to seek or obtain legal personality status.

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

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

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

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

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

In the **United States**, in order to register as a non-profit corporation, religious associations must establish Articles of Incorporation and by-laws. Articles of Incorporation consist of structural information, including the organization's name, address, registering agent and non-profit and tax-exempt purpose. By-laws set forth the organization's rules and procedures, frequently detailing who may serve on the Board of Directors and the length of such service; when and how meetings occur; and the manner in which officers are appointed. In sum, they

<sup>64</sup> UN SR Report on Recognition, para. 58.

comprise the organization's operations. To become a non-profit corporation, religious and belief communities must apply for such recognition with the appropriate state agency. They must also file Form 1023 or 1024 with the federal Internal Revenue Service to obtain federal tax-exempt status. Under most circumstances, once federal tax-exempt status is granted, state and local tax-exempt status is automatic.

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

23. Regardless of the system used to govern access to legal personality and the particular terms that may be used to describe the forms of legal personality open to religious or belief communities, national law in this area must comply with international human rights instruments and OSCE commitments.<sup>65</sup> This means, among others, that religious or belief organizations must be able to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities.<sup>66</sup>

24. Considering that a wide variety of legal acts may be performed only by actors recognized as legal persons, access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory.<sup>67</sup>

25. Any procedure that provides religious or belief communities with access to legal personality status should not set burdensome requirements.<sup>68</sup> Examples of burdensome requirements that are not justified under international law include, but are not limited to, the following: that the registration application be signed by all members of the religious organization and contain their full names, dates of birth and places of residence;<sup>69</sup> that excessively detailed information be provided in the statute of the religious organization;<sup>70</sup> that excessively high or unreasonable registration fees be paid; that the religious organization has an approved legal address;<sup>71</sup> or that a religious association can only operate at the

<sup>65</sup> For a catalogue of laws governing registration of religious/belief organizations, see the 2004 Guidelines, section II.F (1).

<sup>66</sup> ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, para. 123; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004 para.30-35; *Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2009)036, adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009), para. 39.

<sup>67</sup> UN SR Report on Recognition, para. 54; *Opinion on the draft law Law on amendment and supplementation of Law no 02/L-31 on freedom of religion*, CDL-AD(2014)012, adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice 21-22 March 2014), paras. 43ff.

<sup>68</sup> *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 68; *Opinion on the draft law Law on amendment and supplementation of Law no 02/L-31 on freedom of religion*, CDL-AD(2014)012, paras. 67ff.

<sup>69</sup> UN SR Report on Recognition, para. 44.

<sup>70</sup> *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 66.

<sup>71</sup> Human Rights Committee views of 26 July 2005, *Sergei Malakhovsky and Alexander Pikul v. Belarus*, Comm. no. 1207/2003, para. 7.6.

address identified in its registration documents.<sup>72</sup> Such requirements would not appear to be necessary in a democratic society for the grounds enumerated in international human rights instruments. Also, religious or belief communities interested in obtaining legal personality status should not be confronted with unnecessary bureaucratic burdens or with lengthy or unpredictable waiting periods.<sup>73</sup> Should the legal system for the acquisition of legal personality require certain registration-related documents, these documents should be issued by the authorities.<sup>74</sup>

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

26. The process of obtaining legal personality status should be open to as many communities as possible, without excluding any community on the grounds that it is not a traditional or recognized religion or through excessively narrow interpretations or definitions of religion or belief.

27. Moreover, legislation should not make obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members. States should ensure that they take into account the needs of smaller religious and belief communities,<sup>75</sup> and should be aware of the fact that provisions requiring a high minimum number of members make the operational activities of newly established religious communities unnecessarily difficult.

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

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

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

28. Legislation should not necessitate a lengthy existence in the country as a requirement for access to legal personality. Such a requirement has the effect of unnecessarily restricting the rights of religious or belief communities that may be new to a particular state.<sup>76</sup>

29. Since freedom of religion or belief is a right that is not restricted to citizens,<sup>77</sup> legislation should not deny access to legal personality status to religious or belief

<sup>72</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 80-82.

<sup>73</sup> UN SR Report on Recognition, para. 55.

<sup>74</sup> ECtHR 17 July 2012, *Fusu Arcadie and others v. Moldova*, Application no. 22218/06, para. 37-38.

<sup>75</sup> UN SR Report on Recognition, para. 44.

<sup>76</sup> ECtHR 1 October 2009, *Kimlyu v. Russia*, Application nos. 76836/01 and 32782/03.

<sup>77</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 99; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 93.

communities on the grounds that some of the founding members of the community in question are foreign<sup>78</sup> or non-citizens, or that its headquarters are located abroad.<sup>79</sup>

30. In particular, the legal personality status of any religious or belief community should not be made dependent on the approval or positive advice of other religious or belief communities, as the legal personality status of a particular religious or belief community is not a matter for other religious or belief communities.<sup>80</sup> To request the opinion of one or more religious or belief communities on matters relating to applications for such status made by another religious or belief community or organization compromises the neutrality and impartiality of the relevant state bodies or officials.<sup>81</sup>

31. The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality.<sup>82</sup> In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership,<sup>83</sup> its internal rules,<sup>84</sup> the substantive content of its beliefs,<sup>85</sup> the structure of the community and methods of appointment of the clergy<sup>86</sup> and its name and other symbols. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization.<sup>87</sup> Considering the wide range of different organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.<sup>88</sup>

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

<sup>78</sup> ECtHR 5 October 2006, *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, para. 82.

<sup>79</sup> *Ibid.*, paras. 83-85.

<sup>80</sup> ECtHR 24 June 2004, *Vergos v. Greece*, Application no. 65501/01, para. 34; UN Special Rapporteur Report on Recognition, para. 56.

<sup>81</sup> ECtHR 26 September 1996, *Manoussakis v. Greece*, Application no. 18748/91, para. 47.

<sup>82</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 72; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania*, CDL-AD(2005)037, para. 20; *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine*, CDL-AD(2006)030, para.30; 2004 Guidelines, section D.

<sup>83</sup> ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, Application nos. 412/03 and 35677/04. para. 118-121; see ECtHR 14 March 2003, *Serif v. Greece*, Application no. 38178/97, paras. 49, 52 and 53; ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, paras. 62 and 78; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, paras. 118 and 123; and ECtHR 16 December 2004, *Supreme Holy Council of the Muslim Community*, Application no. 39023/97, para. 96.

<sup>84</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 76.

<sup>85</sup> *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, paras. 54 and 90. *Opinion on the draft law on the legal status of a church, a religious community and a religious group of “The former Yugoslav Republic of Macedonia”*, CDL-AD(2007)005, adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), para. 46.

<sup>86</sup> UN SR Report on Recognition, para. 56.

<sup>87</sup> *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 80.

<sup>88</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 39; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 33.

32. A decision to deny or withdraw the legal personality status of any religious or belief organization must be justified under the strict criteria described in Part I.<sup>89</sup> Decisions to deny access to legal personality to a religious or belief community, or to withdraw it, should state the reasons for doing so.<sup>90</sup> These reasons should be specific and clear.<sup>91</sup> This also facilitates the right to appeal (see para. 35 below).

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

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

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

33. Considering the wide-ranging and significant consequences that withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, any decision to do so should be a matter of last resort.<sup>92</sup> In case of grave and repeated violations endangering public order, such measures may be appropriate, if no other sanctions can be applied effectively, but only when all the conditions described in Part I of these guidelines are fulfilled. Otherwise the principles of proportionality and subsidiarity as a rule would be violated.<sup>93</sup> In order to be able to comply with these principles, legislation should contain a range of various lighter sanctions, such as a warning, a fine or withdrawal of tax benefits, which – depending on the seriousness of the offence – should be applied before the withdrawal of legal personality is contemplated.<sup>94</sup>

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

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

- 1. Where the activities of a legal person are contrary to the public order, the District Court shall prohibit and dissolve that legal person upon the request of the Public Prosecution Service.
- 2. Where the purpose (objective) of a legal person, as defined in its articles of incorporation, is contrary to the public order [that is, ordre public], the District Court shall dissolve that legal

<sup>89</sup> ECtHR 10 June 2010, *Case of Jehova’s Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 102; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98 para. 66, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, para. 118; ECtHR 3 April 2008, *Koretskyy and Others v. Ukraine*, no. 40269/02, para. 40, and *Canea Catholic Church v. Greece*, 16 December 1997, para. 30 and 40-41; 2004 Guidelines, para. 9.

<sup>90</sup> *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 38.

<sup>91</sup> *Jehova’s Witnesses and Others v. Russia*, Application no. 302/02, 10 June 2010, Para. 175; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 38. *Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2009)036, para. 29.

<sup>92</sup> *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, paras. 93-94.

<sup>93</sup> *Opinion on the draft law on freedom of Religion, religious organisations and mutual relations with the state of Albania*, CDL-AD(2007)041, adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007), para. 48.

<sup>94</sup> ECtHR 8 October 2009, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application no. 37083/03, para. 82; ECtHR 10 June 2010, *Jehova’s Witnesses of Moscow and others v. Russia*, Application no.302/02, para. 159.



person upon the request of the Public Prosecution Service. Before the dissolution, the District Court may grant the legal person for a specific period of time the opportunity to adjust its purpose (objective) in such a way that it no longer is contrary to the public order.”

[...]

Article 2:21: Dissolution of a legal person by the court

[...]

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

34. The withdrawal of legal personality from a religious or belief *organization* should not in any way imply that the religious or belief *community* in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms. Depriving such communities of their basic rights or even deciding to prohibit them may have grave consequences for the religious life of all their members and, for that reason, care should be taken not to inhibit or terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the community as a whole for actions that in fairness should be attributed to specific individuals. Thus, any wrongdoings of individual leaders and members of religious organizations should be addressed to the person in question through criminal, administrative or civil proceedings, rather than to the community and other members.<sup>95</sup>

35. Overall, it should be possible to secure an effective remedy at the national level for a decision not to recognize, or to withdraw, the legal personality of a religious or belief community that has an arguable claim to such a status.<sup>96</sup> States have a general obligation to give practical effect to the array of standards spelled out in international human rights law, as outlined, for example, in Article 2 (3) of the ICCPR and Articles 6(1) and 13 of the ECHR, which require that individuals and communities have access to a court that must provide them with an effective remedy. Religious or belief communities, therefore, have a right to receive prompt decisions on registration applications (where applicable),<sup>97</sup> and a right to appeal.<sup>98</sup> While there are a number of different systems in place to ensure access to legal personality, including those where courts take the initial decision and those where administrative bodies do so, access to court and a proper and effective review of relevant decisions should always be possible. This principle applies regardless of whether an independent tribunal decides on legal personality directly, or whether such a decision is taken by an administrative body, in which case subsequent control of the decision should be exercised by an independent and impartial court, including the right to appeal to a higher instance.<sup>99</sup>

<sup>95</sup> *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 99. *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 92.

<sup>96</sup> ECtHR 27 February 2007, *Biserica Adevărat Ortodoxă Din Moldova and others v. Moldova*, Application no. 952/03, para. 49-54.

<sup>97</sup> ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98, paras. 78-80; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 44.

<sup>98</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 80. *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 31; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 82.

<sup>99</sup> *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, paras. 82-83.

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

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

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

36. In cases where new provisions to the system governing access to legal personality of religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities.<sup>100</sup> Where laws operate retroactively or fail to protect the vested interests of religious or belief organizations (for example, requiring reapplication for legal personality status under newly-introduced criteria), the state is under a duty to show that such restrictions are compliant with the criteria set out in Part I of these Guidelines. In particular, the state must demonstrate the objective reasons that would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons. Religious or belief organizations should not be subject to excessively burdensome or discriminatory transfer taxes or other fees if the transfer of titles to properties owned by prior legal entities is required by new regulations.

37. States should ensure that the above rights and principles are effectively incorporated into their national legal order, whether in their laws, regulations, practices and/or policies.<sup>101</sup> Furthermore, states should ensure that state officials and bodies dealing with the legal personality of religious or belief communities are aware of and act in accordance with the principles contained in international standards on the freedom of religion or belief.

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

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

<sup>100</sup> UN SR Report on Recognition, para. 57.

<sup>101</sup> Maastricht 2003, para. 9: [the Ministerial Council] “commits to ensure and facilitate the freedom of the individual to profess and practice a Religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies”.

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

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

38. States may choose to grant certain *privileges* to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system or providing membership in public broadcasting agencies.<sup>102</sup> It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory.

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

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

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

39. It is within the power of the state to grant such privileges, but in doing so, it must be ensured that they are granted and implemented in a non-discriminatory manner.<sup>103</sup> This requires that the treatment has an objective and reasonable justification, which means that it pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the intended aim.<sup>104</sup>

40. In particular, the existence or conclusion of agreements between the state and a particular religious community, or legislation establishing a special regime in favour of the latter, does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.<sup>105</sup> Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country's

<sup>102</sup> UN SR Report on Recognition, para. 59.

<sup>103</sup> UN SR Report on Recognition, para. 61; ECtHR 25 September 2012, *Jehovas Zeugen in Österreich v. Austria*, Application no. 27540/05, para. 32; 2004 Guidelines, para. F (2).

<sup>104</sup> ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia*, Application no. 7798/08, para. 86; ECtHR 16 March 2010, *Oršuš and Others v. Croatia*, Application no. 15766/03, para. 156.

<sup>105</sup> ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia*, Application no. 7798/08, para. 85; ECtHR 10 December 2009, *Koppi v. Austria*, Application no. 33001/03, para. 33.

history and society.<sup>106</sup> A difference in treatment between religious or belief communities resulting in the granting of a specific status in law – to which substantial privileges are attached – while refusing this preferential treatment to other religious or belief communities that have not been acceded to this status is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups, to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status, and the criteria established are applied in a non-discriminatory manner.<sup>107</sup>

41. The fact that a religion is recognized as a state religion, that it is established as an official or traditional religion or that its followers comprise the majority of the population may be an acceptable basis for according special status, provided, however, that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, or in any discrimination against adherents to other religions or non-believers.<sup>108</sup> In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service or according economic privileges to members of the state religion or predominant religion, or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection.<sup>109</sup>

42. The rights discussed in the second and third part of this document, including the freedom to manifest religion or belief in community with others and the right to legal personality, must not be seen as a privilege, but as a right which forms a fundamental element of the freedom of religion or belief.<sup>110</sup> In particular, as noted above, the right to legal personality must not be abused as a means to restrict the rights of individuals or communities seeking to exercise their freedom of religion or belief by making their ability to do so in any way conditional upon registration procedures or similar restrictions. On the other hand, access to legal personality should be open to as many communities as possible, and should not exclude any community on the ground that is not a traditional or recognized religion or belief. Differential treatment relating to the procedure to be granted legal personality is only compatible with the principle of non-discrimination if there is an objective and reasonable justification for it, if the difference in treatment does not have a disproportionate impact on the exercise of freedom of religion or belief by (minority) communities and their members and if obtaining legal personality for these communities is not excessively burdensome.<sup>111</sup>

## **Annex – Selected OSCE commitments in the area of the freedom of religion or belief**

**Helsinki, 1975** (Questions Relating to Security in Europe: 1.(a) Declaration on Principles Guiding Relations between Participating States – Principle VII):

<sup>106</sup> 2004 Guidelines, section II.B (3).

<sup>107</sup> ECtHR 10 December 2009, *Koppi v. Austria*, Application no. 33001/03, para. 92; *Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 46.

<sup>108</sup> UN Human Rights Committee, General Comment 22, para. 9; *Observations on the final draft Constitution of the Republic of Tunisia*, CDL-AD(2013)034, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice 10-11 October 2013), para.27.

<sup>109</sup> UN Human Rights Committee, General Comment 22, para. 9; *Observations on the final draft Constitution of the Republic of Tunisia*, CDL-AD(2013)034, adopted by the Venice Commission at its 96<sup>th</sup> Plenary Session (Venice 10-11 October 2013), paras. 27-37.

<sup>110</sup> UN SR Report, para. 30: “the State has to respect everyone’s freedom of religion or belief as an inalienable – and thus non-negotiable – entitlement of human beings, all of whom have the status of right holders in international law by virtue of their inherent dignity.”

<sup>111</sup> *Opinion on the draft Law on amendment and supplementation of Law no 02/L-31 on freedom of religion*, CDL-AD(2014)012, paras. 41-67.

“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.”

(...)

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

**Helsinki, 1975** (Co-operation in Humanitarian and Other Fields):

“The participating States (...) confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.”

**Madrid, 1983** (Questions Relating to Security in Europe: Principles):

“The participating States (...) furthermore agree to take the action necessary to ensure 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. In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favourably consider applications by religious communities of believers practicing or prepared to practise their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.”

**Vienna, 1989** (Questions Relating to Security in Europe: Principles):

(...)

“(11) [The participating States] confirm that they 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 also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and cooperation among themselves, as among all States.”

(...)

“(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, *inter alia*,

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) - 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;
- (16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;
- (16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;
- (16.7) - in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;
- (16.8) - allow the training of religious personnel in appropriate institutions;
- (16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,
- (16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;
- (16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.
- (17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief 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. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.”

(...)

“(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia* through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.”

### **Copenhagen, 1990:**

“The participating States reaffirm that [...]

(9.4) - everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one’s religion or belief and freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards”;

(...)

“(32) (...) Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(...)

(32.3) - to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue”

(...)

“(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.”

**Budapest, 1994** (Decisions: VIII. The Human Dimension)”

“27. [the participating States] Reaffirming their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers, they expressed their concern about the exploitation of religion for aggressive nationalist ends.”

**Maastricht, 2003** (Decisions: Decision No. 4/03 on Tolerance and Non-discrimination):

“9. [The Ministerial Council] Affirms the importance of freedom of thought, conscience, religion or belief, and condemns all discrimination and violence, including against any religious group or individual believer. Commits to ensure and facilitate the freedom of the individual to profess and practice a Religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies.

Encourages the participating States to seek the assistance of the ODIHR and its Panel of Experts on Freedom of Religion or Belief.”

**Kyiv, 2013:**

“The Ministerial Council [...]:

Calls on participating States to:

- Fully implement OSCE commitments on the freedom of thought, conscience, religion or belief;
- Fully implement their commitments to ensure the right of all individuals to profess and practice religion or belief, either alone or in community with others, and in public or private, and to manifest their religion or belief through teaching, practice, worship and observance, including through transparent and non-discriminatory laws, regulations, practices and policies;
- Refrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities;
- Promote and facilitate open and transparent interfaith and interreligious dialogue and partnerships;
- Aim to prevent intolerance, violence and discrimination on the basis of religion or belief, including against Christians, Jews, Muslims and members of other religions, as well as against non-believers, condemn violence and discrimination on religious grounds and endeavour to prevent and protect against attacks directed at persons or groups based on thought, conscience, religion or belief;
- Encourage the inclusion of religious and belief communities, in a timely fashion, in public discussions of pertinent legislative initiatives;

- Promote dialogue between religious or belief communities and governmental bodies, including, where necessary, on issues related to the use of places of worship and religious property;
- Take effective measures to prevent and eliminate discrimination against individuals or religious or belief communities on the basis of religion or belief, including against non-believers, by public officials in the conduct of their public duties;
- Adopt policies to promote respect and protection for places of worship and religious sites, religious monuments, cemeteries and shrines against vandalism and destruction.”

### **About ODIHR**

The Office for Democratic Institutions and Human Rights (ODIHR) is the specialized institution of the OSCE dealing with elections, human rights and democratization.

Based in Warsaw, Poland, ODIHR:

- Promotes democratic election processes through the in-depth observation of elections and conducts election assistance projects that enhance meaningful participatory democracy;
- Assists OSCE participating States in the implementation of their human dimension commitments by providing expertise and practical support in strengthening democratic institutions through longer-term programmes to strengthen the rule of law, civil society, and democratic governance;
- Assists OSCE field missions in implementing their human dimension activities, including through training, legislative support, exchange of experiences, and regional co-ordination;
- Contributes to early warning and conflict prevention by monitoring the implementation of OSCE human dimension commitments by participating States; provides regular human-rights training for government authorities, civil society, and OSCE staff;
- Assists participating States in implementing their commitments on tolerance and non-discrimination and supports efforts to prevent and respond to hate crimes and manifestations of intolerance based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status;
- Serves as the OSCE Contact Point for Roma and Sinti Issues; promotes the full integration of Roma and Sinti groups into the societies in which they live;
- Organizes regular meetings on the implementation of human dimension commitments, such as the Human Dimension Implementation Meeting, the annual Human Dimension Seminar, and Supplementary Human Dimension Meetings; and
- Implements a gender strategy by developing and adjusting its policies and actions to ensure gender mainstreaming while implementing, in parallel, activities designed to improve the situation of women in the OSCE region.

### **Expertise**

Within the broader fields of human rights and democratization, ODIHR's expertise and activities focus on the following areas: democratic elections, monitoring the implementation of OSCE human-rights commitments by participating States, Roma and Sinti issues, protecting human rights in the fight against terrorism, freedom of religion or belief, civil society, freedom of movement, rule of law, gender equality, and addressing intolerance and discrimination.



## About the Venice Commission

The **European Commission for Democracy through Law** - better known as the Venice Commission as it meets in Venice - is the Council of Europe's advisory body on constitutional matters.

**The role** of the Venice Commission is to **provide legal advice** to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

It also helps to ensure **the dissemination and consolidation of a common constitutional heritage**, playing a unique role in conflict management, and provides “emergency constitutional aid” to states in transition.

The Commission has **59 member states**: the **47 Council of Europe member states**, plus **12 other countries** (Algeria, Brazil, Chile, Israel, Kazakhstan, the Republic of Korea, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA). The European Commission and OSCE/ODIHR participate in the plenary sessions of the Commission.

Its **individual members** are university professors of public and international law, supreme and constitutional court judges, members of national parliaments and a number of civil servants. They are **designated for four years** by the member states, but **act in their individual capacity**. Gianni Buquicchio has been President of the Commission since December 2009.

The Commission works in **three areas**:

- [Democratic institutions and fundamental rights](#)
- [Constitutional justice and ordinary justice](#)
- [Elections, referendums and political parties](#).

Its **permanent secretariat** is located **in Strasbourg**, France, at the headquarters of the Council of Europe. Its **plenary sessions** are held **in Venice**, Italy, at the Scuola Grande di San Giovanni Evangelista, **four times a year** (March, June, October and December).