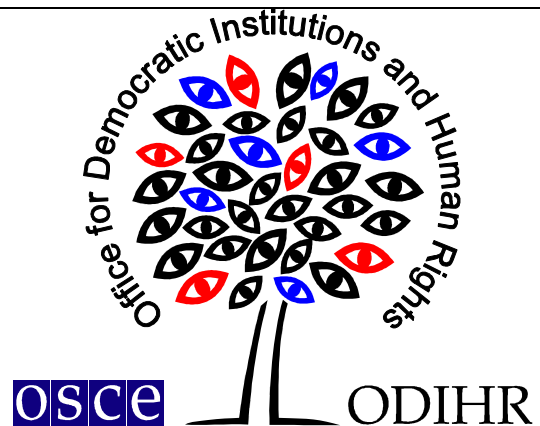


Warsaw, 28 April 2006

Opinion-Nr.: REL - TAJ/063/2006 (Adv
Council on FoRB)

www.legislationline.org



Comments

on the Draft Law of the Republic of Tajikistan

"On Freedom of Conscience and on Religious Associations"

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

I. Introduction

1. The OSCE/ODIHR Advisory Council on Freedom of Religion or Belief (the "Advisory Council") has been asked through the OSCE Mission in Dushanbe/Republic of Tajikistan to review a proposed draft law of the Republic of Tajikistan "On Freedom of Conscience and on Religious Associations" (hereinafter referred to as the draft law) that has been prepared and revised as of March 2006. These comments are based on an unofficial translation completed as of March 2006.

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

II. Executive Summary

The major findings of the comments are summarized here:

1. The draft law, while positively reflecting international human rights commitments in general, contradicts major international human rights commitments in its detailed provisions.
2. The draft law suffers from vague language that facilitates arbitrary and discriminatory decisions in practice.
3. The draft law in many parts is self-contradicting.
4. The draft law impermissibly restricts non-registered religious activity.

5. The draft law impermissibly restricts religious activities of smaller religious groups.
6. The draft law unduly discriminates against religious minorities.
7. The draft law impermissibly restricts religious activities of non-citizens of the Republic of Tajikistan.
8. The draft law unduly establishes an over-intensive State control over religions and religious activities.
9. The draft law impermissibly intervenes into the protected sphere of religious self-determination.
10. The draft law unduly restricts free manifestations of religion or belief.
11. The draft law unduly restricts democratic participation of religions.
12. The draft law impermissibly restricts religious teaching and the religious education of minors.
13. The draft law unduly restricts the religious rights of minors.
14. The draft law unduly restricts the rights of parents.
15. The draft law unduly regulates internal matters of religious associations such as leadership and property.
16. The draft law unduly restricts manifestations of religion or belief in private.
17. The draft law impermissibly restricts the production of items of religious worship.
18. The draft law impermissibly restricts the rights to legal remedy of religious associations facing dissolution.

III. Comments on the Legislation under Consideration

1. Reference points of review

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

The comments are likewise based on the relevant provisions of international treaties, most notably the International Covenant on Civil and Political Rights,² the International Covenant on Economic, Social and Cultural Rights,³ the Convention on the Rights of the Child⁴. They are further based on United Nation declarations, most notably the Universal Declaration of Human Rights⁵ and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.⁶

The comments have been prepared taking into account the Guidelines for Review of Legislation Pertaining to Religion or Belief that were prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.⁷

¹ For a list of relevant OSCE commitments see OSCE Human Dimension Commitments: A Reference Guide [available in English or Russian at http://www.osce.org/documents/gen/2001/07/15828_en.pdf; last visited on 12 April 2006].

² International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 23 March 1976 (hereinafter "ICCPR"). The Republic of Tajikistan has acceded to the ICCPR on 04 April 1999.

³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976 (hereinafter "ICESCR"). The Republic of Tajikistan has acceded to the ICESCR on 04 April 1999.

⁴ Convention on the Rights of the Child, adopted and opened for signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, entered into force 2 September 1990 (hereinafter "CRC"). The Republic of Tajikistan has acceded to the CRC on 26 October 1993.

⁵ Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948.

⁶ Declaration on the Elimination of All Forms of Intolerance and of Discrimination adopted and proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981.

⁷ The Guidelines were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN. 4/2005/61 para. 57. The major international

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

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

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

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

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

This fundamental commitment has been repeatedly reaffirmed.

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

respect the right of these religious communities to

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

instruments relied upon are excerpted in Appendix I of the Guidelines. Guidelines, Appendix I, pp. 31-51. The Guidelines are available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf [last visited 12 April 2006].

- solicit and receive voluntary financial and other contributions.

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

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

1.3.1 ICCPR (article 18) reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 1993, the U.N. Human Rights Committee issued its General Comment No. 22 (48) which provides a detailed official interpretation of the meaning of ICCPR (article 18). The General Comment begins by noting that "[t]he right to freedom of thought, conscience and religion ... is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief,

whether manifested individually or in community with others." It notes that "the fundamental character of these freedoms is ... reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2)."

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

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

Similarly, "[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted." This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in article 18(2).

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

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

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

Furthermore, the interference must be necessary to attain one of the purposes listed in the ICCPR (article 18(3)). The restrictions must thus be proportional in severity and intensity to the purpose being sought and may not become the rule. This also means that the restriction must be proportionate in the given case.⁸

1.3.2 The ICCPR reinforces the substantive protections of freedom of religion by strongly articulating the obligation to equal treatment and non-discrimination. The ICCPR makes it very clear that State parties are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (ICCPR article 2(1)). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State parties "to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant" (ICCPR article 2(2)) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (ICCPR article 2(3)). Further, ICCPR (article 26) provides:

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

⁸ For these rules on the permissible restrictions cf. Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd revised edition, 2005, pp. 425-426; Sarah Joseph, Jenny Schultz, and Melissa Castan, The International Covenant on Civil and Political Rights, 2nd edition, 2004, pp. 507-508.

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

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

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

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

ICCPR (article 27) affords particular protection against discrimination where "ethnic, religious or linguistic minorities exist." It provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." The U.N. Human Rights Committee's General Comment No. 23 (50) on article 27 indicates that "the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party." The General Comment goes on to note that

Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents.

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

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

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

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

tion of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights..."

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

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

- (a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

2. Analysis and recommendations in general

In this part some of the points are highlighted that run through the draft law as whole. Certain points of concern repeatedly figure throughout the draft law. They amount to structural deficiencies of the draft law. Since the comments are not a comprehensive review, further issues may be included in the draft law that can give rise to concern, but are not addressed here.

2.1 It is important to note that the draft law refers explicitly and positively to international instruments. It states in its article 40 that if an international treaty, to which the Republic of Tajikistan is a part, establishes other rules than those set forth in the legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations, then the provisions of the international treaty apply. The draft law also states in its article 3(2) that nothing in the legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations can be interpreted in a sense of belittling or discriminating human and citizens' rights on the freedom of conscience and freedom of religious belief guaranteed by the constitution of the Republic of Tajikistan or stemming from international legal acts recognized by the Republic of Tajikistan. The draft law, in its preamble, also states that the right of each individual and citizen for freedom of conscience and freedom of religious belief, as well as to the equality before the law irrespective of the attitude to religion and beliefs is secured by international legal norms recognized by the Republic of Tajikistan.

The Republic of Tajikistan has acceded to the ICCPR, the ICESCR, the CRC. It is obligated to the U.N. Universal Declaration of Human Rights and to the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief. The OSCE commitments concerning the freedom of religion or belief are valid also for the Republic of Tajikistan.

2.1.1 As will be described in more detail below, numerous provisions of the draft law are in open conflict with these international instruments. According to the draft law (ar-

ticle 40) then the provisions of the international treaties and instruments apply. However, such a provision is not sufficient to adequately guarantee the right to freedom of religion or belief as protected in the relevant international treaties:

According to the ICCPR (article 18(3)) freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Laws that limit the freedom of religion or belief and that contradict international instruments are not "necessary" in the sense of ICCPR (article 18(3)). Such provisions should not be part of national legislation from the very start.

2.1.2 Provisions that are declared invalid by the very law they form part of are equally not necessary.

2.1.3 Moreover, such provisions, even if declared invalid by the draft law (article 40) can be dangerous for freedom of religion or belief in practice. Not all public officials, judges or authorities will be well acquainted with international legal instruments while applying the draft law. It is to be expected that they will refer to the direct and explicit provisions of the draft law and apply norms that are in contradiction to the international instruments. Those whose rights to freedom of religion or belief are thus infringed upon will then have to refer to the international legal instruments. This would put an undue burden upon them.

2.2 Freedom of religion or belief is a human right. It is not limited to citizens of a particular State or to any other category of human beings. Accordingly, both the UDHR (article 18) and the ICCPR (article 18) as well as other pertinent international instruments state that *everyone* has the right to freedom of thought, conscience and religion. No-one may be excluded from the protection of freedom of religion or belief. Limitations that apply to specific categories of persons must meet the standards set forth by the limitation clauses provided by the relevant international instruments.

2.2.1 The draft law in many of its provisions is particularly unclear as to the range of persons it applies to. It often is uncertain whether or not it applies to citizens only or to all human beings or to citizens and certain other categories of people. This applies inter alia to draft law (preamble, articles 1, 2, 3(2), 4, 12). In several provisions (e.g. preamble, article 2, 3(2), 4 et al.) the draft law refers to “individuals and citizens” or “persons and citizens” or equivalent terms. Although to some extent this can be due to ambiguities caused by translation, it is not clear which range of people is addressed here: all individuals, persons, etc. or only those individuals, persons, etc. who are also citizens of the Republic of Tajikistan. If all individuals, persons, etc. were meant there would be no point in also mentioning citizens, since all citizens clearly are also individuals, persons, etc. It would suffice – and would be advisable – to refer to all individuals, persons, etc., and to omit the reference to citizens. Otherwise the draft law in many of its provisions could be read as unduly restricting the scope of freedom of religion or belief to citizens of the Republic of Tajikistan. That would directly contradict the international instruments that guarantee freedom of religion or belief as a human right. In its current version the draft law is unclear and ambiguous in its language.

2.2.2 The draft law (article 5(4)) does state that foreign citizens and persons without citizenship legally staying on the territory of the Republic of Tajikistan enjoy the right to freedom of conscience and freedom of religious belief equally with the citizens of the Republic of Tajikistan. Thus, those foreign citizens and persons without citizenship who are not legally staying on the territory of the Republic of Tajikistan are completely excluded from enjoying freedom of religion or belief. This is impermissible. It is in open

conflict with the international instruments. It is clear that persons who are illegally staying on the territory of a particular State can face more rigid limitations to their human rights. However, even those stricter limitations must be based in and also must remain in accordance with the standards set forth by the relevant limitation clauses in the international instruments, e.g. in ICCPR (article 18(3)). For example, persons who are staying illegally on the territory of a particular State may legitimately face arrest. However, it would be impermissible to deprive them of the spiritual care that is normally provided for arrested or imprisoned persons.

Furthermore, only the freedom to manifest one's religion or beliefs may be subject to limitations. The freedom of religion or belief as such, the *forum internum*, cannot be subjected to any limitations at all. This applies also to persons not legally staying on the territory of a particular State. It is impermissible to deprive them in any way of their freedom of religion or belief in as far as the forum internum is concerned; in this respect they must not be treated in any way different from citizens of the particular State or foreign citizens and persons without citizenship legally staying on the territory of the State.

It would be advisable that the draft law would more clearly define the scope of its applicability (or non-applicability) to non-citizens of the Republic of Tajikistan in the specific contexts.

2.2.3 The equal treatment clause for foreign citizens and persons without citizenship legally staying on the territory of the Republic of Tajikistan forms part of the draft law's article 5 which guarantees individual and collective rights to freedom of conscience and freedom of religious belief. The equal treatment clause for non-citizens is attached to that article as its subsection 4. From the point of view of systematic interpretation this could be understood as restricting the scope of this equal treatment clause for non-citizens to the provisions in article 5 only. This would unduly limit the freedom of religion or belief of non-citizens. Many provisions throughout the draft law refer to the freedom of religion or belief and to manifestations thereof that are legitimate expressions of this human right and thus must apply for everybody, whereas the draft law could be read as excluding non-citizens (e.g. draft law (article 27(1), 33(1)).

2.3 In a number of provisions the draft law lays out principles that basically are in accordance with international instruments such as non-interference (article 7(1)), freedom of religion (preamble, article 5(1)), equal treatment of religion (preamble, article 6(1)) or religious rights of parents (article 5(3)). However, other provisions of the draft law restrict these rights and principles in such a far-reaching way that virtually nothing remains of their substance. To a very large extent, the draft law is in itself contradictory.

2.4 As will be described in more detail below, in many of its provisions the draft law is unclear. The draft law often uses vague language. This is the case even taken into account that translation of terms and legal concepts is often difficult. The vague language and unclear relationships between individual provisions make it impossible to adequately predict decisions of State authorities in specific cases.

2.5 In many of its provisions the draft law is unproportionate. While many of the provisions throughout the draft law lay out quite appropriate rights and principles in accordance with international commitments the draft law at the same time introduces restrictions to these rights and principles in a severity that the restrictions become the rule. This is inconsistent with the requirement that restrictions must be proportional to the purpose being sought and may not become the rule.

3. Analysis and recommendations per article

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

3.1 Article 1

The draft law (article 1) restricts the subject regulated by the draft law in as far as the exercise of freedom of conscience and freedom of religious belief is concerned to citizens of the Republic of Tajikistan.

It is unclear to what extent the equal treatment clause for non-citizens in the draft law (article 5(4)) relates to the draft law (article 1).

3.2 Article 4

While the draft law (article 4) contributes to clarity in some of its provisions by defining a number of terms it uses not all of its definitions are in fact clear. Some definitions seem to be contradictory (e.g. religious associations, religious organizations, and religious institutions). Some of the terms used in the draft law are not defined at all (e.g. republican religious association; province religious association (article 18); leader of a religious association (article 12)), although a definition could be expected.

3.2.1 Freedom of conscience and of religious belief are too narrowly defined compared to ICCPR (article 18) and other pertinent international instruments. This could lead to an impermissible restriction of freedom of religion or belief in practice. It would be advisable to keep to the larger definitions in the ICCPR and other international instruments.

3.2.2 Religious worship: The definition of religious worship narrowly restricts this form of religious activities to those deriving from customs and professed at a domestic level.

The term domestic here might perhaps more adequately be translated as “normal” or “usual”. This provision could exclude religious activities performed by new or young religions. Their forms of worship will regularly not be rooted in customs. They often will perform worship in newly defined ways. The human right of freedom of religion or belief as defined in the relevant international instruments, however, includes also new and non-traditional religions and beliefs.

The definition of religious worship in the draft law (article 4) also restricts this form of religious activity to that professed at a domestic level. If domestic in the translation would stand for “countrywide” or “non-foreign” this could exclude worship of minority religions and religions of minorities that are based only in parts of the Republic of Tajikistan. The human right of freedom of religion or belief, however, also protects minority religions and religions of minorities.

3.2.3 Clergy: The draft law (article 4) defines clergy in a narrow way. According to the draft law only persons designated for service in a religious organisation can be regarded as clergy. The draft law defines a religious organisation as a membership based voluntary association of no less than 20 citizens of the Republic of Tajikistan, of other persons permanently and legally residing on the territory of the Republic of Tajikistan, in an order established by law, and registered as a legal person.

The definition of clergy thus excludes all those persons who are not designated for service in a religious group or community smaller than 20 citizens of the Republic of Tajikistan. It could also exclude clergy of foreign religious communities not registered in the Republic of Tajikistan. This definition could also exclude persons designated for service in a religious entity which has not been registered as a legal person. However, international instruments protecting freedom of religion or belief entail the right to freely organize according to their own hierarchical and institutional structure. The international instruments also guarantee the right to select, appoint and replace their personnel in accordance with their respective requirements and standards.⁹

The narrow definition of clergy in the draft law (article 4) could also exclude all those persons who do not professionally carry out worshipping activity, but do so on an honorary or lay basis. However, there are religions and religious communities that are structured with wide-spread lay ministry. These lay ministers would perform many functions which in other religions are restricted to professional personnel. The narrow definition in the draft law (article 4) of clergy could be read as biased against such religions with

⁹ Cf. e.g. Vienna Concluding Document, Principle 16(4).

wide-spread lay ministry. While it can be appropriate to restrict certain benefits such as exemptions from military service, tax exemptions or pensions to professional clergy this would not be the case for other fields of law such as worship, spiritual care or observances.

3.2.4 Religious association, religious organisation, religious institution: These definitions are unclear. It is not certain what exactly the relations between these categories are. Whereas these definitions could mean that a religious association in contrast to a religious organization is not necessarily registered and is not necessarily a legal person, other provisions such as article 12, 13, 18 or 22 indicate the contrary. Those provisions speak of religious associations as legal persons. Article 12 can be understood that religious associations can only exist either as religious organizations or as religious institutions. These questions are addressed below in greater detail (cf. 3.9.1).

3.2.5 Local religious association: This definition is unclear in relation to the terms religious association and religious organisation. The definition of a local religious association seems to be restricted to citizen-founders. It is unclear how that relates to the definition of a religious association which apparently can be formed by non-citizens permanently and legally residing on the territory of the Republic of Tajikistan.

3.2.6 Centralized religious association: It is unclear why it should be necessary to have three local religious associations and why it should not be sufficient to have only two of such local religious associations. That would form a centralized religious association.

It is also not clear why it should not be possible to form a countrywide religious association with a centralized structure that has no subdivisions such as local religious associations. Such a rule would unduly discriminate against religions with few followers who are spread over the country and cannot form local religious associations.

3.3 Article 5

The draft law (article 5(4)) could be read as excluding persons illegally staying on the territory of the Republic of Tajikistan from any protection of the human right to free-

dom of religion or belief. As has been outlined above (cf. 2.2) this would be impermissible under international law instruments.

3.4 Article 6

The draft law (article 6) provides for far-reaching equal treatment. While this is quite in line with international obligations, the draft law (article 6(3)) could be read in a narrow way putting unnecessary burdens on believers. The draft law (article 6(3)) states that nobody is allowed to deviate from implementing obligations established by law on the motives of personal religious beliefs.

However, there are many circumstances where individuals and groups, as a matter of conscience, find it difficult or morally objectionable to comply with laws of general applicability. Some people have religious objections to eating certain types of food and others insist on wearing particular clothing. For some, military service violates deeply held religious beliefs. Although there is no controlling international standard on conscientious objection to military service, the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service.¹⁰ Also in other places in which objections may arise such as refusing oaths or to perform jury service, States should, to the extent possible, attempt to provide reasonable alternatives that burden neither those with considerable conscientious beliefs nor the general population.¹¹

The draft law (article 6(4)) implies that conscientious religious practices must give way to general duties imposed by legislation. However, under international standards, conscientious religious practices need only to give way to legislation that is strictly necessary to furthering legitimate State interests in public safety, order, health, or morals or the fundamental rights and freedoms of others. Thus, this provision overstates permissible limitations on manifestations of conscience that could be overridden by legislation.

¹⁰ Cf. Commission on Human Rights resolution 1998/77; Commission on Human Rights resolution 2002/45; Guidelines for Review of Legislation Pertaining to Religion or Belief, pp. 22-23.

¹¹ Cf. Guidelines for Review of Legislation Pertaining to Religion or Belief, p. 23.

3.5 Article 7

While article 7 of the draft law positively sets out to protect autonomy of religions and foster tolerance it sharply and unduly limits actions directed on converting believers of one confession into others.

The draft law (article 7(4)) unduly restricts the right to manifest one's religion or belief. It is important to remember that, at its core, the right to express one's convictions, beliefs, and faith can be a vital dimension of the human experience and the right to do so is encompassed within the right to freedom of religion or belief, as well as by the right to freedom of expression.¹² It is now well settled that traditional door-to-door proselytizing is protected.¹³ Legislation that constrains missionary work can only be justified if that work involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved. The term “pressure” in the draft law (article 7(4)) leaves a far too great discretion to State authorities in restricting missionary activity.

3.6 Article 8

While article 8 of the draft law positively sets out to protect autonomy of religions it could be read as overstrictly limiting political activity based on religious beliefs.

The draft law (article 8(1)) states that a religious association may not participate in elections to the bodies of State government and local government bodies. If the term “participate” would mean that religious associations are not allowed to state any preferences in political election campaigns this could be an undue burden on the legitimate aim of religions to take a positive influence on the country. For example, the draft law (article 39(3)) provides for the liquidation of a religious association when it repeatedly carries out activities prohibited by the law. If any statement of clergy or other officials of a religious association concerning an election to State or local bodies would be prohibited

¹² Guidelines for Review of Legislation Pertaining to Religion or Belief, p. 20.

¹³ *Larissis v. Greece*, (ECtHR 1993).

by the law that would be an impermissible restriction on religious freedom. Thus, this restriction would not be necessary to protect any of the aims in ICCPR (article 18(3)).

From the point of view of democratic participation and freedom of religion or belief it is highly problematic to exclude religious association servicemen from the right to be elected in the bodies of State government.

It would also be highly problematic if the draft law (article 8(2)) would mean that a political party must not have any religious background. It would not be necessary to protect any of the aims indicated in ICCPR (article 18(3)) if a political party would not be allowed to draw inspiration from religious convictions.

These provisions restrict unduly the democratic participation of religions.

3.7 Article 10

While article 10 of the draft law positively sets out to guarantee religious education, it provides for a number of problematic restrictions on this human right. Training in other forms than established by the draft law must be possible (teaching groups, circles, etc.). Religious education also must be possible for non-registered groups. Freedom of religion entails teaching and is a human right regardless of State registration.

Educating children in religious dogmas must be permissible also when they are younger than seven years of age.

The will of very young minors is not always clear and usually difficult to establish. Better would be to explicitly state a special age of the minor from which on their will in religious matters prevails, as is best practice.

The rights of parents to educate their children in their own beliefs must be respected. It is important to note that the U.N. Human Rights Committee in its General Comment No. 22 (48) in providing its official interpretation of ICCPR (article 18) has stated that “the liberty of parents and guardians to ensure religious and moral education cannot be restricted.”

Religious teaching must not be restricted to accordance with the State body on religious affairs.

Religious teaching must not be restricted by the State to teachers with special religious education.

The ICCPR (article 18(1)) guarantees to manifest one's religion "in teaching" also "in private". Religious education in private houses must be possible.

If the provision should mean that parents could not teach religious principles to their children where such principles differed from what a child might be taught at government sponsored schools, the draft law (article 10) would also not conform to fundamental rights of religious education as set forth in the ICCPR (article 18(4)) and the Vienna Concluding Document which explicitly instructs States in its articles 16.6 and 16.7 to "respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions." The provision would also not conform with the ICESCR (article 13(3)) which reads:

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

3.8 Article 11

The draft law (article 11(1)) provides that religious associations in the Republic of Tajikistan are formed with the purpose of meeting religious needs of citizens to profess and spread beliefs voluntarily and publicly.

The provision could be read in a way that would unduly restrict the purposes of membership and activities of religions.

3.8.1 The provision implies that the legal purpose of religious associations is restricted to meeting religious needs of citizens only. Religious needs of non-citizens would be excluded. However, it is a very common feature of many religions to care for people regardless of their status, background or citizenship. There can be cases in which religions specifically aim at caring for displaced persons or persons deprived of their national status. It would be an undue limitation of the legitimate purposes of religious associations if such a restriction would be introduced.

3.8.2 Many religions, although professing specific beliefs, do not aim at spreading their beliefs. The draft law (article 11(1)) could be read as implying that religious associations must have the purpose of spreading their beliefs. This would be an undue limitation of the legitimate purposes of religious associations.

3.8.3 The provision also implies that religious associations must have the purpose to profess and spread beliefs publicly.

This could mean that professing or spreading beliefs must be public and cannot be done privately. However, it is a wide-spread legitimate phenomenon that religious teaching or speaking about one's beliefs is done in private. Religion is a highly private matter notwithstanding its impact on and its functions in public life. The pertinent international instruments (e.g. ICCPR (article 18(1)) guarantee that the freedom of religion or belief shall include freedom to manifest a religion or belief in public as well as in private. It would be an undue limitation to the freedom of religion or belief to force religious associations to perform each and every activity in professing and spreading beliefs in public.

3.8.4 The draft law (article 11(2)) restricts the membership and participation in religious associations to persons who have attained majority.

While it can be a legitimate limitation under international law that only those who have attained majority can be founders of legal persons it is problematic to exclude minors from being members of religious associations. Although that is not completely clear according to the definition of a religious association in the draft law (article 4), religious associations are not (necessarily) legal persons. The provisions of the article 11(2) could

be read as excluding baptizing of minors or equivalent religious rites. This would be in open conflict with the CPC as well as with the international instruments guaranteeing the right of parents and legal guardians to raise their children in their religious beliefs.

If this provision should have to be understood as excluding minors from being members of religious associations whereas they could be members of other organizations such as football clubs this would be an impermissible discrimination of religion or belief.

The provision could also be read as implying that minors may not participate in religious rites or practices. This would be in open conflict with the freedom of religion or belief of minors. Freedom of religion or belief is a human right. It is valid for every human person regardless of age. There is no reason that would be necessary under the ICCPR (article 18) or any other international instrument to limit this right for minors in such a far-reaching manner.

3.8.5 The draft law (article 11(4)) could be read as excluding foreign citizens and persons without a citizenship who do not permanently but on legal basis reside on the territory of the Republic of Tajikistan from being members or participating in religious associations. Freedom of religion or belief, however, must not be excluded for persons such as tourists, business people, visitors, etc. The same holds true for those who stay illegally on the territory of a State.

3.8.6 The draft law (article 11(5)) makes it an obligation for every religious organizations to indicate its full name in the course of carrying out its activities. This can be an undue burden. The term activity is a very wide and broad term. It can entail all activities such as performing religious rites and practices, worship, etc. Activity also would entail any action taken such as internal meetings, even travels of clergy and officials of a religious association. It will be quite impossible to always indicate the name and even the full name of a religious organization in such cases.

Such a limitation to freedom of religion or belief is not necessary.

3.9 Article 12

This provision raises questions of definition and of autonomy.

3.9.1 The draft law (article 12(1)) states that religious associations can be established in the form of religious organisations and religious institutions.

As has already been stated above in relation to the draft law (article 4) it is unclear how that relates to the definitions of religious association, religious organisation and religious institution in article 4. The draft law (article 4) defines religious institutions as contract based religious organisations having no membership whereas religious associations (and organisations) are defined by membership of at least 20 persons. It is unclear how a religious association (which is defined by membership of persons) can be established in the form of a religious institution (which is defined as having no membership).

3.9.2 It is not clear why religious associations should have to take account of the administrative and territorial situation of the Republic of Tajikistan.

3.9.3 The draft law (article 12) provides that only citizens of the Republic of Tajikistan who have adequate religious education can be leaders of religious associations.

3.9.3.1 It is not clear what the term "leader" entails. A leader could be – in a hierarchical form of organisation – the top representative within the association. However, a leader could also be any imam, clergy, rabbi or lay person fulfilling responsible office within the religious association. Leader could mean the legal representative of an association. However, leader could also mean the spiritual leader of a religion. Such a spiritual leader would not necessarily have any legal powers in respect of the religion.

3.9.3.2 It is not clear why only citizens should be leader of a religious association. This would be in conflict with freedom of religion or belief as a human right.

3.9.3.3 The provision makes “adequate” religious education a condition for religious leadership. If this would mean that State authorities would decide on the adequacy of religious education, this would be in open conflict with the autonomy of religious associations.

The draft law (article 12) violates ICCPR article 18(1 and 3). General Comment No. 22(48) defines freedom to manifest religion or belief as including a religious organization's "freedom to choose their religious leaders". Requiring State consent or approval in the choice of religious leaders also violates Principle 16(4) of the Vienna Concluding Document, which requires States to respect the right of religious communities to "select, appoint and replace their personnel in accordance with their respective requirements and standards."

3.10 Article 14

The draft law (article 14) regulates the number and status of mosques according to the number of the local population.

If this provision – as is likely – has to be understood as excluding any other mosques than those provided within the calculation then this would be highly problematic. This would exclude any mosques as places of worship for smaller groups of Muslims who would not visit the mosque provided for.

The draft law (article 14(2)) would also deprive believers in remoter areas of the country from establishing mosques as places of worship if they form a smaller number than 200.

This provision would, in direct conflict with ICCPR (article 18), deprive dissenting Muslims from manifesting their religion in worship as well as in community with others.

3.11. Article 15

The provision excludes other than centralized religious associations to establish religious education institutions to prepare the clergy and service men. This would deprive smaller religious associations which only have a local existence from educating their clergy and personnel. This would be contrary to ICCPR (article 18).

3.12 Article 16

The draft law (article 16(1)) declares that unlawful (unregistered) religious activity in the Republic of Tajikistan is prohibited. This provision is in clear and direct conflict with the freedom of religion or belief as guaranteed in the international instruments.

3.12.1 The provision would prohibit all unregistered religious activity. The notion of religious activity is very broad. It entails any performance of rites, personal prayer and worship as well as religiously motivated practices. There is no reason under international instruments that could justify such wide and far-reaching limitations of the freedom of religion or belief.

While it is permissible under international instruments to provide for registration of religions religious activity must also remain possible outside and beyond a registration system. Some religions may not want to submit to a registration process while keeping in perfect harmony with the law in a given State. It is impermissible under international instruments to prohibit religious activity just because the religion is not registered.

3.12.2 Freedom of religion or belief is guaranteed by the international instruments also for smaller religions. Very often, religions in a particular country will have only few adherents. The provision would exclude small religions from freedom of religion or belief. There is no acceptable reason under international instruments to prohibit religious activity of smaller religions just because they are small.

3.12.3 It must be possible for non-registered religious groups to have access to legal personality.

3.12.4 The provision would also prohibit any religious activity by persons from abroad. Their religions may often times not be registered in the Republic of Tajikistan. However, freedom of religion or belief is a human right and foreigners must not be deprived of it.

3.12.5 The draft law does not indicate what happens to religious entities that have already been registered or have the status of a legal person under the present law. It is

unclear whether those religions have to re-register or whether their present status remains valid. If re-registration would be required any activity of the relevant religious entities could be unduly interrupted.

3.12.6 It is important to note also ICCPR (article 22) which addresses freedom of association:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

The UDHR and the ICCPR address the full scope of the rights to freedom of religion or belief. But it is worth noting that they clearly recognize and protect the communal dimension of religious life. While religion can be an intensely private matter for some, it is fair to say that most religions cannot be practiced in isolation. Thus, the instruments stress that the right involves freedom "either alone [or individually] or in community with others and in public or private" to manifest one's religion. Implicit in these norms is that one should be able to engage in religious life in authentic community with others of like beliefs, and that the type of communal experience should be determined in accordance with religious beliefs, and should not be dictated, monitored or otherwise "impaired" by coercive requirements of the State.

It is also important to emphasize that while some restrictions on manifestations of belief are permissible, such restrictions must be consistent with the rule of law, and must meet the rigorous "necessary in a democratic society" test. That is, it is not enough to justify burdensome registration rules to claim that they contribute in some general sense to public order (or to one of the other legitimating grounds for imposing limitations on

manifestations of religion or belief). Only when limitations further a legitimating objective and are genuinely "necessary" can negating a religious freedom claim to be justified.

Laws governing the ways that religious communities acquire legal personality and organize their temporal affairs constitute limitations on the organizational manifestations of religion or belief. Like any other limitation on freedom of religion, they must be justifiable under the standards set forth in General Comment No. 22. It is not enough to suggest that laws governing religious associations are important for public order, protection of health and other such legitimating purposes. In addition, it must be clear that the restrictions are proportionate to the ends pursued and that they are not applied with discriminatory purpose or in a discriminatory manner.

These conditions are not met in the draft law.

3.13 Article 17

The draft law (article 17) requires the statutes of religious associations to contain information on a number of topics.

While it is permissible under international instruments that in case a registration system is put into place to require certain information about the religion to be registered, the draft law (article 17) is far too broad. The provision makes it possible for the authorities to require "other provisions related to the peculiarities of this association activity." It is not clear what "other" provisions would mean in particular. This leaves broad discretion for the State authorities to request any provision about the activity of the applicant whatsoever to be included in the statutes of the religious association. This specific information required is not foreseeable by the religious association. This opens the door for any possible arbitrary request. It can be used as a tool to put any burden of information onto the association to prevent the association to be registered. This contradicts ICCPR (article 18(3)).

3.14 Article 18

This provision makes registration of religious entities particularly and unduly difficult.

3.14.1 It is not clear how this provision relates to the draft law (article 4). The term republican and province religious associations is not defined anywhere.

3.14.2 The time frame of one month for registration after creation of a religious association is over-restrictive and not necessary.

3.14.3 It can be very difficult to receive the reference note of the local government bodies on the number of the population in the given territory. Having in mind that the religious association in order to be registered and to start lawful religious activity has to submit the application for registration within one month after creation it is hard to see how the application can be filed. The local government bodies may not respond to the request of the association in time.

It is also not clear for which purpose under the ICCPR (article 18) the number of the population in the given territory is needed.

3.14.4 The provision requires the signature of 200 citizens supporting the creation of a local religious association and 600 citizens for the creation of a centralized religious association.

This as a rule makes it impossible for smaller religions to lawfully exist in the Republic of Tajikistan.

While it is permissible under international human rights instruments to require a minimum number of members or followers of religious groups for them to be registered, the number required must be adequate and proportionate. Given the fact that the draft law (article 16(1)) – although in open conflict with international commitments – prohibits any un-registered religious activity in the Republic of Tajikistan this requirement of minimum supporters would render any religious activity illegal which does not have such a high minimum number of supporters in a given local community. Such a restriction could not be justified and would violate the ICCPR (article 18).

3.14.5 The draft law (article 18 (8)) requires all amendments and addenda to the statutes of the religious associations to be registered in order to have legal effect. This can be particularly burdensome.

3.15 Article 21

The draft law (article 21(1)) requires information on decisions taken within the religious association related to achieving its statutory goals on the mere request of the register authority. Such an obligation could mean a complete and full duty to report on each and every issue within the religious association. This would be unproportionate.

The provision also requires that State officials are allowed to attend any event hosted by the religious association. That leaves no privacy to the religion. However, the ICCPR (article 18(1)) guarantees to manifest one's religion also in private. The reporting obligations of a religious association or organization are too far-reaching.

3.16 Article 22

The draft law (article 22) positively guarantees property rights of religious associations. However, it is not quite clear who decides about what property is necessary for providing the activity of a religious association. The provision could be understood as leaving it to the discretion of State authorities to decide on what property is necessary for any given religious association and for any of their activities. That would deprive that religious associations of any self-determination and autonomy. It would leave the religion to the grace of State authorities. That would be unproportionate and in clear conflict with the ICCPR (article 18).

3.17 Article 23

The draft law (article 22(3)) seems to exclude the right of religious associations to receive charitable donations from other persons than citizens. This violates the international instruments such as Vienna Concluding Document (Principle 16(4)).

The draft law (article 23(1)) could mean that religious associations would have no right to use buildings and property provided for them from persons who are not citizens. There is no apparent reason why such a restriction should be necessary.

3.18 Article 26

It does not seem to be necessary that the State body for religious affairs is the only entity lawfully competent to organize haj and umra. However, any person must have the right to make a pilgrimage which is not organized and conducted by State agencies.

3.19 Article 27

The draft law (article 27(1)) could be read as excluding non-citizens from setting up and maintaining places of public worship, religious meetings or pilgrimage places. There is no apparent reason why such a restriction should be necessary. The freedom to manifest one's religion or belief in worship, rites, observances and practices is a human right. Such manifestation must be possible in public or private. Also non-citizens must be able to establish places where such activities can be performed.

It is unclear whether the draft law (article 27) excludes military chaplaincy.

3.20 Article 28

Also individuals and also non-registered religions must have a right to produce items of religious worshipping. The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in accordance with the ICCPR (article 18) explicitly states in its article 6 that the right to freedom of thought, conscience, religion or belief shall include 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."

3.21 Article 30

The complete control of international contacts by State authorities is not necessary. It is unproportional.

3.22 Article 31

It is unclear whether religious associations have the right to employ other persons than citizens of the Republic of Tajikistan. This must at least be possible with the consent of State authorities.

3.23 Article 38

The provision makes it possible that on the decision of a State body for religious affairs the activity of a religious association is suspended in case of repeated violation of the statute of the religious association. This is not consistent with autonomy.

Suspending of the activity of a religious association is also possible in case of the abuse by the religious association of legitimate interests of natural or legal persons. This is a far too broad concept.

The provision also prohibits any free dissemination of information on its activity by the religious association when its activity is terminated. This would hinder the religious association to inform anyone about what is happening. It could mean that it could not even inform a lawyer. It could also mean that it could not inform the public, journalists or foreign entities. This would leave the religious association at the complete grace of the State authorities. The religious association would be prevented from taking adequate legal remedies. This would not only impair freedom of religion or belief, but also freedom of speech and the right to legal remedy.

3.24 Article 39

The provision makes it possible to liquidate a religious association inter alia at the event of repeated carrying out activity prohibited by the law. This could mean that dissolution is possible if any, even minor, abuse of the legislation happens only twice. This would be unproportionate.

In general, the rules on dissolution leave impermissible scope to arbitrarily end the activity of religious associations.

3.25 Article 40

While it is highly positive that the draft law (article 40) gives priority of international commitments of the Republic of Tajikistan to conflicting national legislation, many of the provisions of the law remain in open conflict with international treaties to which the Republic of Tajikistan has acceded. This fact renders the draft law unclear and self-contradicting. This makes the relevant provisions also unnecessary.

APPENDIX I

LAW OF THE REPUBLIC OF TAJIKISTAN “ON FREEDOM OF CONSCIENCE AND ON RELIGIOUS ASSOCIATIONS”

The Republic of Tajikistan being a secular state and respecting all religions, and at the same time recognizing the particular role of Islam in the social and spiritual life of the population of Tajikistan, by adopting this Law affirms the right of each individual and citizen for freedom of conscience and freedom of religious belief, as well as to the equality before the law irrespective of the attitude to religion and beliefs.

This right is secured by the Constitution of the Republic of Tajikistan, international legal norms recognized by the Republic of Tajikistan and this Law.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Subject regulated by this Law

The subject regulated by this Law are legal relations resulting from exercising by the citizens of the Republic of Tajikistan of the constitutional right to freedom of conscience and freedom of religious belief, as well as from the establishment, activity, reorganization and liquidation of religious organizations.

Article 2. Tasks of this Law

The tasks of this Law is providing guarantees of every person and citizen's right to freedom of conscience and freedom of belief, to social justice and equality, securing civil rights and interests irrespective of attitude to religion, to equal legal relations connected with organization and activity of religious associations.

Article 3. Legislation of the Republic of Tajikistan on the freedom of conscience and on religious organizations

Legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations bases on the Constitution of the Republic of Tajikistan and consists of this Law, the Civil Code of the Republic of Tajikistan and other normative and legal acts.

Nothing in the legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations can be interpreted in sense of belittling or discriminating human and citizen's rights on the freedom of conscience and freedom of religious belief guaranteed by the Constitution of the Republic of Tajikistan or stemming from international legal acts recognized by the Republic of Tajikistan.

Article 4. Definitions and terms operational in this law

Freedom of conscience – the rights of each person and citizen to freely and independently define his/her attitude to religion, to practice any religion individually or together with others, or not to practice any one, to change religious beliefs and to equally express and spread beliefs related to the attitude to religion, including atheistic ones.

Freedom of religious belief – the right of each person and citizen freely and independently to define and profess any religion, participate in a religious worshipping, practicing religious rites and worshipping, in teaching religion.

Religious cult – the main form of the religious activity, expressed in carrying out religious rules, ideas and traditions defining religious behaviour of each believer.

Religious worship – is one of the forms of religious activities based on the body of ideas and actions deriving from customs and professed at a domestic level.

Religious needs – the status of need of an individual believer, group, institutional formation shaping out in the course of development and modification of religion and expressed in the motion and reproduction of religious conscience, behaviour, relationships and activity of believers.

Religious rite – a part of a religious cult, expressed in a set of symbolic actions adding a religious meaning and significance to certain events in a human life.

Religious symbol – religion related objects, actions, texts, images, speaking formulas and manners of conscience, which have acquired religious meaning and importance differing from own properties.

Clergy – a group of persons designated for service in a religious organization and professionally carrying out worshipping activity.

Religious association – any formed in accordance with this Law voluntary association of no less than 20 citizens of the Republic of Tajikistan, other persons permanently and legally residing on the territory of the Republic of Tajikistan, with the purpose of jointly professing and spreading their religious beliefs.

Religious organization – is a membership based voluntary association of no less than 20 citizens of the Republic of Tajikistan, of other persons permanently and legally residing on the territory of the Republic of Tajikistan, in an order established by law, and registered as a legal person.

Religious institution – a contract-based religious organization, having no membership, registered as a legal person in an order set forth by law, aiming in accordance with its statute to offer specific services meeting the interests of participants of a religious association.

Local religious association – a religious association consisting of no less than twenty citizens-founders, which have attained 18 years old and permanently reside in the same urban or rural settlement.

Monastery – a separate community based church economic organization of monks or nuns, set up for jointly residing and professing religious beliefs in accordance with certain rules and norms established by respective religions.

Mosque – a main historically formed relatively autonomous, non-hierarchical form of a religious organization in Islam, created on the basis of a common dogma designated for practicing religious ...

Centralized religious association – a religious association consisting in accordance with its statute of no less than three local religious associations in a separate administrative and territorial unit of the Republic of Tajikistan.

Article 5. Right to freedom of conscience and freedom of religious belief

The Constitution of the Republic of Tajikistan guarantees each person and citizen individually or jointly with others the right to freedom of conscience and freedom of religious belief.

No compulsion is allowed while defining by a citizen of his attitude to religion, to practicing or denial to practice, to participating in religious worshipping, religious rites and ceremonies, to teaching religion.

Parents or person replacing them on mutual consent have the right to bring up their children in accordance with their own attitude to religion.

Foreign citizens and persons without citizenship legally staying on the territory of the Republic of Tajikistan enjoy the right to freedom of conscience and freedom of religious belief equally with citizens of the Republic of Tajikistan and bear responsibility established by the laws of the Republic of Tajikistan for infringing the legislation on the freedom conscience and on religious associations.

Article 6. Equality of citizens irrespective of their attitude to religion

Citizens of the Republic of Tajikistan are equal before the law in all spheres of the civil, political, economic, social and cultural life irrespective of attitude to religion. Referring to attitude of a citizen to religion in official documents is not allowed, with the exception of cases, when a citizen personally wishes that.

Any direct or indirect constraining rights or establishing benefits for citizens depending on their attitude to religion, as well as instigating hostility or hatred either insulting citizens' senses, defilement of cults respected in this or another religion results in liability established by law.

Nobody is allowed to deviate from implementing obligations established by law on the motives of personal religious beliefs. Implementing one obligation instead of another on the motives of beliefs is allowed only in cases set forth by the legislation of the Republic of Tajikistan.

Article 7. Non-interference of the state and its entities in the activity of religious associations

The state and its entities do not interfere into the activity of religious associations, if it is not contradictory to the legislation; at the same time the state or its entities

do not place on religious associations carrying out state government, local government and self-government functions.

The state and its entities do not allow setting up any preferences or constraints of one religion or religious belief towards others; do not fund the activity of religious associations and atheism promotion activity.

The state and its entities assist in establishing relations of mutual tolerance and respect between citizens professing religion or not professing it, between religious associations of various religion beliefs, as well as between their followers.

Actions directed on converting believers of one confession into others are prohibited, as well as any other charitable or missionary activity having a nature of intellectual, mental or other pressure to citizens in proselyte aims.

Article 8. Separation of religious associations from carrying out functions of state government

Separation of religious associations from carrying out functions of state government means that a religious association:

- forms and implements its activity in accordance with its religious norms and laws, its own hierarchic and institutional structure, selects and designates its own personnel in accordance with its own provisions;
- does not participate in forming state government bodies, as well as does not participate in elections to the bodies of state government and local government bodies;
- does not carry out functions of state government bodies, other governmental bodies, governmental institutions and local government bodies;
- religious associations servicemen during the work in these associations do not have the right to be elected in the bodies of state government;
- does not participate in the activity of political parties and political movements, does not provide them with material and other assistance.

Political parties can not build up their activity on a religious ideology and carry out religious training.

Separation of religious associations from carrying out functions of state government does not entail limiting rights of participants of mentioned associations to exercise equally with other citizens their rights and obligations in participating in governmental affairs, elections in bodies of state government and local government bodies in accordance with the legislation of the Republic of Tajikistan.

Article 9. Separation of school from religious associations

National education system in the Republic of Tajikistan is separated from religion and religious associations.

The state ensures the secular nature of education in all governmental educational institutions, as well as access to various forms and levels of education irrespective of the attitude to religion.

In the Republic of Tajikistan subjects of religious science can be included into state education system curricula, but inclusion of religious disciplines is prohibited.

Article 10. Religious education

Citizens have the right to learn religious dogmas and receive religious education in the state language or other languages on their choice individually or together with others.

Religious associations having statutes (regulations) registered in the order established by law have a right to create educational institutions and groups for religious education of children and adults as well as carry out training in other forms in accordance with this Law.

Training children to religious dogmas is allowed from the moment of their attaining 7 years old with written permission of their parents or persons replacing them only in case if it does not interrupt education process and in the time free from school in special premises. Practicing religious education in private houses is prohibited.

Involving of minors in religious education against their will, even with the consent of their parents or persons replacing them, is not allowed.

Persons delivering religious dogmas should have special religious education and carry out their activity in accordance with the state body on religious affairs.

CHAPTER 2. CREATION AND FORMS OF RELIGIOUS ASSOCIATIONS

Article 11. Creation of religious associations

Religious associations in the Republic of Tajikistan are formed with the purpose of meeting religious needs of citizens to profess and spread beliefs voluntarily and publicly.

Only citizens of the Republic of Tajikistan, who attained their majority, can found religious associations in the Republic of Tajikistan. Minors cannot be members or participants of religious associations.

Along with natural persons the board of founders of a religious association can contain legal persons-religious associations.

Foreign citizens and persons without citizenship permanently and on legal bases residing on the territory of the Republic of Tajikistan can be only members or participants of religious associations.

The name of a religious association should contain information on its religious beliefs. In the course of carrying out its activity the religious organization is obliged to indicate its full name.

Religious associations are created upon notification of the local body of state government of self-government in coordination with a state body on religious affair in cases and order set forth in this Law.

Creation of religious associations in the structures of state government bodies, other governmental bodies, governmental institutions and organizations and local self-government bodies is prohibited.

The establishment and activity of religious associations is prohibited, the aims and actions of which contradict the legislation.

Article 12. Forms and territorial area of religious associations' activity

Religious associations can be established in the form of religious organizations and religious institutions with due account of administrative and territorial situation of the Republic of Tajikistan.

Citizens of the Republic of Tajikistan having adequate religious education can be leaders of religious associations.

Religious organizations are Islamic, Christian and other religious societies, mosques, churches and other religious associations based on membership in a religious association with acquiring the status of a legal person.

Religious institutions are Islamic, Christian and other religious centres, religious educational institutions and other religious associations based on agreement and having no membership and having acquired the status of a legal person.

Depending on the territorial area of their activity religious organizations are divided into local and centralized ones.

A territorial area of activity of a religious institution is secured in its statute.

Article 13. Religious societies, centres and associations

Religious societies, centres and associations act on the basis of their statute (regulations), adopted and registered in order established by this Law.

Religious centres have a right in accordance with their registered statutes (regulations) to establish monasteries, religious brotherhoods and missionary organizations (missions), which act on the basis of their statutes (regulations), registered in the order established by Law.

Article 14. Mosque and a Cathedral mosque

Mosques as a main form of Islamic religious organization are divided into local and centralized – the mosque and the cathedral mosque.

Taking into account the administrative and territorial order of the Republic of Tajikistan in each settlement with the population:

- a) between 200 and 2000 persons only one mosque is formed.
- b) with the population exceeding 2000 one more mosque per next 2 thousand persons.

A cathedral mosque can be formed per 20 thousand persons in the rural area and 30 thousand persons in towns, excluding the city of Dushanbe. In the city of Dushanbe one cathedral mosque is formed for 50 thousand urban population.

A cathedral mosque in any event, irrespective of the number of the population can be formed one:

- a) within the territory of the body of local self-government (jamoati dehot-village council, and jamoati shahrak-town council) on no less than three mosques available;
- b) in district centres and city-type settlements (shahrak).

Article 15. Religious education institutions

Centralized religious associations, including the cathedral mosques in accordance with their registered statutes (regulations) have a right to establish religious education institutions to prepare clergymen and servicemen of other religious specialties they need. Religious educational institutions operate on the basis of their statutes (regulations) adopted and registered in an order established by law.

Citizens studying in internal higher and secondary religious education institutions, use in an order established for students of governmental education institutions, rights and benefits on the delay for conscription, taxation, inclusion of the time of study in the working register.

Religious education institutions have to be opened only upon availability of special premises, equipment and personnel enough for their functioning.

Higher and secondary religious education institutions programmes are coordinated with a state body for religious affairs and have to comply with this education level within the laws of the Republic of Tajikistan on general education.

CHAPTER 3. REGISTRATION OF RELIGIOUS ASSOCIATIONS

Article 16. Organizational status of a religious association

Unlawful (un-registered) religious activity in the Republic of Tajikistan is prohibited.

Religious organizations and religious institutions acquire the status of a legal person from the day of state registration of their statute (regulations) and incorporation in the single state register of legal persons.

Religious organizations and religious institutions as legal entities enjoy rights and bear obligations in accordance with the legislation of the Republic of Tajikistan and their statutes (regulations).

Article 17. Statute of a religious association

The statute (regulations) of a religious association should contain information on the form, location of the religious organization, its religious affiliation, on the status and organizational structure of the religious association, on property status, on the right to establish enterprises and media outlets, to establish other religious associations, educational institutions and other warrants, on the procedure of settling property and other issues at the event of terminating its activity, as well as other provisions related to the peculiarities of this association activity.

Article 18. State registration of a religious association

For achieving the capacities of a legal entity by a **local religious association**, no less than twenty citizens, who have formed it, have attained the age of 18, no later than one month after the creation of a religious association submit the application with the statute (regulations) attached to the authorized governmental entity on religious affairs in the place of supposed activity of the religious association.

The competent person of the state entity on religious affairs examines the respective application within one month and registers the statute of the local religious association.

Centralized religious associations also no later than one month after their establishment submit statute (regulations) for registration, adopted by these associations to the state body on religious affairs. The state entity for religious affairs in coordination with respective local executive government bodies makes a decision on the registration of the charter of the mentioned religious association within one month's frame.

The statute (regulations) of **republican and province religious associations** is registered by the governmental body for religious affairs within the timeframe specified in this article.

Religious associations submit the following documents for state registration:

- Application to the registering body signed by no less than 20 citizens, which have formed this religious association, indicating place of residence of each of them;
- Permission (protocol) containing information on the establishment of a religious association, on the approval of its statute and formation of its administrative body;
- The statute (regulations) of the religious association in two copies;
- Reference note (spravka) on the location of the religious association;
- Reference note of local government bodies on the number of the population in the given territory;
- Receipt on paying off the state due.

Upon submission of documents for registration, the founders also submit a signed list with the indicated data and addresses of citizens supporting the creation of this religious association – signatures of 200 and 600 citizens supporting them for the establishment of a local or a centralized religious association accordingly.

Demanding the submission of other documents is prohibited.

Registration of religious associations is performed within 30 days from the moment of submission of documents enlisted in this article of documents. The mentioned timeframe is interrupted on the period, during which the applicant removes the irregularities in founding documents figured out in the course of their examination.

Amendments and addenda in the statutes of religious associations are subject to state registration in the same order and within the same timeframe as the state registration of the statute and acquire legal force from the moment of such registration.

Article 19. Denial of registration of a religious association

A religious association can be denied registration only at the event of incompatibility of its charter (regulations) with the requirements of the Civil Code and this Law.

At the event of denial of state registration the applicants are notified of this in written form with the indication of the provisions of the legislation, infringement of which entailed denial of registration of this association's statute.

Denial of registration or exceeding the timeframe for taking a decision set forth by this Law can be complained in court in an order established for appealing on unlawful acts of state government bodies and officials abusing citizens rights.

CHAPTER 4. RIGHTS AND OBLIGATIONS OF RELIGIOUS ASSOCIATIONS

Article 20. Rights of a religious association

For carrying out statutory aims a religious association has the right:

- to freely disseminate information on its activity;
- to establish media outlets and perform publishing activity in an order, established by law;
- to present and protect its rights, rights and legitimate interests of its members and participants, as well as other citizens in judicial bodies and other cases set forth by the legislation;
- to come up with initiatives on various issues of the social life, to introduce proposals to state government bodies;
- to run production and economic activity within the legislation of the Republic of Tajikistan;
- to exercise other rights envisaged by this Law and other laws of the Republic of Tajikistan.

Article 21. Obligations of a religious association

A religious organization is obliged:

- to observe the Constitution of the Republic of Tajikistan, international legal acts recognized by Tajikistan related to the sphere of its activity, as well as norms envisaged by its statute and other constituent documents;
- to present on the request of the body, which have registered the religious association, information on decisions taken within the religious association related to achieving its statutory goals;
- to allow attending by representatives of the body, which have registered the religious association, supervising and controlling bodies of the events hosted by the religious association.

A religious association with the rights of a legal person is obliged to annually inform the body, which have registered it on the continuation of the activity indicating the data to be included into the single state register of legal persons.

Failure to submit the mentioned data during three years in a row serves a ground for the registering body to consider ceased the activity the religious association.

CHAPTER 5. PROPERTY STATUS OF RELIGIOUS ASSOCIATIONS

Article 22. Ownership of religious associations

The ownership right of religious associations is protected by law.

The ownership of religious associations can include buildings, objects of worship, objects of production, social and charitable purpose, funds and other property necessary for providing their activity.

Religious associations have an ownership right to property purchased or created by them at their own expense, to charitable donations of citizens, organizations or allocated by the state, and equally purchased on other bases, envisaged by law.

Religious associations have a right to apply for voluntary financial and other donations and receive them.

Financial and property donations of religious associations are exempt from taxation.

Religious servants and the staff of religious associations equally with other citizens are liable before the law for financial and other irregularities.

Article 23. Usage of property being ownership of the state, social associations or citizens

Religious associations have the right to use for their needs buildings and property provided for them on the contract basis by state organizations, social associations or citizens.

Local bodies of state government can transfer into ownership or free usage of religious organizations cult buildings and other property being in ownership of the state.

Religious associations have a preferential right for handing them over suitable religious buildings with the adjacent territory.

The decision on the question of handing over to religious associations of religious buildings and property should be taken no later than within one month from the moment of receipt of the respective request with simultaneous written notice on that of the applicant.

Transfer of objects and items being monuments of history and culture to religious associations and their usage is performed in accordance with the legislation of the Republic of Tajikistan.

Religious associations carry out owning and utilization of land in an order set forth by the legislation of the Republic of Tajikistan. The construction of religious buildings is performed with the authorization of local Majlises (assemblies) of people's deputies.

Article 24. Production and economic activity of religious associations

Religious associations have the right in accordance with the legislation of the Republic of Tajikistan and their statutes (regulations) to set up publishing, productive,

restoration-construction, agricultural and other enterprises, as well as charitable institutions (shelters, orphanages, hospitals, etc.) with the right of a legal person.

Income from production activity and other incomes of religious associations enterprises are imposed taxation in accordance with the legislation of the Republic of Tajikistan in order and amounts set forth for enterprises of public associations.

Article 25. Disposal of property of religious associations, which have terminated their activity

Upon termination of the activity of a religious association the disposal of the property being in its ownership is carried out in accordance with its statute (regulations) and legislation.

No dues can be imposed on the property of religious purpose belonging to religious associations in accordance with claims of debtors.

Upon absence of successors the property transfers into the state property.

CHAPTER 6. RIGHTS OF CITIZENS AND RELIGIOUS ASSOCIATIONS RELATED TO FREEDOM OF RELIGIOUS BELIEF

Article 26. The right of citizens to haj and umra (pilgrimage)

Citizens of the Republic of Tajikistan have the right to haj and umra, which are organized and conducted by the state body for religious affairs.

The procedure of conduction of haj and umra, as well as the procedure of trip of citizens for haj and umra is defined by the Government of the Republic of Tajikistan.

Cathedral mosques and Islamic religious education institutions independently or in coordination with the state body for religious affairs can participate in training and preparation of believers (performing haj) for haj and umra.

Article 27. Religious worships and ceremonies

Citizens and religious associations have the right to set up and maintain freely accessible places of public worship or religious meetings, as well as places respected by religions (pilgrimage places).

Public worships, religious rites and ceremonies are without impediments conducted in worshipping buildings and on the territory belonging to them, in the places of pilgrimage, in institutions of religious associations, in cemeteries, in apartments, in houses of citizens.

The commandment of military units does not hamper military servicemen's participation in religious worships and implementation of religious rites in their free time.

Religious associations have the right to address proposals on the conduction of religious worships to citizens staying in hospitals, old people's and handicapped asylums, in places of deprivation of liberty.

Religious worships and rites are held in hospitals, old people's and handicapped asylums, in places of deprivation of liberty and penitentiary institutions are conducted on the request of their inmates.

These institution's administration assist in inviting religious servants, participate in determining the timing and other conditions of conducting worships, a rite or a ceremony.

In other cases public worships and rites are conducted in an order established for conducting meetings, demonstrations, and marches in the legislation of the Republic of Tajikistan.

Article 28. Religious literature and items of religious purpose

Citizens and religious associations have the right to purchase and use religious literature in the language of their choice, as well as other items and materials of religious purpose.

Religious associations have the right to produce, export, and import and disseminate items of religious destination, religious literature and other information materials of religious content in accordance with the legislation in effect of the Republic of Tajikistan.

Religious associations exercise the right to publish and disseminate religious literature in accordance with the legislation of the Republic of Tajikistan.

Religious associations have an exclusive right for producing items of religious worshipping.

Article 29. Charitable activity of religious associations

Religious associations have the right to carry out charitable activity in accordance with the legislation of the Republic of Tajikistan.

Religious associations have the right to run charitable activity both individually and through the public funds.

Donations and allocations for these purposes are not liable to taxation.

Article 30. International links and contacts of citizens and religious associations

Citizens and religious associations have the right on a group and individual basis to set up and maintain international links and direct personal contacts, including foreign trips for pilgrimage, participation in meetings and other religious events, as well as to invite representatives of respective confessions and missionaries in coordination with the state body for religious affairs.

Religious associations can send citizens of the Republic of Tajikistan abroad for training in religious education institutions and receive foreign citizens on the same purpose in coordination with the state body for religious affairs.

CHAPTER 7. LABOUR ACTIVITY IN RELIGIOUS ASSOCIATIONS AND THEIR ENTERPRISES

Article 31. Labour legal relations and labour rights of citizens in religious associations

Religious associations have the right to employ citizens. Labour conditions are established on the basis of an agreement between the religious association and the employee and are specified in the labour contract, which is concluded in a written form.

Religious association is obliged to register the labour contract in an established order.

Documents determining conditions of payment for religious servants labour are registered in the same order.

Citizens working in religious associations on the basis of a labour contract can be members of a trade union.

Citizens employed in religious associations on the basis of a labour contract are subject to labour legislation equally with workers and servants of governmental and social enterprises, institutions and organizations.

Taxation of income generated from the work in religious associations received by citizens, including religious servants is carried out on the basis of rates established for workers and servants of state enterprises, institutions and organizations.

Article 32. Social security and social insurance of citizens employed in religious associations

Citizens employed in all enterprises established in religious associations as well as in charitable institutions created by them are subject to labour legislation, to order of taxation, social insurance and social security of workers and servants of state and social enterprises, institutions and organizations.

Citizens working in religious associations, including clergymen are subject to social insurance and social security equally with workers and servants of state enterprises, institutions and organizations.

To this end, religious associations, their enterprises and establishments transfer allocations to the State Insurance Fund and Pension Fund in the order and amounts set forth for public associations, their enterprises and institutions.

All citizens working in religious associations are assigned pension and are paid on general basis in accordance with the legislation.

CHAPTER 8. THE STATE AND RELIGIOUS ASSOCIATIONS

Article 33. Relationships between the state and religious associations

The state ensures observing rights and legitimate interests of believing citizens and their religious associations and in accordance with the Constitution of the Republic of Tajikistan guarantees them conditions for pursuing their statutory objectives.

Interference of governmental bodies and officials in the activity of religious associations, as well as the interference of religious associations in the activity of governmental bodies and officials is not allowed except in cases envisaged by law.

Issues touching upon interests of religious associations in events envisaged by law are addressed by governmental bodies and economic subjects with participation or in coordination with respective religious associations.

Article 34. Supervision and control over the activity of religious associations

Surveillance over precise and uniform enforcement of laws by religious associations on the territory of the Republic of Tajikistan is carried out by the Prosecutor General and prosecutors subordinate to him within their authorities.

Financial and tax entities in coordination with the state body of the Republic of Tajikistan for religious affairs or in accordance with its respective appeal carry out control over sources of income of religious associations, over the amount of funds they receive and payment of taxes in accordance with the legislation of the Republic of Tajikistan.

The state body, which has registered the religious association, performs supervision over the implementation of its statutory provisions regarding its financial expenditures in accordance with aims and objectives of the religious association.

Surveillance and control over the implementation by religious associations of existing norms and standards is carried out by ecological, fire security, sanitary and epidemiological and other bodies of state control.

Article 35. State body for religious affairs

Committee for Religious Affairs within the Government of the Republic of Tajikistan is a controlling, information, consultative and expert centre. With these purposes it:

- performs registration of the statute of religious associations and control over the compliance of their activity with their statutory provisions and objectives;
- maintains contacts and coordinating links with similar institutions outside the Republic of Tajikistan in the field of freedom of conscience and religious associations;
- creates a database on the activity of religious associations in the Republic of Tajikistan on the implementation of the law on the freedom of conscience and on religious associations;

- creates an expert council of religious scientists, representatives of religious associations and specialists on human rights problems for performing religious scientific expertise and when required gives an official expert conclusion on the request of governmental and judicial bodies;
- upon request of religious associations renders assistance in achieving agreements with governmental bodies and necessary assistance on issues demanding decision of governmental bodies;
- facilitates strengthening mutual understanding and tolerance between religious associations of various religious beliefs within the Republic of Tajikistan and abroad.

Committee for Religious Affairs within the Government of the Republic of Tajikistan functions in accordance with the legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations and the Regulation on the Committee for Religious Affairs under the Government of the Republic of Tajikistan approved by the Decree of the Government of the Republic of Tajikistan.

CHAPTER 9. LIABILITY FOR ABUSE OF LEGISLATION

Article 36. Liability for abuse of legislation on the freedom of conscience and on religious associations

Officials and citizens having abused legislation on the freedom of conscience and on religious associations are liable in accordance with the legislation of the Republic of Tajikistan.

Article 37. Liability of religious associations for abusing legislation of the Republic of Tajikistan

At the event of abusing the legislation of the Republic of Tajikistan religious associations are liable in accordance with this Law and other laws of the Republic of Tajikistan.

At the event of committing by a religious association of acts beyond the framework of aims and tasks specified by their statute or abusing laws as well as legitimate interests of legal and natural persons, the administering body of this religious association is issued a written notice by the body, which has registered this religious association, or a prosecutor.

Written notice is issued before taking a decision by the authorized body on suspending the activity of the religious association.

The religious association is obliged to rectify the abuse inflicted within one month from the moment of receipt of the written notice and to notify the body, which issued the notice, about the rectification. At the event of non-rectifying of the irregularity by the religious association within the established timeframe, the registering body on

its initiative or on the basis of the statement of the prosecutor takes a decision on suspending the religious association's activity.

Article 38. Grounds for suspending the activity of a religious association

The activity of a religious association can be suspended on the decision of a state body for religious affairs for the period of three months in cases of:

- Non-implementation of requirements of written notice of the registering body or a prosecutor issued for the abuse of the legislation of the Republic of Tajikistan in accordance with Article 37 of this Law;
- Repeated violation of the statute of the religious association;
- Single serious abuse of the legislation in effect;
- Abuse by the religious association of rights and legitimate interests of natural or legal persons.

If the religious association rectifies irregularities and constraints mentioned in the decision of the state body for religious affairs on suspending within the established timeframe, it resumes its activity with the decision of the state body for religious affairs from the moment of removing the irregularity.

In case if the religious association fails to rectify the mentioned irregularity the state body for religious affairs has the right to take a decision on terminating its activity.

At the event of disagreement with the decision of the state body for religious affairs on the suspension or termination of the activity of the religious association the latter has the right to appeal to the Supreme Court.

Terminating the activity of a religious association means prohibition during the established timeframe to use the status of a legal person, to freely disseminate in any form information on its activity, to propagate its statutory ideas and aims, to establish media outlets, except of conducting sessions of organizational nature envisaged by the statute of the religious association.

Article 39. Termination of the activity of a religious association

The activity of the religious association as a legal person can be terminated through its liquidation or reorganization.

Reorganization of the activity of the religious association is carried out in accordance with the Civil Code of the Republic of Tajikistan.

A religious association can be liquidated:

- upon decision of the general meeting of its members or the body of the religious association authorized to do that by its statute (regulations);
- due to the recognizing unlawful the registration of the religious association in court because of non-repairable abuses of legislation having incurred during its establishment;
- on the basis of the decision of the state body for religious affairs at the event of carrying out activity prohibited by the law, either due to repeated or serious abuses of the legislation, either due to carrying out the activity contradicting

statutory objectives, as well as in other cases set forth by the legislation of the Republic of Tajikistan.

In case if religious association files an appeal in court on the decision of the state body for religious affairs on the liquidation of the religious associations, only after recognizing the decision of the state body for religious affairs on the liquidation as legal by the court, the mentioned religious association will be excluded from the public register of legal persons.

CHAPTER 10. FINAL PROVISIONS

Article 40. International treaties

If an international treaty, to which the Republic of Tajikistan is a part, establishes other rules than those set forth in the legislation of the Republic of Tajikistan on the freedom of conscience and on religious associations, then the provisions of the international treaty apply.

Article 41. Entering into effect

This Law enters into effect from the date of its official publication

Article 42. On recognizing invalid some normative and legal acts

Due to adoption and putting into effect of this Law to recognize invalid:

The Law of the Republic of Tajikistan “On religion and religious organizations” of December 1, 1994 with amendments and addenda included as of...

**President
of the Republic of Tajikistan**

