Chapter 2. Initiatives for the adoption of the Special Law on Religion – History, Political Contexts, and Critics

Research objectives and methodology

In recent years, discussions concerning the adoption of a special law on religion and religious organizations have been activated in public and political fields. Since 2014, this initiative is openly supported by the State Agency on Religious Affairs (*hereinafter "SARI)* which operates under the Prime Minister apparatus. This issue was also actively discussed by the Human Rights and Civic Integration Committee of the Parliament in 2018-2019 within the working group on the issues of religious freedom.
It should be mentioned that, the adoption of the special law on religion is part of the political agenda since the 90s and was subject to political discussions in various periods. In all cases, initiatives for the adoption of such law was taken by the lobbyists of dominant religious organization and conservative groups and revealed interests of hierarchizing and controlling of religious organizations. However, as adoption of special law creates high risks of interference in religious freedom, of hierarchizing religious organizations and discrimination of small religious groups, initiatives were always followed by the strong criticism from civil and religious organizations. It is noteworthy, that none of the authoritative international organizations which have a mandate of monitoring and protection of religious freedom in member states, recommended the adoption of such law.

The below document studies international practice related to the laws on religious organizations in light of the international standards of freedom of religion. The given chapter of the report reviews and analysis special laws on freedom of religion and religious organizations in Europe and Post-Soviet states and examines them within the international standards of freedom of religion. The assessment of such laws in Western Europe reveals that they are old and respective state practice establishes higher standards of protection and outdated approaches established in the Laws are not adhered to. The analysis further exposes the unreasonable nature of the special law initiatives in the legal, political, and historical context of Georgia.

The given document is depended on the research of states' practice and international standards, on the assessments of relevant international and analytical organizations on freedom of religion, as well as on written opinions of various experts and theologists.

1.1. Historical retrospective of the process of adoption of the Special Law on Religion in Georgia

Adoption of Special law on Religion and Religious Organizations had various initiators and supporters in various periods. The discussion on this matter commenced yet in early 90s, after the dissolution of the Soviet Union.

In the 1990s, the Government of Georgia actively considered the adoption of two legislative acts, whether to adopt the Law on Freedom of Religion and Religious Associations or to sign an Agreement between Georgia and Georgian Orthodox Churches. The first draft of the Law on Religion and Religious Associations was developed in 1992. It became public only two years later and was published on May 5, 1994 in the

newspaper „Republic of Georgia“. The goal of the draft law was to regulate public relations in the field of religion, which should be equally exercised by all people living in Georgia. The draft also aimed to determine the state's obligations before religious associations and at the same time, it recognized the separation of these two institutions. Article 6, which was subject to harsh criticism, was granting benefits to Georgian Orthodox Christianity, as a traditional religion. Therefore, the article determined that the relationship between the State and Georgian Orthodox Church should be regulated by a separate agreement. On the other hand, non-traditional religious associations were required to undergo special recognition procedures. The draft law also addressed the issue of teaching religion in public schools, stating that religious organizations have the right to establish religious educational institutions, as well as to include religious studies, religious history in the school national curriculum (the law also provided an alternative - the subject of Orthodox theology). The draft law also defined the concept of "religious association" as the voluntary association of adult citizens, which is created based on the common faith to jointly exercise religion. The religion itself means the service of the cult, the expansion of the faith directly and through the mass media, charity, mercy, religious teaching and upbringing, the establishment of monasteries and missionary societies, and other activities provided for in the religious associations' charters.

For the registration of non-traditional religious associations, draft law required minimum membership of 10 or 30 persons. The refusal of registration/or termination of organizations' activities was permitted based on court decision if their activity was in violation of Georgian legislation or itself violated the Law on Religion. Interestingly, the draft law also regulated the places of religious activities where they could freely act. However, in public places they needed the prior consent of the relevant state authority or the administration of that public institution. The law also regulated the issues related to the property of the religious association and their taxation. The violation of any provision would cause responsibility but it did not specify the type of violation and responsibility.

The parliament had not heard the draft law in 1994. This issue was reactivated in 1996 independently from the President of Georgia and was submitted to the Parliament under the signature of Minister of Justice. This draft was substantially different from the draft elaborated two years ago. It did not include an Agreement between the Orthodox Church and State, but it recognized the Church as a traditional religion having an exceptional role in Georgia and it provided adoption of not a treaty but a law on the Orthodox Church. In between, 1996-1997 several drafts of the law were presented which reiterated similar issues. The supporters were mostly Georgian Patriarchate and affiliated groups or individuals. One could find among the Law-related old documents, newspapers and Parliamentary discussion minutes the supporting positions of Georgian Christian Union, the church of St David the Builder Tbilisi State University, the commission of Georgian Orthodox Church, the society of Ketevan Martyr, also the alternative draft versions, which recognized the necessity of adoption of both, the Law and Agreement and in this way to recognize an exceptional role of Georgian Orthodox Church. The theologists involved in this process also approved during the interviews, that the Patriarchate was determined to strengthen its domination on the legislation level and to establish a definition of religious association, which would prevent activities and development of small religious groups. During the Parliamentary hearings of 1996-1997 the Fraction- Citizens Union was active and its representatives, Guram Adamashvili who presented a resolution adopted by the Tbilisi State University (TSU) Scientists Conference. Georgian Orthodox Church, TSU, representatives of the Parliament and Executive branch participated in this conference. The key spirit of the resolution was to grant an exceptional role to the Church and to adopt the draft law on Georgian Orthodox Church. The resolution also requested permanent representatives of the Church in the Parliament, to give compensation to the church and to provide them with the lands. The resolution

banned activities of sects and religious-philosophical currents, which "cause anxiety in the society against the established national traditions."

Remarkably, a new provision developed in these draft laws: “The freedom of religion or belief can be restricted if needed for the security of society and order, for the protection of other’s life and health, and their rights and freedoms”. The second important amendment, that emerged in 1996-97 versions, recognized additional four traditional religions (Islamic, Jew, Catholic, and Armenian Apostolic Church), and stated that “the state has to assist and care for their development”. Other associations were considered as non-traditional and their recognition was followed by separate rules.

For non-traditional religious organizations the law required accomplishment of criteria, such as duration of their activities (25 years), minimum membership (500 members, in other versions 50 members). Besides, a strict provision emerged that without registration, religious activities are banned. The refusal of registration was allowed if the content of the organization’s activities violated the Georgian Constitution or other legal acts, which meant interference in the content of religious organizations’ activities. An alternative version of the Georgian Christian Union also declared Orthodoxy as the state religion. Various other vague provisions were also included, like “the State and Orthodox Chuch are in harmonious relationship with each other”.

The idea of law adoption was based on one major argument, that it should restrict the influence of small religious groups on public space. [1] They also determined to ban ownership of Georgian lands and forests for other religious organizations and to grant such prerogative only to the Orthodox Church.

One part of society and politicians opposed the adoption of the Law on Georgian Orthodox Church. Zurab Zhvania, the chairperson of 1995 Parliament and then-chairperson of Human Rights and National Minority Committee of the Parliament, Paata Zakareishvili were in this group. They considered that the law should protect the rights of every citizen regardless of their belief and it should be equally applied to every religious association, which did not violate legislation with their activities. They also considered that categorization religions as traditional or non-traditional ones were not acceptable and violated the principle of equality.

By 1997, the Georgian Constitution had not recognized any status of religious organizations/associations. Therefore, religious minority groups also wished to determine their legal status under the law. Only in 1997, the Civil Code of Georgia established the concept of a non-commercial legal person (association/union/fund). This legal status for the majority of religious organizations was acceptable for that period. However, the debate on the adoption of an agreement between the State and Georgian Orthodox Church was not ceased, which was finally adopted by the parliament on 22 October 2002. The Constitutional Agreement supported the major principle discussed during the law-drafting: “Georgian Orthodox Church represents the traditional belief of the State and its exceptional role is recognized in the history.” The constitutional agreement grants certain privileges to the Orthodox Church and is subject to strict criticism for years.”[2]

[1] Research has also been conducted on religious organizations (sects) spread in Georgia by region.

[2] Freedom of Religion- State Discrimination and non-secular politics, EMC, 2017, Part 1. available at: https://emc.org.ge/ka/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-da-arasekularuli-politikis-kritika

After the signature of the Agreement between the State and the Church, discussions concerning the adoption of the law on religious associations/organizations had not halted within various political contexts. For example, in 2002, a round table discussion was held in Tbilisi with the participation of representatives of the Autonomous Republic of Adjara, which was attended by representatives of academia and religious organizations.[3] Apart from the Georgian Orthodox Church, supporters of the law were Armenian Apostolic Church, Catholic, and Lutheran Churches. It was considered that, the law should determine registration rule and property-related issues.

The issue of a special law adoption was postponed by a 2005 amendment to the Civil Code, according to which all religious organizations which decided so, could be registered as non-commercial private legal entities. Furthermore, the amendment of 2011 allowed religious organizations to register either as public or private legal entities. [4] Legal Entity of Public Law (LEPL) under Ministry of Justice of Georgia – National Agency of Public Law is authorized to register religious entity that is historically connected with Georgia as public legal entities when it is considered as a religion by laws of Council of Europe member states. The registration as a public legal entity does not grant any preferential or different rights comparing to the non-commercial legal entity. These two statuses carry the same content in the context of religious organizations, as according to Article 1509[1] the registration as a public legal entity did not mean the application of the Law on the Legal Entity under Public Law to this organization. The rules established for the registration of non-profit (non-commercial) legal entities apply to the registration of religious associations. As of today, religious minorities mostly are registered in this way.

The adoption of this law on July 5, 2011 met resistance. Regardless of the opposition and dissatisfaction of the Georgian Patriarchate, the Parliament soon approved the amendments in an expedited manner and without open public discussion.

One day before the adoption of the law, the Patriarch of the Orthodox Church of Georgia demanded the suspension of the adoption procedure and additional public discussion on this issue.[5] However, on the 5th of July, parliament adopted the law. This was followed by the decision of Synod,[6] which mentioned that "Common dissatisfaction is visible because regardless of the Constitutional Agreement, adoption of the law occurred without any prior consultations with the Georgian Patriarchate and society." However, it also mentioned that the church recognizes the equality before the law for all religions and freedom of religion and that the special legal status of the Orthodox Church did not restrict the freedom of religion and equality before the law of other religious denominations. Simultaneously, on the 10th of July, a large-scale demonstration was organized to "save Orthodoxy".[7]

Based on such changes religious organizations' legal status had improved and accordingly, the discussions on the special law had reduced, but not for a long time.

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[3] Does Georgia need the law on Religious Associations?! available at: https://www.radiotavisupleba.ge/a/1519753.html

[4] Civil Code of Georgia, Art. 1509[1].

[5] Religious majority, minority and equality in Georgia, 2011. : https://netgazeti.ge/life/10185/

[6] Statement of the Patriarchy of Orthodox Church: https://www.interpressnews.ge/ka/article/180862-sakartvelos-katolikos-patriarkis-gancxadeba/

[7] The rally was organized for the protection of the Orthodox Church. https://www.palitravideo.ge/yvela-video/akhali-ambebi/6446-marthlmadidebeli-eklesiis-uflebebis-dasacavad-msvleloba-moetsyo.html

In 2014, within the first years of the establishment of State Agency in Religious Affairs, the agency commenced active lobby for the law adoption. This is evidenced in the draft strategy document elaborated by the Agency in 2015 on the religious policy development in Georgia, which names the absence of a special law on religion in the Georgian legislation as one of the problems. The strategy document clarifies that it is problematic when the legislation provides the "rules for registration of a religious organization" and does not explain what a religious organization is. Due to this consideration, the agency believes that it is necessary to create a special law on religion, which will regulate issues such as religious rights and the legal issues on the activities of religious associations. Under these issues, the concept of a religious organization, the issue of granting legal status, the organization's rights and duties, the rules of activity, property and financial issues, education issues, etc. would be defined. [8] Besides, the Agency's 2014 activity report[9] states that it had studied the relationship systems between the state and religious organizations in the European Union, and the study found that there are special laws governing relations between the state and religious associations in up to 20 Council of Europe countries. The Agency argues that international practice analysis revealed that Georgia's religious composition and existing forms of religious associations requires a comprehensive and systematic approach and it is important to determine the legal status of religious communities in such manner when the legal status derives from the objective approach, which itself does not exclude certain differentiations.

These initiatives in 2018-19 became the subject of discussion again against the background of the proposals and numerous regressive ideas that were heard from representatives of various branches of government simultaneously with the idea of creating a special law. Amongst them, this issue was actively raised within the framework of the working group set up in 2018 by the Chairwoman of the Parliamentary Committee on Human Rights and Civil Integration, which mandate and purpose also raised questions for the religious and civil society organizations.

Hereby it is important to note those additional circumstances under which the Patriarchate and its affiliates have recently lobbied for the adoption of a special law. This is directly related to the religious organization - the Christian, Evangelical, Protestant Church of Georgia - Biblical Freedom established in 2017 by the political party Girchi. The major purpose of this religious organization is to help young people to be released from compulsory military service, as provided under the current legislation concerning the clergy. [10] Biblical Freedom was able to register as a religious organization under current legislation. The media then reported on the creation of another religious organization that would have a similar purpose as the Biblical Freedom. After that, the Georgian Patriarchate openly stated that the gap in the law should be eradicated and not everyone should have the opportunity to receive such status. [11] The Patriarchate believes that the activities of such pseudo-religious organizations are directed against the church, the state, and society.

Despite these contexts, proponents of the adoption of a special law had not explained the specific principles on which the special law on freedom of religion is based and had not substantiated its real need in this legal context. However, discussions, arguments, and explanations related to this law pose a high risk that the adoption of this law will limit the degree of religious freedom in the country, establish limits

[8] The Strategy fo the development of Georgian Religious Policy, 2015.

[9] Report of State Agency in Religious Affairs, 2014 June-December, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

[10] Girchi Religious Organization assists youth to postphone compulsory military service, 2017.

[11] Registration of Religious Organization – The Patriarchate requires amendments in the decree, 2019, https://news.ge/2019/04/05/religiuri-organizaciis-registracia/

for religious activities, and create conditions of interference in the substantive evaluation of the beliefs of organizations and believers. At the same time, it will hierarchize religious organizations, which *de facto* already exists in Georgia, given the privileges of individual religious associations.

1.2. The law on Religious Associations – International experience and Standards

In countries, where the special laws on religious organizations exist, they are regulating various institutional and legal issues, such as registration of religious organizations/bestowing a legal status, as well as the cancellation of registration, benefits and privileges, such as access to public institutions (penitentiary institutions, the army, the various missionary activities), social assistance/pensions, exemption from taxes, hate speech and insults of religious sentiments, etc. The historical context of the adoption of laws, political attitudes, and also the regulation of individual issues differ within the framework of these laws. [12]

The regulation of each issue related to the activities of a religious organization is of great importance, as it can lead to excessive expansion or restriction of religious freedom. After the collapse of the USSR, special laws adopted on the freedom of religion in certain cases changed existing legislation and attitudes, while in others, they were limited to only minor changes and remained essentially the same. For example, the legislative initiative in Hungary, which required more than 10,000 members of a religious organization, or a hundred-year history of its existence, failed in 1993 because it would have led to the abolition of ¾ of already registered religious organizations. [13] In the 2000s, there was a risk of similar repressive legislation in Bulgaria and Romania, which were blocked by the leaders of certain political parties, and in some cases were affected by the Council of Europe's negative assessments.[14]

Such attempts and processes are not usually linked with the constitutional models of separation between the state and the church, but they rather strive to maintain a certain balance between the state and the church per changing political environment and the positions of religious organizations. The general trend, regardless of the struggle to initiate restrictive legislation and the aspiration of traditional religious organizations to relinquish small/new organizations to maintain dominant positions has finally evolved in favor of religious freedom and increased the extent of religious autonomy. However, adopted laws still contain problematic provisions. The Laws on Religion always contain the rule of registration of religious organizations and the issues of recognition from the state and attainment of a specific status. This indicates the main destination of such laws to balance state-religion relations, grant certain privileges to the traditional religious organizations, and in this way protect them from the influence reduction caused by the emerging new religions.

In this regard, the development of international human rights law has contributed to the positive development of international standards, which constituted leverage at the local level to hold the political pressure against freedom of religion. As far back as the 1986 OSCE document, which was received after

[12] Law and religion, Ibid, pg 10.
[13] Ibid.
[14] Ibid, 11-12.

the end of the so-called Helsinki Proceedings, significant recognitions of the rights of religious organizations, for example right to be granted legal status and autonomy. [15]

These protection standards have been widely supported by the European Court of Human Rights in several cases where the Court upheld the right of religious organizations to be granted the legal status, that derived from their freedom of assembly/association. [16] European Court of Human Rights has become a protection mechanism from those unreasonable restrictions, which were faced by religious organizations in various political realities. In light of this, it should be mentioned that the states have not given up their authority to arbitrarily define legislation for religious organizations. Such legislation is often applied as a restrictive and controlling mechanism for religious life, rather than supportive. If the legislation regulating religious organizations' activities is not well-expressed and defined, it may lead to the restriction of freedom of religion and belief, due to the doctrinal issues of belief.[17] As it is defined in ECHR case-law, interference in the freedom of religion is legitimate if it satisfies a three-layer test, when "emerging social need" exists", which is "proportionate to achieve the restriction's limitation goals".[18] One of the most frequently cited shortcomings in the general parts of these special laws on religion is that they broaden the grounds of interference in religious freedom.[19] In particular, the special Laws on Religious Organizations using vague and ambiguous terms, often try to increase the possibility of interference in the freedom of religion "prescribed under the law." Here it is important to draw some general conclusions about the admissibility of interference in the freedom of religion, which the European Court of Human Rights has accumulated in the *Metropolitan Church of Bessarabia v Moldova case*. These general conclusions and principles are in correlation with the problematic issues discussed below, that are reflected in the special laws on religion. The Court explained that "freedom of thought, belief, and religion is the foundation of a democratic society."[20] This implies that freedom of religion has more weight when balancing any other interests of the state. Consequently, restriction of freedom of religion cannot attain the test of "necessity" unless the action of the state is neutral and impartial. [21]

In the same case, the ECHR emphasized that the State should not enter into a substantive assessment and consideration of religious beliefs when establishing their registration requirements. At the same time, the Court found that interference in the freedom of religion is not necessary unless the state interests are in immediate danger, which necessitates immediate action. In this case, the state is obliged to find alternative ways to protect its interests. Therefore, the restrictions must be very specific and narrow, necessary to achieve a specific goal.[22]

Below the special laws on religion are reviewed within the Post-Soviet and Council of Europe states' context, as well as within Western European countries legislation, to demonstrate the major trends, the common issues of regulations, and their compliance with freedom of religion standards. The state practice

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[15] Concluding Document of The Vienna Meeting 1986 of Representatives of The Participating States of the Conference on Security and Co-operation in Europe, held on the basis of the provisions of the final act relating to the follow-up to the conference, 1989, para 16.4. available at: https://www.osce.org/mc/40881?download=true.

[16] Sidiropulos v. Greece, ECHR, para 40; Bessarabia vs. Moldova, ECHR, 116-130

[17] Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities, ODIHR Background Paper 1999/4 by Cole Durham, pg 2-3.

[18] ECHR, article 9; https://www.echr.coe.int/LibraryDocs/Murdoch2012_EN.pdf; pg35-40.

[19] Law and religion, Ibid, pg 14.

[20] Metropolitan Church of Bessarabia v Moldova, echr, para 114.

[21] Metropolitan Church of Bessarabia v Moldova, ECHR, para 114-118.

[22] Ibid, para 118-125.

analysis will be important to examine the necessity and possible consequences of such legislation in the Georgian context.

1.3. Registration of religious organizations and registration requirements.

The issue of registration of a religious organization is one of the most important subjects reflected in the Special Laws on Religion and at the same time overlaps other important issues such as the definition of a religious organization, dissolution of the organization, registration procedure, and registration authority and others.

The right of a religious organization to receive legal status derives from its right to freely exercise its religious activity.[23] Several conclusions, issued by the Venice Commission, mentions that if a religious group wants to receive legal status, they should have such opportunity.[24]Apart from this, the Venice Commission and OSCE Human Rights office in their joint guidelines mention that the autonomic existence of religious communities is an inherent part of pluralism in a democratic society and of religious freedom.[25] According to the Guiding Principles, the registration procedure for religious organizations should not be more difficult than for other groups and communities. Besides, the procedure should be quick, transparent, fair, inclusive, and non-discriminative.[26]

Apart from this, one of the consultative conclusions of the Venice Commission mentions that, the law should not require excessively detailed information for registration. The refusal of registration for incompliance with such requirements will be arbitrary, particularly in those cases, when the registration is mandatory.[27] As for the Venice Commission recommendations concerning the timeline of registration, the commission found in the case of Hungary that delays should be prevented at maximum level, and in fact, there is no need to appoint waiting time.[28] The European Court of Human Rights shares the same opinion. The court notes that some time may be needed for registration of a new religious organization, but a religious group with a long history of activity in this or that country does not need waiting periods.

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[23] CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §6 See also CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo, §46

[24] CDL-AD(2011)028, Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §64

See also: CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo, §48

[25] Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §18

[26] Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and the OSCE/ODIHR, §17-24.

[27] CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §66

[28] CDL-AD(2012)004, Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary, §44

Therefore, it should be assessed in a relatively short period whether this group meets the requirements established under law. [29]

The state may reject the registration of a religious organization for the legitimate purpose of protecting public safety and interests. If the deeds of a specific religious organization include such acts that are dangerous for population and public security, the state may interfere in such exercise of religious freedom. However, the state must not enter into substantial discussion whether the organization is holding a sincere religious belief, must not define its beliefs and objectives. [30]

Hereby, it is also important to mention, that registration of religious organizations has a direct connection with the smooth implementation of religious activities.
Since registration provides the basis for the functioning of a religious organization, such as the opening of a bank account, entry into certain labor relations, exercise property rights, and other logistical activities. [31] The status of a religious organization is also often associated with the granting of certain privileges or powers by the state, such as exemption from taxes, funding, and so on. Apart from this, the establishment of essential requirements for registration is itself connected with the issue of the religious organization's definition, which is subject to broad discussion.

Consequently, the establishment of a religious organization and the formation of the requirements for registration can easily be turned into a space for restricting religious freedom or establishing discriminatory practices. It is important to note that not all religious organizations may wish to register because of their beliefs, or due to the fear that the State will use this registration as a controlling mechanism. For example, the International Council of Evangelist/Baptist church opposes registration due to the principles of their belief.[32] Contemporary international standards and state practice unconditionally recognize that the requirement for mandatory registration is incompatible with freedom of religion. [33] Freedom of religion and belief does not depend on the legal status. People and groups of people can practice any religion without registering if they so wish.[34]

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[29] Compilation of Venice Commission Opinions and Reports Concerning freedom of religion and belief. (Revised July, 2014). pg 36.

[30] CDL-AD(2010)005, Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", §§63-64

[31] Laws on Religion and the State in Post-communist Europe; edited by W. Cole Durham, Silvio Ferrari, pg XVI.

[32] Under the 2002 legislative change in Estonia, the authority to register a religious organization was transferred from the Ministry of the Interior to the four district courts of Estonia. This amendment, on the one hand, was positively assessed by the religious organizations because the issue of registration would no longer be the subject of political debate and would be into the hands of a more independent tribunal. However, it was emphasized that religious organizations are not required to register. For example, the International Council of Evangelical / Baptist Churches has been opposed to registration in all post-Soviet countries where it operates. In some of these countries, they faced problems, but not in Estonia. See, FELIX CORLEY, 5 JULY 2002 https://english.religion.info/2002/07/05/estonia-registration-transferred-from-interior-ministry-to-courts/

[33] OSCE/ODIHR-Venice Commission Guidelines for Review of Legislation pertaining to Religion or Belief, pg 17. Available at https://www.osce.org/odihr/13993?download=true

[34] W. Cole Durham Jr. (2010) LEGAL STATUS OF RELIGIOUS ORGANIZATIONS: A COMPARATIVE OVERVIEW, The Review of Faith & International Affairs, 8:2, pg 7; OSCE, "Guidelines for Review of Legislation." The Guidelines are available online in English, adopted by Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18–19 June 2004).

From the post-Soviet countries, only Belarus requires mandatory registration of religious organizations.[35] Macedonia also had similar regulation, but in 1998, the Constitutional Court found this regulation as unconstitutional.[36] Furthermore, the legislation of Moldova contains such provisions, which may be defined as if it requires mandatory registration. Armenian and Azerbaijanian administrative Codes also establish sanctions for preventing registration.[37] Bulgaria rejected such repressive legislation when received a negative assessment from the Venice Commission in 2000.[38] One of the valuable rewards for religious organizations after the dissolution of the Soviet Union was that they gained a right to receive legal status. However, it should be highlighted that, this is a right not an obligation. The European Court of Human Rights discussed this issue several times in the cases against Greece, Turkey, Moldova, Russia, Bulgaria, etc.[39]

Apart from the non-mandatory principle of registration, ECHR in this case emphasized other major principles: Religious Organizations, when they wish to gain legal status, fall under the freedom of religion as well as under the freedom of association. The registration process should not be discriminatory.

An obtainment of legal status by the religious organizations in post-communist countries is largely regulated in two ways - they can register as a non-governmental organization or a special religious organization. In most cases, religious organizations are banned to register as NGOs (Legislation of Azerbaijan, Belarus, Czech Republic, Macedonia, Russia).[40] Many of them simply do not explain the possibility of these alternatives (Armenia, Bulgaria, Hungary, Latvia, Lithuania). However, as the best practice indicates, if more freedom of choice is left for religious organizations how to define their legal status, more the quality of freedom of religion and legal flexibility is increased. For example, instead of narrow and restrictive regulation, legislations of Albania and Romania create broader opportunities to register as a common association to gain legal status and protect their believers and communities' interests and rights.

Procedurally, the registration requirements are the same in all countries. The standard information that states require for registration from religious organizations is information about members and founders of a religious community, the organization's charter, description of the faith principles and structure, procedures for the charter amendment, and other formal details. The main principle set by the European Court of Human Rights in the case of *Bessarabia vs Moldova* is that it is inadmissible to impose

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[35] Law of the Republic of Belarus on Freedom of Conscience and Religious Organizations, 2002. Article 14, 16. "Religious organizations are subject to the mandatory registration. From the moment of registration, a religious organization gains the status of a legal entity."

[36] Macedonia Constitutional Court decision of December, 1998. Law and religion, pg 19.

[37] Armenia Administrative Law, article 206; Azerbaijani Administrative Code, article 299 (1).

[38] Amendments to the Bulgarian Law on Confessions entered into force in 2008 - Article 14 of the law stated before the amendment that a religious organization should acquire the status of a legal entity, although current legislation states that "it may gain status", See: https://www.legislationline.org/legislation/topic/78/country/39

[39] Canea Catholic Church v. Greece, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, December 16, 1997) (legal personality of the Roman Catholic Church protected); United Communist Party of Turkey v. Turkey (ECtHR, App. No. 19392/92, January 30, 1998); Sidiropoulos & Others v. Greece (ECtHR, App. No. 26695/95, July 10, 1998) Metropolitan Church of Bessarabia v. Moldova (ECtHR, App. No. 45701/99, December 13, 2001); Moscow Branch of the Salvation Army v. Russia, (ECtHR, App. No. 72881/01, October 5, 2006);

[40] Durham, laws on religion in post-communist states, pg. 21.

requirements that include the substantive consideration and evaluation of the beliefs of a particular religious organization. [41]

The legislation of individual countries recognize additional requirements for registration. For example, for the sake of transparency, the legislation of Moldova and Poland requires information from religious organizations on their funding sources, which may be justified to combat terrorism.[42] Some of these additional requirements go beyond simple formal purposes and enters into the substantial assessment of religion and belief. For example, the Law of the Russian Federation on Freedom of Conscience and Religious Associations, the religious association must provide documents on the roots of their belief and practices, including information about their attitudes towards family and marriage, education, health, etc. [43] Such regulations can be considered as interfering in the content of religious organizations believe, which may also become the ground of registration refusal according to the Article 12 of the same law if a specific issue is incompatible with Russian law or constitution. As there is no objective standard that religious organizations can qualify, with such regulations they are subject to vague and unintelligible control over their religious practices.[44]

Armenian legislation is further problematic in that regard, as religious organizations are obliged to approve that they are not based on violent principles and that they depend on holy canonical rules, are free from material objectives. [45] The imposition of such substantial obligations is incompatible with the freedom of religion and with the requirements of state neutrality.

Another important issue for discussion regarding the registration requirements of religious organizations concerns the minimum number of members of the organization and the duration of religious activities of that organization. The requirement of a specific number of members must not be one of the criteria for registration.[46] This was important in the case of Slovakia when legislation required 20.000 members as an obligatory criterion for registration. Such problem exists in Romanian law, which requires 0.1% of population support to grant state recognition as a religion.[47] This means that religious organizations must have at least 20.000 followers.

In general, only 6 states from post-soviet countries require at least 30 members for registration, [48] and the majority of them establish the requirement of a minimum of 15 members.[49] In the OSCE member states, the minimum requirement for more than 10-15 members is very rare, which is incompatible with

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[41] Bessarabia vs Moldova, ECHR, app No 45701/99, 13 Dec, 2001. Paras 110-129.
[42] Durham, laws on religion in post-communist states, pg. 24.
[43] The Law on Freedom of Conscience and Religious Associations under the legislation of the Russian Federation, Article 11 (5).
[44] Durham, laws on religion in post-communist states, pg 24.
[45] Law of the Republic of Armenia on Freedom of Conscience and Religious Organizations, Article 5.
[46] W. Cole Durham Jr. (2010) Legal Status of Religious Organizations: A Comparative Overview, The Review of Faith & International Affairs, 8:2, 3-14, available at:
https://www.tandfonline.com/doi/pdf/10.1080/15570274.2010.487986?needAccess=true
[47] Romanian Law on General Status of Freedom of Religion and Religious Denominations, Article 6.
[48] Law in Armenia, Article 5 (e); Croatian Law of 2002, Article 21; Law of the Czech Republic of 2002, Article 10; Hungarian Law of 1990, Article 9 (1); Law of Poland, Articles 30-31; Law of Slovakia, Article 11;
[49] Albanian Law on Non-Commercial Organizations, 2001, Article 10; Law of Azerbaijan 1992, Article 10; Estonian Law of 2002, Article 13; Latvian Law of 1995, Article 7 (1); Russian Law of 1997, Article 9; Law of Ukraine, 1991, Article 14.

international standards of freedom of religion.[50] The European Court of Human Rights has repeatedly ruled that states must establish reasonable requirements for legal status. [51] Macedonia's Constitutional Court has ruled that the requirement of 50 members for registration is unconstitutional, restricting freedom of assembly. In that sense, the requirements of 20,000 members in Slovakian and Romanian laws, 300 members in Czech law, and more than 200 members in Armenian law are excessive and creates a discriminatory approach for new, relatively small religions, which also aims to protect the influence of dominant religions.[52] High membership requirements can be an unjustified burden for religious organizations and incompatible with their religious beliefs.

The joint guidelines of the Venice Commission and the OSCE indicate that imposing higher requirements on minimum membership for a religious organization is not acceptable, as well as the establishment of a long period of activities.[53] The Venice Commission supported a limited and minimal membership requisites when considered the requirement under the Republic of Kyrgyzstan on 200 members and 500 members established in Armenia for the registration of religious organizations.[54] Interestingly, the Venice Commission explained in cases of Hungary and Romania, that the obligation to submit a document signed by members may be an impediment for small religious groups to gain legal recognition. The problem arises primarily for those groups that are recognized in theology not as a polytheistic church but as an individual congregation.[55] The request of at least 50 members in Kosovo did not provoke much criticism, although no further explanation was given by the Commission regarding the minimum requirement of 50 members.[56]

The opinions are also different concerning the requirement of the duration of activities for religious organizations registration. In the legislation of several post-Soviet countries (Croatia, Russia, Belarus) religious organizations are required to have from 5 to 20 years of experience. Similar requisites have been made in several Western European countries and in Lithuania, which is often used by post-Soviet countries to justify such regulations. For example, according to Article 6 of the 1995 Lithuanian Law,[57] The Seimas (Parliament) of the Republic of Lithuania may recognize a religious organization, if 25 years have elapsed since its initial registration. Initial recognition is valid if this organization was legally functioning in Lithuania since 1918. A religious community that is a part of the individual religious association will gain legal status after recognition from state authorities (it may happen after 25 years of initial registration).

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[50] Durham, laws on religion in post-communist states, pg 25

[51] Bessarabia Case, para 110-129; Hassan and Caush vs Bulgaria, paras 56-65

[52] Durham, pg 25.

[53] Venice commission compilation, pg 37.

[54] CDL-AD(2008)032, Joint opinion on freedom of conscience and religious organisations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, §32 (related to a membership requirement of 200); CDL-AD(2009)036, Joint opinion on the law on making amendments and addenda to the law on the freedom of conscience and on religious organisations and on religious organisations and on the law on amending the Criminal Code of the Republic of Armenia, (related to a membership requirement of 500)

[55] CDL-AD(2012)004, Opinion on act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary, §52

CDL-AD(2005)037, Opinion on the draft law regarding the religious freedom and the general regime of Religions in Romania, §16

[56] CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §68

[57] REPUBLIC OF LITHUANIA LAW ON RELIGIOUS COMMUNITIES AND ASSOCIATIONS 4 October 1995 – No I-1057 (As last amended on 22 December 2009 – No XI-601) Vilnius, 6

Lithuanian legislation recognizes 9 religious organizations (Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Russian Orthodox, Old Believer, Judaist, Sunni Muslim, and Karaite) which already have a historical background and do not need to quality 25-years requirement for state recognition. Other religions have to protect these regulations. Furthermore, according to the Law on Freedom of Religion of Portugal,[58] religious associations have to approve "30 years of its organized social existence", unless the organization has 60 years of experience outside Portugal. Such regulation contradicts the 2009 ruling of the European Court in the case of Kimlya v. Russia, where ECHR ruled that the legislation should not establish a long-existence requirement to receive legal status. Such demand unfairly limits the freedom of religion and belief for a newly formed organization and gives unfair privilege to the dominant religious groups. [59] Additionally, the Venice Commission and the OSCE directly recommended that laws on religious organizations that define the legal status obtaining regulatory rules, should not constitute a long-term existence/activity in a particular state as a registration requirement. Also, these laws should not set out the requirements for registration, which become an excessive burden for religious associations and delay the process.[60]

1.4. Definition of Religion/Religious Organization

The line of criticism of the Laws on Religion is mainly based on the fact that they define and explain "religion," "faith," "religious organization/association/denomination," and so on. Also, the laws on religion often include definitions of terms such as "cult", "traditional religion", "sect" and others. Apart from this, the fact that these definitions are problematic from a purely theoretical viewpoint and will always be the subject of discussion, these terms are often related to the status-related rights, privileges, and obligations. Accordingly, certain definitions in the law can create problems for the exercise of freedom of religion, unfoundedly, and discriminatorily interfere in it.

It is noteworthy, that these terms have no definition in international law and any attempt to explain them ends with a debate that does not go to a conciliatory position. The main argument beyond this discussion is that these terms cannot be legally defined due to the dogmatic, vague, multifaceted concept of religion.[61] The main mistake that states make in definition, is that they associate religion with God, although there are clear opposing examples, not in the form of theistic religions such as Buddhism and polytheistic religions such as Hinduism. Terms such as "cult" and "sect" are often used to refer to non-traditional religions.

Any restriction that pre-determines what is considered a religion and what is not must be subject to very strict scrutiny, and during the attempts to define religion, subjectivity, arbitrariness, and bias must be

[58] Law on Religious Freedom of Portugal, LAW Nº 16/2001 of 22nd June, article 35-37

[59] ECtHR 1 October 2009, Kimlya v. Russia, Application nos. 76836/01 and 32782/03.

[60] Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the European Commission for Democracy through Law (Venice Commission) and adopted by the Venice Commission at its 59th Plenary Session (18-19 June 2004) and welcomed by the OSCE Parliamentary Assembly at its annual session (5-9 July 2004)

[61] Guidelines for legislative reviews of laws affecting religion or belief, p.4; Venice Commission General Comments, pg, 6.

avoided. [62] However, any criteria that will be used in the interpretation of religion must be flexible, since no religion historically rules out change, development, or evolution.[63]

Understanding the importance of religion is of particular importance in protecting freedom of religion as one of the fundamental human rights. In this case, the questions are related to what is the object of protection, what is the scope of its protection and how should we separate what deserves protection under the status of religion and what does not. While searching for the definition of religion, there are always two main problems in the agenda: not to over-expand this definition, or not to over-narrow it, which would be unfoundedly restrictive for religious freedom. [64] The risk of over-expansion also implies the protection of subjects that should not be defined as a religion. According to recent trends, this concept is becoming broader. This is also observed in the formation of theories on the definition of religion in literature and judicial practice.

Four dominant approaches of the definition have been developed in literature and practice, often advocated by legal scholars and also used by the courts. These are substantive or existential theory, which relies on the identification of existing or characteristic signs of specific religion; Functional theory, which is concentrated on the role of confession in the believer's life; Theory of Analogy – it looks at the characteristics which identify religious feelings and the differential theory that focuses on the believer's self-perception, as to what is or is not a religion.

More specifically, substantive theory seeks to explain religion by identifying the supreme belief in it. This was discussed in 1890 by the Supreme Court of the United States Davis vs. In Beason's case, where the court explained that "religion is a person's belief in his or her creator"."[65] This approach has been demonstrated in other U.S. Supreme Court rulings. However, such an approach in turn, does not include religions that do not consider the faith of the Supreme Creator, and in the sense that freedom of religion also applies to non-religious beliefs. Therefore, the Supreme Court's approach has changed since the 1960s, naming Buddhism, Taoism, secular humanism, and other religions in this category of religions.

As for the functional theory, which instead of recognition of religion according to the content of its beliefs, it focuses on the role of faith and practice in the life of the individual. A classic example of this is Paul Tillich's idea of faith as the ultimate concern of man, which guided the Supreme Court of the United States and found that human resistance to compulsory military service is protected under this very belief, even though his resistance was not strictly religious, but an ethical belief played such role in his life.[66] Exactly, in this case, the above-mentioned substantive theory was changed in the United States practice.

The theory of analogy even tries to find the difference between religion and non-religion by identifying between them the analogies, that have a questionable phenomenon and the religious phenomenon. In discussing this theory, Judge Adams of the Supreme Court of the United States argued that the definition of religion should be flexible, although some objective guidelines are still needed to prevent *ad hoc* law.[67]

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[62] Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§46-47

[63] Ibid, para 55

[64] Law and Religion, pg. 40-41

[65] Law and Religion, pg 45.; Davis v. Beason, 133 US, 333,342, (1890).

[66] US Supreme Court, US vs. Seeger (1965).

[67] Law and religion, pg 47.

Therefore, such an approach differs from the substantive approach where flexibility is less and differs from the functional theory where specific roles exist. This theory also takes into account the beliefs that use an analogy to have certain similarities in recognized religions. This theory also takes into account such beliefs that have specific similarities in recognized religions by using analogical tools. The theory has its critics as it establishes the list of "unquestionable religions", however it is not clear on what grounds they are recognized as unquestionable.

The differential theory goes even further in the flexibility of the elaboration of religion and shifts the focus to the question of how far the courts or other state institutions can delegate authority to the believing community to determine whether they are religious or not. The central axis of this theory stands on the idea of "self-determination", which is a relevant and often decisive factor in court decisions. In this case, it is more supportive to limit the differential theory, since excessive flexibility would allow more interpretations. This implies that the state allows people to practice a particular religion, as long as this action does not create an unavoidable need for intervention, it must accept self-determination of its own religion if there is no convincing reason not to accept this definition.[68]
At the same time, the definition of religion is on what the relationship between the state and the church stands. It also has an impact on what interaction is between different religions in the state. Simultaneously, religions can use definition as part of their autonomy, since people define themselves not only by words but also by actions. Therefore, restriction on self-determination also can qualify as a restriction of freedom of religion.[69]

The literature states that it is up to the plaintiff to prove that he or she truly believes what he or she is claiming. This can be approved in several ways, which is depended on the content of belief. For the state, the burden of proof is much stricter, as it needs to approve whether such grounds exist or not to overweight persons/organizations' self-determination right as a religious or non-religious believer.[70]

The above-given brief analysis of the theories of religion definition allows us to conclude that modern standards of religious freedom allow for a broader definition of religious and non-religious organizations. This principle is highlighted by OSCE and Venice Commission recommendations. [71] Therefore, fragile and inflexible definitions by the state carry high risks of interference in this freedom. To ensure that the flexibility of the definition does not over-expand the object of freedom of religion for dishonest purposes, there is an evaluation test established by court practice that determines whether the intervention is legitimate and how correctly this or that organization defines itself religiously or non-religiously.

The Human Rights Committee clarifies in its general commentary to Article 18 of the Covenant on Civil and Political Rights that this article protects theistic, non-theistic and atheistic beliefs, as well as the right not to have any faith or belief. The Committee notes that "it does not agree discrimination against any religion or belief for any purpose, including if this religion/belief is newly formed or constitutes a religious minority and is therefore subject to harassment by the traditional religious community."[72]

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[68] Durham and Sewell, Definition of Religion, in *Religious Organizations in the United States: A study of Identity, Liberty and the Law, 3, at 38* (James A. Serritella, ed, Carolina Academic Press 2006).
[69] Law and Religion, pg. 43
[70] Durham and Sewell, pg 39.
[71] Guidelines on the Legal Personality of Religious or Belief Communities, OSCE/ODIHR, 2014.
[72] Human Rights Committee, General Comment 22, article 18(2).

Therefore, to be in line with international human rights standards, this term must have the widest possible scope of use, not be limited to the ideas of traditional religions and beliefs. The term must be separated from religion so that the law protects the freedom of religion and belief, which means theistic, non-theistic, atheistic, and agnostic beliefs as well.[73]

As for the content of freedom of religion and belief, international human rights protection mechanisms explain that religion is practiced through worship, teaching, practice, and fasting.[74] The practice in addition to worship includes not only ceremonial events, but also customs, fasting, wearing religious garments, participating in rituals, using a special language, etc.[75] Apart from this, the practice or teaching of religion or belief includes elements of the religious groups' core activities, such as freedom to choose a religious leader, priest, teacher, the freedom to establish seminaries and religious schools, the freedom to produce and disseminate religious texts.[76]

Deriving from the abovementioned, the definition of religion or any related term and its inclusion in a particular legal context is the most difficult task for a legislator to pass a high-quality check and scrutiny, each word of which must be measured so as not to limit the high standards established for freedom of religion. The examination of the special laws on religion reveals that such definitions always carry certain problems.

For example, Moldovan law defines "religious cult" followingly: "A religious structure with the status of a legal entity, which acts on the territory of the Republic of Moldova, according to its own doctrinal, canonical, moral and disciplinary norms, with historical and customary traditions that do not contradict the existing legislation and are created by Moldovan legal entities, which jointly express their faith and follow established traditions, ceremonies, rules." Armenian law in the definition of a religious organization considers many cumulative requirements, including that this organization should not contradict the morals and law of the society, as well as that it should be based on any historical-canonical holy book, is included in modern religious communities and others. Such definitions raise suspicions that they are tailored only to existing religions and lock the way for new religious associations to be recognized under the same law equally to other religions. Also, all religions are required to have traditional historical customs, sacred books, and so on.

1.5. Registration authority of a religious organization

In most cases, a registry body under the legislation on religious organizations is a permanent state body - it could be a state committee, or a council on religious affairs, or a body under the government's structural unit - the Ministry of Justice, or the Ministry of Culture. [77] Recently, there has been a trend of transferring

[73] Law and Religion, pg. 40
[74] ICCPR, article 18.
[75] Human Rights Committee, General Comment N22.
[76] Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §§22-24
[77] Azerbaijan - State Committee on Religious Organizations; Belarus - the governmental body for religious affairs, the Czech Republic - the religious department of the Ministry of Culture; Latvia - Council on Religious Affairs; Lithuania and Russia - Ministry of Justice;

registration functions to the courts (Estonia, Hungary, Albania, Bulgaria).[78] Imposing the function of registration of religious organizations to the judiciary can be a positive change while the judiciary is an independent body and free from political or other influences. Otherwise, the court may also support a discriminatory approach on the matters of registration, as it happened in 2004 when the Moscow court banned the registration of Jehovah's Witnesses. In 2010, the European Court of Human Rights found the violation of Article 9 of the Convention (freedom of thought, belief, and religion) and Article 11 (freedom of assembly and association).[79]

The special laws define the period of up to 1 month for decision-making by the registration authority.[80] The shortest period is defined by the Law on Non-profit Organizations of Romania (3 days). The laws that do not set a time limit for the registration authority (Albania, Czech Republic, Estonia, Macedonia, Slovakia), or establish unreasonably long period (Lithuanian law stipulates 6 months), or allow extensions (Belarus, Latvia, Russia) are problematic and incompatible with the principles of freedom of religion. [81]

The grounds for rejecting registration of a religious organization are the subject of a separate discussion when assessing their freedom of religion. If the religious organization's activity is incompatible with the constitution or law, this may become ground for refusal under the Special laws, ,[82] or if its activities are not religious with its nature, [83] or if this religious association is already registered with this name. [84] These grounds for refusal must be narrowly formulated and interpreted, otherwise the grounds and motives for restricting freedom of religion will be expanded, as well as the likelihood of making unreasonable decisions. Unless there is a direct risk caused by the registration of a religious organization, then it is unjustified to refuse it.[85] The decision to register should not be based on the motive of whether the religion is traditional, new, or specific to a particular society. Religious organizations need to have more flexibility and freedom, as evidenced by the international standards discussed above.

Some laws provide vague instructions on morals and the health of citizens (Croatia, Article 22.2; the Czech Republic, Article 5; Slovakia, Article 15-16; Poland, Article 33; Russia, Article 14). Such restrictions can be regulated by special norms of medical law, although they should not impede granting of legal status to a religious association. [86]

1.6. Dissolution of Religious Organization

[78] Law and religion, pg 28.
[79] CASE OF JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA (Application no. 302/02), 10 June, 2010.
[80] Law of Armenia (Article 16); Azerbaijani law (Article 16); Belarus (Article 16; establishes 1 month, although deferral of up to 6 months is possible if a religious organization serves an "unknown" faith); Latvia (Article 8.2); Moldova (Article 14); Russia (Article 11); Ukraine (Article 14).
[81] Law and religion, pg 29.
[82] Albanian Law on Non-Commercial Organizations, Article 5; Law of Armenia, Article 16; Law of Azerbaijan, Article 13; Croatian Law, Article 22; Czech law Article 5; Estonian Law Article 14 (1); Hungarian law Article 11; Law of Latvia, Article 11 (1.2); Russian law, Article 2.1. Law of Slovakia, Articles 15-16; Law of Ukraine, Article 15;
[83] Law of Armenia (Article 5); Czech law, Article 3; Russian Law Article 12.1.
[84] Croatia, Estonia, Czech Republic, Hungary, Latvia.
[85] Law and religion, pg 30.
[86] Law and religion, pg, 31.

The dissolution of religious organizations/ associations can be voluntary or forced. Voluntary dissolution does not require additional explanations, while on compulsory one international standards and principles apply, which protects the right to practice religion collectively and the right to have legal status.[87]

Special laws on religion governing the dissolution of religious organizations mainly define the grounds for forced dissolution: The harsh violation of law/constitution,[88] the violation of public safety, or harm to national security,[89] the attempts to forcibly change the constitutional order or violate the unity of the state,[90] stimulation of social, racist, ethnic or religious rivalry,[91] the violation of citizens' health or moral integrity,[92] the violation others freedoms and rights.[93]

The dissolution of a religious organization is an extreme measure that the state can take if it commits a gross, mass, or recurring grave crime. If a particular crime or violation has been committed by one or more members of a religious organization, the decision to dissolve the organization is disproportionate and unnecessary, as it is possible to impose individual sanctions. If the organization itself is not involved in illegal activities, the restriction of religious activities due to crimes committed by individuals is not in line with the standards of freedom of religion. Some special laws on religion allow the organization to disintegrate if it is involved in illegal activities. [94]

According to the Venice Commission, a religious organization can only be abolished following a court decision if it "repeatedly violated the law or this violation was severe in nature." This must be interpreted and proportionately applied in accordance with the standards set out in Article 9 of the European Convention.[95]

At the same time, the grounds for the forced dissolution of a religious organization must be narrowly interpreted if emerging needs exist in a democratic society. Restrictions on the legal status of an organization are inadmissible, if they substantially examine the teachings and beliefs of a religious organization, for example, when it comes to the health of citizens, or education, and so on.

The state may regulate such issues in special legislation, but this should not be decisive for granting or revoking legal status for a religious organization.[96] It is difficult to imagine situations where it is necessary

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[87] CDL-AD(2004)028, Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, p.12

[88] Albania, Article 44; Armenia, Article 16; Azerbaijan, Article 59; Belarus, Article 39; Croatia, Article 23 (1); Latvia, Article 18 (4); Ukraine, Article 16, etc.

[89] Law of Armenia, Article 3; Law of Belarus, Article 39; Croatian Law, Article 23 (1); Czech law, Article 5; Law of Latvia, Article 18 (4); Romanian Law, Article 56 (1). Etc.

[90] Law of Belarus, Article 39, Law of Latvia, Article 18 (4); Romanian Law, Article 56 (1); Law of Ukraine, Article 3;

[91] Law of Azerbaijan, Article 1; Law of Belarus, Article 39; Croatian Law, Article 23 (1); Law of Latvia, Article 18 (4); Lithuanian Law, Article 20; Etc.

[92] Law of Armenia, Article 3; Law of Belarus, Article 39; Croatian Law, Article 23 (1); Czech law, Article 5; Law of Latvia, Article 18 (4); Etc.

[93] Law of Armenia, Article 3; Law of Belarus, Article 39; Croatian Law, Article 23 (1); Czech law, Article 5; Law of Latvia, Article 18 (4); Etc.

[94] Albanian Law on Non-profit Organizations, Article 44 (b); Lithuanian law, article 20.

[95] CDL-AD(2010)054, Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§97-98

[96] Law and religion, pg 35.

and proportionate to disrupt the legal status of an organization solely because of its beliefs and teachings. This can only happen when the organization, as such, is itself a source of urgent risk and its nature is harmful, and even solely its membership will be enough to use an individual as a tool for its illegal activities.[97] At the same time, it is noteworthy that civil disobedience and opposition supported by religious organizations have traditionally been a source of democratic reform. Thus, provisions that establish grounds to revoke the religious organization's status due to opposition to the law threaten and "freeze" freedom of expression, which is an important part of an open moral dialogue in society, which can also be the basis for transformation and progress. [98] Therefore, any such restriction should be strictly and narrowly defined and interpreted, and should not be used on political grounds to discriminate against a particular religious organization.

It should also be noted that the law should give the right to appeal against the decision to dissolve a religious organization, and the decision should be written and substantiated. [99]

1.7. Benefits/preferences of religious organizations under the special laws on religion

Registration of a religious organization is linked to standard benefits related to a legal status, which helps religious organizations and groups to exercise their freedom of religion. In particular, obtaining a legal status allows organizations to acquire property, enter into contracts, go to court and protect the rights and interests of the organization, and engage in other routine legal proceedings as a person with legal status.[100]

Also, religious organizations can benefit from the exemption from budget taxes. Depending on the economic situation of a particular state, financial benefits may be limited or generous, although in general the structure of benefits should not be discriminatory.
Most religious organizations are exempt from taxes, their charitable donations are exempt from taxes, and the export and import of religious items are exempt from VAT.[101] As a rule, exemption from taxes is tied to having legal status.

The issue of privileges may be further expanded under the legislation of specific countries, which in turn increases the risks of discriminatory treatment. As a rule, the benefits such as subsidies to maintain historical buildings,[102] the appointment of pensions for religious persons,[103] funding of cultural, charity, and religious activities,[104] must be applied to all religious organizations, subsidies must be transparent, open, and non-discriminatory.[105] European Court of Human Rights on the case *Jehovah's Witnesses of*

[97] Law and religion, pg 36.
[98] Law and religion, 36.
[99] CDL-AD(2012)022, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §§93-94
[100] Venice Commission and OSCE/ODHIR joint Guidelines for legislative reviews of laws affecting religion or belief, pp.11-12; Albanian Law, Article 14; Law of Armenia, Article 14; Law of Azerbaijan, Article 11; Croatian Law, Article 6 (3; Czech Law, Article 6 (1); Hungarian Law, Article 13; Latvian Law, Article 13 (1); Lithuanian Law, Article 10.
[101] Law of Poland, Article 13; Law of Lithuania, Article 16; Law of Moldova, Article 27; Etc.
[102] Law of Belarus, Article 30; Russian Law, Article 4.3.
[103] Law of Azerbaijan, Article 27; Moldovan Law, Article 48.
[104] Croatian Law, Article 18 (3); Hungarian law, Article 19; Lithuanian Law, Article 7; Russian law, Article 18.3. Etc.
[105] CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp.11-12

Moscow and others vs Russia[106] found that, if a state grants privileges to the religious groups according to their special status, the state should establish a respective legislative framework, which grants all religious groups equal opportunities to gain such status and criteria must be non-discriminatory.

The conclusion of the Venice Commission on Kosovo clarifies that the establishment of different treatment in the Law on Religion as if the five specific religious associations are part of the historical, cultural, and social heritage of the country, establishes a discriminatory approach. To avoid a discriminatory approach, the relevant Kosovo authorities must ensure that other religious groups are included in this list, which is also a historical and cultural part of Kosovo. In resolving this issue, these other religious groups should be compared to the five listed groups, and the margin of appreciation that state agencies have should be in line with European standards. For this, the state must establish neutral criteria that will create an equal basis and do not accord special privileges to any organization. [107]

1.8. Other contextual issues in the Laws on Religion

The special laws on religion have been criticized for their substantive discussion/interference in religious matters, which, as discussed above, is in direct conflict with the standards and principles established by freedom of religion.

An example of such contextual interventions and regulations is Romania's Law on Religious Freedom and General Status of Religious Denominations. This law has been criticized by the Venice Commission for its difficult registration requirements and restrictive content issues. More specifically, Romanian law requires the recognition of denomination "not jeopardize public safety, order, health, morals, or fundamental human rights and freedoms."

Such general provision leaves a wider grounds for state intervention in the registration of religious denominations, which has been strongly criticized by the Venice Commission in its opinion on this law. Bearing in mind the facts, that under Romanian legislation strict requirements are provided for the registration of new denomination (12 years of experience and 0.1% of population support which is up to 20.000 followers) and the law recognizes 18 major denominations, which were functioning in Romania for years, it is obvious that, the state authorities left wide grounds of intervention to refuse registration of specific denominations if they are not compatible with this provision.

Refusal to the registration to protect the security, public order, health, morals and rights of others and restrict their activities are established under the laws of Bulgaria, Latvia, Lithuania, Romania, religion and

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CDL-AD(2011)028, Joint Opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR, §76; CDL-AD(2012)004, Opinion on act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary, §98

[106] *Religionsgemeinschaft Zeugen Jehovas v. Austria*,

[107] CDL-AD(2014)012, Opinion on the draft law on amendments and supplementation of law no. 02/L-31 on freedom of religion of Kosovo*, §§60, 61, and 62

religious organizations..[108] Especially when the registration procedure requires the religious organization to submit information on its activities, dogmatics, teaching and forms of religious ceremonies to the relevant registration authority, the state is given a broader opportunity to enter into scrutiny and content assessment of specific religious teachings or ceremonies and assess whether it is contrary to public order, security, moral, etc.

Another example of contextual intervention in the freedom of religion under the special laws is the Latvian Law, Article 6, according to which6, only the Christian religion can be taught in public schools, for those who have expressed their desire to do so in writing (at least 10 students). The teaching of the Christian faith and ethics is funded by the state budget.

Observation on the special laws on religion also reveals other substantive limitations that may be an obstacle to the full implementation of the freedom of a particular religion and may not be justified by established international standards. The Lithuanian law, for example, defines places of worship that can be religious buildings and their surroundings, as well as citizens' homes, funerals, and cemeteries. Hospitals, prisons, and other public spaces can be added, if the relevant bodies meet the requirement and do not pose a threat to public order, the health of others, and so on.

1.9. Western European experience

While discussing the law on religion, it is often emphasized that Western European countries also have experience in passing such laws. Therefore, it is important to better understand the historical and political context of the experience of Western European countries during the adoption of relevant laws.

By adopting the Vienna Document in 1989, OSCE member states undertook that "following requirements of the community of believers, grant appropriate status for the free practice of their faith. This commitment is being fulfilled in many countries, however, there are challenges by the imposition of mandatory registration and other practical problems that do not go unnoticed by the relevant authorities. It is also important that practice is being developed and refined to strengthen the freedom of religion standards. In this regard, there are several conclusions and recommendations of the OSCE Human Rights Institute (ODIHR) and the Venice Commission that have been discussed above, including the 2004 and 2014 guidelines on religious freedom.[109] Therefore, it is important to take into account the experience of any country when it comes to the adoption of this or that law and what assessments it had/has with today's approaches, how they are used in contemporary practice.

Western European countries usually do not define what religion is in either the Constitution or other relevant legislation, and mostly entrust the courts with the power to determine the issue in the event of

[108] Law of the Republic of Bulgaria on Religious Denominations, Article 7. Law of Latvia on Religious Organizations, Article 8;

[109] Guidelines for Review of Legislation Pertaining to Religion or belief: https://www.osce.org/odihr/13993?download=true; Guidelines on the Legal Personality of Religious or Belief Communities, OSCE/ODIHR, 2014.

a dispute.[110] Therefore, explanations about religion are included in court practice, and in some cases the court may refuse to explain it.

For example, a British court ruled that it was not necessary because it was sufficient to establish "faith" or that it was difficult to define religion "especially in a growing multicultural era" where there is a growing trend of new religions.[111] The states have agreed that religion should be widely interpreted and that "religion" does not include only churches and officially recognized religious communities, and that some national courts tend to limit the over-Jewish-Christian understanding of religion (Slovenia, Austria, Spain).[112]

There is also a consensus in Western European countries that there should be minimal objective criteria that religious organizations must meet before it can be officially recognized. However, the criteria vary from country to country. Some do not have such a criterion at all. [113] However, in Italy, for example, in 1993 the court set the criteria and considered them to be "public recognition", "public opinion" and "self-determination."[114] In Portugal, it is considered important to assess how deeply entrenched this organization is in society. [115] In Germany, the definition of religion and belief in the early period was related to well-established beliefs, but later this approach was changed and discussed objectively according to its content and external expressions, where religious self-esteem is also important.[116]

In Western European countries, practice is also varying in explaining what elements religion includes. Everyone agrees that mostly it is “belief” or “group of beliefs”, “expression of belief” or “specifically formulated belief” (Uk, France, Austria, and Sweden.)[117]

As for the rule of registration, there are various alternatives in legislation for the registration of religious organizations in Western European countries. For example, in **Spain,** three such forms exist - registration as a “confessional religion”, which is a major legal form for religious organizations and communities; Registration as “Religious Person” under which territorial and structural units are registered; and “Religious Federations”, which unifies several confessions. Also, it is an interesting fact that in Spain the law stipulates that there is no state religion, but a representative of the faith can enjoy equal rights and

[110] Norman Doe, Law and Religion in Europe Comperative Introduction, Oxfor University Press 2011.pg 21. Romania: SC, Decisions 769, 7 March 2000 and 1124, 28 March 2000; Germany: CCt, BVerfGE 84, 341. Sweden a discrimination bill 2003: Proposition 2002/03:65, p 82.

[111] UK: R v Secretary of State for Education, ex p Williamson [2005] UKHL 15, para 24,

[112] Slovenia: FRA 2007; Austria: ETA, Explanatory Notes: ‘Religion is any religious, confessional belief’; Spain: CCt, Judgment 46/2001 of 15 February

[113] UK: R v Secretary of State for Education, ex p Williamson [2005] UKHL 15, paras 23–24:

[114] Italy: CCt, Dec no 195, 27 April 1993: the Church of Scientology met the criteria of public recognition (pubblici riconoscimenti), common opinion (comune considerazione), and self-perception.

[115] Law and Religion in Europe Comparative Introdcution, pg 22.

[116] Law and Religion in Europe Comparative Introdcution, pg 22.

[117] UK: for religion as ‘faith and worship’, see Re South Place Ethical Society, Barralet v AG [1980] 1 WLR 1565; R v Registrar General, ex p Segerdal [1970] 3 WLR 479; France: Lyon CA, 28 July 1997: ‘common faith’; Austria: FLSCC, Explanatory Notes: religion is ‘a structure of convictions’; Sweden: for debate on ‘belief’ signified by ‘worship’ (religion) or ‘religious faith’ (trosuppfattning) and its connection to ‘conviction’ (övertygelse), see government Proposition 2002/03:65, pp 81–2.

privileges. However, in one of the rulings, the National Court ruled that the Catholic Church had more priority based on concordat than the Protestant, and thus tax benefits were guaranteed for it.[118]

In the **Netherlands**, legal entities and individuals have the same rights and obligations under civil law**.** Religious organizations can gain legal status as an association, foundation, or sui generis ecclesiastical organization, and can, therefore, engage in any legal action, such as filing a lawsuit, concluding a contract, claiming land, and more. All religious organizations have the opportunity to carry out the same legal actions in any of these three categories.

In **Italy**, a religious community can be unregistered, but the community cannot acquire a legally recognized status unless it has submitted the founding documents and registered.

It is also interesting to note that in **Germany**, although there are both registered and unregistered organizations, in practice the courts use the provisions of the registered religious organization similarly for those of the unregistered. [119]

It should also be noted that the recommendations of the OSCE and the Venice Commission are used in practice by these states (Sweden, Estonia, Albania, Poland) to avoid difficult and discriminatory requirements in the registration process. [120]

The practice of European countries on the non-discriminatory distribution of privileges and benefits also differs. In **Germany**, only legal entities under public law are exempt from taxes. Concerning this practice, the OSCE recommends that privileges be distributed non-discriminatorily, and the fact that a particular religion is declared a state religion in any country does not imply an opportunity to infringe on the fundamental rights of others.

Practice on these and other issues in Western European countries varies and changes over time with the growth of society and the refinement of international standards. Legislation in Western European countries also includes provisions granting privileges to individual religious groups, although it is important to consider the practice developed by national and international courts in relation to each provision.

Conclusion

The laws on religion in different countries, prior and subsequent assessments of its adoption, national and international jurisprudence, shows that the adoption of special laws on religion involves risks that may be conflict with freedom of religion under internationally established standards. At the same time, the start of a completely new order in the field of religion, in the conditions when a liberal rule of registration exists in the country and the legislation establishes high standards of freedom of religion, is dangerous. It should be noted that from the state, more specifically from the State Agency in Religious Affairs, which since its foundation is actively lobbying for adoption of the law, the legal and social need of adoption is not well-established and its arguments indicates to the objectives of differentiation of religious organizations. The agency's argument for codifying norms related to freedom of religion clearly cannot be considered a convincing and serious explanation for such a legislative reform.

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[118] Iglesia Bautista and Ortega Moratilla v Spain App no 17522/90 (1992) 72 D&R 256:
[119] OSCE guideliens, 2014. Pg 24.
[120] OSCE guideliens, 2014. Pg 29-31.

The practice discussed above shows that adoption of a law on religion carries high risks of defining religion, religious organization, revising the existing liberal rule of religious organization registration, and generally hierarchizing religious organizations. It also contains risks related to the content regulation of religious organizations' activities. These risks are illustrated by the draft laws discussed in Georgia in the 1990s and the public discussions that took place in relation to them. It is noteworthy that in this reality, the initiatives on a special law adoption are taken by the political organizations supporting the dominant religious organization, and a large part of other religious organizations see high risks and dangers in the adoption of the law for freedom of religion and equality.

Several laws recognize traditional and non-traditional religious organizations with separate registration requirements, including the number of members and the duration of the organization's activities. This practice is strictly criticized by international organizations within the international standards of freedom of religion protection. This trend was also noticeable in Georgian reality in the early period. Given that today the initiative to adopt the law has become particularly active in the background of the registration of non-traditional religious organizations, it is clear that the purpose of the law is to introduce the definition and complicate the registration procedure. This position was stated by the Georgian Orthodox Church openly[121] and for them equal registration rules for all religious organizations in 2011 were not also acceptable.

The division into traditional and non-traditional religious organizations, in turn, will strengthen the hierarchy that already exists *de facto* in the legal and administrative spheres.

Also, such changes will limit religious diversity. Today, for example, there are several powerful religious organizations within the Muslim community, since the state is excessively interfering within the internal affairs of individual organizations, leading to the creation of parallel and new religious associations.

Even in the face of strict regulation and registration of religious organizations, there is a pluralism eradication danger. In practice, this is already the case with Muslim organizations. The state recognizes and establishes legal relations only with the LEPL Administration of All Muslims of Georgia and demonstratively refuses formal communication with other Muslim religious organizations, which is openly discriminatory.

In addition to the objective to complicate registration requirements and to introduce a strict definition, there are also risks that the law will interfere in the substantive discussion of the activities of a religious organization. Such attempts also appeared during the elaboration of the constitutional amendments, when the ruling political team pointed out "national security" as the legitimate ground for restricting religious freedom in the final draft of the constitutional amendments. Also, the expectations on the content regulations are demonstrated in initiated various bills and proposals, such as banning of the niqab

[121] Registration of a religious organization - the Patriarchate demands changes in the resolution,2019: https://news.ge/2019/04/05/religiuri-organizaciis-registracia/

and burqa as religious attributes of Muslim women in public spaces.[122] the criminalization of religious insults [123] and the return of religious teachings at public schools.

It is noteworthy that authoritative international organizations which systematically assess Georgia's state of religious freedom never mention the absence of a special law as a shortcoming or a challenge. Georgia does not have any recommendations for changing the registration procedure or introducing a definition. Today, the adoption of the law and the introduction of the definition are supported only by the representatives of the dominant religious organizations and a small part of the religious organizations that are concerning due to excessive influence from state. Twenty members of the Council of Religions under the Public Defender's Office mentioned in a collective statement that it was unacceptable for them to pass a special law on religion.[124]

The Council member organizations are critical towards the establishment of regulations, and see the risks associated with the hierarchization of organizations. In contrast, signatory organizations have called on the state to address gaps in legislation in the area of discrimination.

Given the above, it is clear that the adoption of a special law on religious associations will be a regressive initiative and will undermine the existing free and equal legal order for the registration and operation of religious organizations. The Special laws increase the risks of interference in the internal autonomous issues of religious organizations and in practice further deteriorates the situation of non-dominant religious organizations. Bearing in mind the political and ideological values of the law initiators, makes the risks clear on the hierarchizations of religious organizations and discrimination. Furthermore, the initiatives set up and supported by these political groups in recent years have essentially contained approaches aimed at weakening religious freedom. In this regard, the negative role of the LEPL State Agency in Religious Affairs, which operates under the Prime Minister apparatus, should be emphasized, which since its adoption is exceptional with its ideas not compatible with freedom of religion and equality, and contains high risks of rights-violating regulations and practices.

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[122] Ombudsman - Wearing a burqa and a niqab may be discriminatory, but I do not think that banning women from wearing these clothes will protect their rights: https://www.interpressnews.ge/ka/article/528831-ombudsmeni-burkis-da-nikabis-tareba-shesazloa-iqos-diskriminaciuli-tumca-ar-vpikrob-rom-kalebistvis-am-tanisamosis-tarebis-akrzalva-ikneba-mati-uplebebis-dacva/

[123] The Coalition for Equality urges Parliament not to allow the adoption of a bill criminalizing the insult of religious sentiments: https://emc.org.ge/ka/products/koalitsia-tanastsorobistvis-moutsodebs-parlaments-ar-daushvas-religiuri-grdznobebis-sheuratskhqofis-kriminalizebis-kanonproektis-migheba; Kvitsiani's initiative envisages punishment for insulting religious sentiments http://liberali.ge/news/view/35561/kvitsianis-initsiativa-religiuri-grdznobebis-sheuratskhyofistvis-sasjels-itvalistsinebs

[124] We do not welcome the development of a special law on religious organizations - the Council of Religions: http://liberali.ge/news/view/42898/religiuri-organizatsiebis-shesakheb-spetsialuri-kanonis-shemushavebas-ar-mivesalmebit--religiata-sab