

EPF Occasional Policy Brief

RECOMMENDATIONS ON FREEDOM OF RELIGION OR BELIEF

September 2017

The **situation and recent developments** in Armenia pertaining to **freedom of thought, conscience, religion or belief** and respective **policy recommendations** are presented below. They are based on studies conducted by EPF as a part of programmatic activities, hands-on experience accumulated through several years of grassroots work and feedback collected from the various beneficiaries.

FREEDOM OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF

1. Legislation and policies relating to freedom of thought, conscience, religion or belief

SITUATION AND RECENT DEVELOPMENTS

The area of freedom of thought, conscience, religion or belief is presently regulated by the law “On freedom of conscience and religious organizations,” adopted by Supreme Council of the Republic of Armenia back in 1991, prior to the adoption of the Constitution of Armenia, based on the USSR Law “On freedom of conscience and religious organizations.” Bearing in mind the fact that the Law has a number of deficiencies, contradictions and fails to comply with Armenia’s international obligations the Ministry of Justice of Armenia (MoJ) has developed and circulated on **June 1, 2017** the **draft law (the Draft) on “Making Amendments to the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations” and amendments and/or supplements to adjacent laws¹ through the Governmental www.e-draft.am website without duly notifying relevant stakeholders and with rather restricted timing for discussions – until July 2.**

The civil society organizations and religious communities with which EPF is in regular contact had already articulated several concerns regarding the Draft.

In particular, it could be inferred from the wording of the Draft that it would not be applicable to the activities of the Armenian Apostolic Church (AAC) as opposed to other religious communities, thus creating a risk of discriminatory approach and undermining the foundations of equality and secularism.

Hence, EPF, within the project supported by the Embassy of the Kingdom of the Netherlands to Armenia and Georgia, **has initiated public discussions with all interested parties**, which took place on **June 16**.

Representatives from the Ministry of Justice, the Staff of the Ombudsman of Armenia, religious groups and organizations, CSOs, international organizations and embassies attended the discussion. The discussion provided a platform for comprehensive, profound and inclusive considerations of the Draft, and development of relevant recommendations regarding its worrisome provisions.

For the draft law to be understandable to a wider audience and the international community, EPF translated it into English and provided it to all interested international parties.

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

To mitigate possible risks with the Draft, EPF also approached the OSCE/ODIHR Senior Adviser on Freedom of Religion or Belief, who suggested that that National Human Rights Institution (the Ombudsman of Armenia) officially apply to OSCE/ODIHR with a request to provide a review of the Draft.

Thanks to these timely advocacy measures, the government's plan, if any, to pass the law quietly to the Parliament failed since too many local and international actors are already engaged. The achievements registered so far go as follows:

- EPF submitted a clarification request to the MoJ enquiring whether the Draft law will be equally applicable to the AAC due to the ambiguous wording of the Draft. An official positive reply is received, meaning that the AAC will be the subject of the law along with other religious organizations and associations. EPF is looking forward to the respective revisions of the draft.
- the Ombudsman of Armenia Mr. Arman Tatoyan has submitted the Draft law to OSCE/ODIHR for review per EPF's request.
- the deadline for public discussions of the draft law and other related legal acts has been extended from July 2 to July 31.
- some religious organizations, which are usually reserved in terms of engaging in such discussions, were part of the advocacy process, due to the carefully crafted methodology of trust building that EPF applies during human rights advocacy. As a result, religious or belief communities took a lead in the advocacy process, and EPF hopes that this consolidation will go beyond the discussion of this particular law only.
- the discussions around the Draft law initiated by EPF increased the law's visibility and generated a number of recommendations from religious organizations and CSOs. EPF has also submitted its package of recommendations on the Draft law to the Ministry of Justice.

RECOMMENDATIONS TO THE GOVERNMENT OF ARMENIA

General recommendation

- revise the Draft law on “Making Amendments to the Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations” and amendments and/or supplements to adjacent laws bringing it into full compliance with the principles and norms of international law, excluding any provisions that would result in a discriminatory approach towards religious organizations.

Specific recommendations

- to avoid misinterpretation of the Draft as well as based on the Constitution of Armenia, which guarantees prohibition of discrimination on the grounds of religion, the Draft should equally cover the relations pertaining to the activities of the AAC and stipulate its legal status as a “religious organization.”
- replace the ground of “state security” for limiting the freedom of religion, introduced in the Draft, with “public safety,” in conformity with paragraph 2 of Article 9 of the European Court of Human Rights (ECHR)². At the same time, the standard of “necessary in a democratic society” shall be added in the same clause in compliance with paragraph 2 of Article 9 of the ECHR.
- amend the Draft, making restrictions on carrying out religious preaching in educational institutions equally applicable to the activities of the AAC.

2. http://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

- remove the reference to the Law “On non-governmental organizations,” which in fact confusingly mixes religious organizations with non-governmental organizations from the Draft, and introduce a new provision, envisaging the procedure of establishment of religious organizations.
- remove a blanket prohibition on foreign financing of religious organizations, bearing in mind the OSCE/ODIHR-Venice Commission Joint Opinion for Armenia, which considers the blanket prohibition of foreign financing of religious communities to be unreasonable and emphasizes the incompatibility of such prohibition with the requirements of Article 9 of the ECHR, i.e. absence of the “necessary in a democratic society” standard.
- replace with the term “member” of the religious organization the concepts of “follower” and “servant” and remove the requirement of keeping the personal data on the members of the organization.
- further, clearly provide an exhaustive list of documents on the activities of the religious organization to be requested by the Authorized Body (which carries out supervision over activities of religious organizations) in case such a necessity arises.
- include a provision in the Draft law removing the prohibition of law enforcement servants’ membership in religious associations and/or religious organizations.

2. Freedom of thought, conscience, religion or belief and the right to education

SITUATION AND RECENT DEVELOPMENTS

“The history of the Armenian Church” was introduced in Armenian schools as a pilot subject starting from 2002 and later **became compulsory**, giving rise to practical problems in terms of the child’s freedom of conscience.

A field study conducted by EPF with the support of the Embassy of the Kingdom of the Netherlands revealed that during “the history of the Armenian Church” course, some teachers arbitrarily, without following the program methodology, start the class with The Lord’s Prayer, during which the children stand up, and at the end they make the sign of the cross.³

At the same time, studies illustrate that many of the representatives of religious minorities have a positive attitude towards the history of the Armenian Church. They regard the topics of this subject as part of their national history and if this is not in conflict with their conscience, they enjoy studying it.⁴ However, there is also a viewpoint that the textbooks on the history of the Armenian Church are primarily aimed at teaching the theology of the Armenian Church, and there is no alternative course for the pupils whose parents do not wish for their children to participate in the course on the history of the Armenian Church.

The Committee on the Rights of the Child has suggested in its concluding observations of 2013 that Armenia should revise the curriculum of schools in order to reflect the freedom of religion of all children and eliminate the compulsory subject of the history of Armenian Church from the curriculum.

In accordance with OSCE Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools, if a compulsory program involving teaching about religions and beliefs is not sufficiently objective, efforts should be made to revise it to make it more balanced and impartial, but where this is not possible, or cannot be accomplished immediately, recognizing

3. http://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014_Field_Study_Rights_of_Children_arm.pdf

4. Ibid.

opt-out rights may be a satisfactory solution for parents and pupils, provided that the opt-out arrangements are structured in a sensitive and non-discriminatory way.

RECOMMENDATIONS TO THE GOVERNMENT OF ARMENIA

- based on the 2013 recommendations of the UN Committee on the Rights of the Child and the recommendations addressed to Armenia during the Universal Periodic Review in 2015, and bearing in mind the secular nature of education in Armenia stipulated by national legislation, revise the content of “the history of the Armenian Church” subject, reflecting the coverage of historical events and excluding religious preaching.
- eliminate the instances of religious preaching in schools by the AAC as well as anti-preaching against other religions and beliefs, which lead to intolerant and discriminatory practices, through intervention of authorized bodies (where necessary) guaranteeing that the education on religion is provided in line with the objective, impartial and democratic principles of pluralism.
- eliminate prayer, crossing oneself and other religious ceremonies while teaching the history of the Armenian Church at schools.
- opt-out “the history of the Armenian Church” compulsory school subject. In parallel to it or as an option, introduce the subject of “world religions” and/or “history of culture”, thus reducing the risk of endangering the freedom of conscience and religion of the child in the school, in line with recommendations of the UN Committee on the Rights of the Child, UN Committee on Racial Discrimination, European Commission of Racism and Intolerance (ECRI) and OSCE Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools. The teaching process should be exclusively secular, avoiding elements of religious indoctrination, usage of religious symbols or rituals in public school, which is in line with Armenia’s Constitution and Law on Education.