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Problems of Religious Freedom and Tolerance in Selected OSCE States

Report to the OSCE Supplementary Meeting
on Freedom of Religion or Belief
Vienna
July 17-18, 2003

International Helsinki Federation for Human Rights
(IHF)

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This report surveys recent developments regarding religious freedom and tolerance in ten selected OSCE countries, which are of particular concern to the IHF. The chapters are primarily based on information from Helsinki committees and IHF cooperating organizations. The report is not meant to be comprehensive and the length of a chapter does not necessarily reflect the gravity of our concerns.

The IHF hopes that the report will serve as a useful background document for the discussions to be held during the OSCE Supplementary Meeting on Freedom of Religion or Belief in Vienna on July 17-18, 2003.

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Summary

The developments discussed in this report indicate that the situation regarding religious freedom and tolerance is deteriorating in parts of the OSCE region, and that so-called “non-traditional” religious movements are increasingly stigmatized and repressed.

In several of the countries covered in the report, one church enjoys preferential treatment from the state in comparison with other churches. This church, with which a majority of the population at least nominally identify themselves, is typically depicted as “traditional” or “national” and is considered to have played a “special role” in the history of the country. Privileges afforded to the majority church amount, for example, to financial support, tax-exempt status, control over religious instruction in schools and opportunities to directly influence policy decisions on religious matters. This situation appears to be in line with that of many West European countries, where one church or a few religious communities have enjoyed similar privileges for a long time.

In some cases the privileged position of the majority church is based on formal agreements or legal provisions, in others it is of an informal character. In late 2002, the Georgian government and the Georgian Orthodox Church concluded a constitutional agreement, thus cementing their close relationship. The Belarusian government and the Belarusian Exarchate of the Russian Orthodox Church signed a similar agreement in June 2003, and the Armenian government and the Armenian Apostolic Church are currently negotiating an agreement. Russian authorities at federal, regional as well as local level have individually concluded formal agreements with the Russian Orthodox Church, and in Bulgaria the Bulgarian Orthodox Church has been granted the exclusive status of a legal entity with the force of law. The Greek government has allowed the Greek Orthodox Church to informally influence its policies. The fact that the majority church is in a privileged position in these states clearly has a negative impact on the situation of other religious communities.

In these countries, as well as in the other countries covered in the report, the authorities treat so-called “new” religious communities with suspicion and restrict their activities in different ways. In a general pattern, religious communities must register with the authorities in order to obtain legal status and/or to be able to engage in the full range of religious activities. At the same time the registration requirements are strict – for example, they typically involve a requirement of a high number of members – and the registration process is open to arbitrary implementation. Such provisions are laid down by a 1996 Turkmen law, a 1997 Russian law, a 1998 Uzbek law, a 2001 Armenian law as well as by new restrictive laws that were adopted in Belarus and in Bulgaria in 2002. A draft law imposing strict registration requirements is currently under consideration in Georgia. In Greece registration is not required, but minority religious communities are not allowed to open and operate houses of worship without a license, a policy that has also resulted in arbitrary decisions.

The Turkmen and Uzbek governments routinely crack down on meetings held by unregistered religious communities and intimidate, arrest, fine and abuse those present for participating in “illegal” activities. In Turkmenistan, evictions and expulsions have also frequently been used for repression of minority groups, and in several cases houses of worship have been destroyed. In Russia and Belarus, members of unregistered communities regularly experience difficulties when seeking to buy or rent meeting premises from the authorities and are sometimes fined, arrested or deported. For the first time in the country, a church building that belonged to an unregistered community was destroyed in Belarus in 2002. Some local Russian authorities also reportedly treat unregistered religious groups as “illegal,” and the new Belarusian law on

religion outlaws all collective practice of faith by unregistered religious groups. In Armenia and Greece, members of minority groups reportedly experience discriminatory treatment by authorities as well as by private actors. In Greece, a ban on proselytism that allows for arbitrary implementation targeting minority religions remains in force, and in Georgia, a broadly-worded ban of a similar kind has been proposed.

Security concerns are increasingly used to justify restrictive policies against minority believers. Following September 11, the Uzbek government has sought to mute international criticism of its relentless campaign against independent Muslims by presenting it as an Uzbek contribution to the "war on terrorism." Under this pretext, the government has continued arbitrarily to arrest, torture and sentence independent Muslims to lengthy prison sentences, or even to death, in trials grossly violating international fair trial standards. Since the mid-1990s thousands of Muslims have been imprisoned for their convictions. Muslims prisoners are subject to notoriously harsh treatment and in numerous cases Muslims have allegedly died in custody as a result of the treatment they have suffered. In a development raising fear that the Uzbek government will expand its campaign against "religious extremism" in full scale to non-Muslim believers, security arguments were – for the first time – explicitly used to justify the criminal prosecution of a member of a non-Muslim minority religious community in 2002.

In Russia, a 2002 anti-extremism law is so vaguely worded that it may be used to stifle legitimate religious activities under the guise of defending national security. In inter alia Turkmenistan and Uzbekistan, the security services are actively involved in monitoring the activities of minority religious communities, and in Bulgaria, a government office on religious affairs was in 2002 granted broad powers to "police" the activities of such communities. Moreover, the governments in some former Soviet republics, including Armenia and Belarus, have publicly emphasized the need to take action against "sects" considered to represent a "danger" to national security.

Since the mid-1990s, the Belgian and French governments have been engaged in efforts to monitor and control the activities of religious groups depicted as "harmful sects." While these policies have been justified by the need to increase public awareness of the destructive teachings advocated by certain religious movements, they have primarily targeted religious groups that have never been engaged in anything but peaceful and lawful activities and have, in fact, encouraged prejudice and intolerance toward minority religious groups. The governments in the two countries have not taken any effective measures to counteract the hostility and discrimination suffered by members of those groups depicted as "sects." The "anti-sect" policies pursued by the Belgian and French governments have also set a problematic precedent for former socialist countries that have sought to present restrictive policies toward "new" religious movements as democratically acceptable.

In Georgia, Orthodox extremists have sought to secure public support for their attacks on religious minority groups by claiming that the activities of these groups threaten the Georgian nation. During the last few years, extremist mobs have persistently raided and looted private homes of members of minority communities, destroyed their places of worship, burnt their property, and intimidated and physically abused them. The mobs have repeatedly used brutal methods, as a result of which victims often have needed hospital treatment and sometimes have sustained permanent injuries. The authorities have seriously failed to take adequate measures to respond to the spiral of violence. In some cases police and local administration officials have been involved in attacks and investigations into complaints filed by victims have been slow, ineffective or non-existent. As of this writing, not a single perpetrator has been punished.

In virtually all countries covered in the report – albeit to a varying extent – media have encouraged negative attitudes toward minority religious groups by engaging in prejudiced and offensive reporting. Adding to restrictive government policies, such reports have contributed to fostering a general climate of intolerance toward “new” religious movements.

In Armenia, Belarus and Turkmenistan, no laws on alternative civilian service to military service exist and the authorities in these countries continue to imprison young male members of minority religious communities who refuse to serve in the army for conscientious reasons. During the last few years the Turkmen authorities have also imprisoned several religious activists on fabricated criminal charges and, as noted above, a member of a religious minority was criminally prosecuted and convicted for his religious activities in Uzbekistan in 2002. The criminal prosecution of a minority believer in Armenia in 2001 set another troubling precedent, although the victim eventually was acquitted.

In most countries covered in the report, Jehovah’s Witnesses have been a particular target of harassment.

Overview of international standards protecting freedom of thought, conscience and religion

The preamble of the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief notes that “religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life.”¹ In a similar vein, the European Court of Human Rights has observed that “freedom of thought, conscience and religion [...] is one of the most vital elements that go to make up the identity of believers and their conception of life”, adding “but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.”²

Article 18 of the 1948 Universal Declaration of Human Rights (UDHR) states that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) reiterate the content of this provision. The ICCPR article uses a slightly different wording, and talks about “freedom to have or to adopt a religion or belief of his choice” instead of “freedom to change his religion or belief.” However, the UN Human Rights Commission has stated that this expression “necessarily entails the freedom to choose a religion or a belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”³ The ICCPR article also establishes that “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

In the 1975 Helsinki Final Act, the OSCE states agreed to “respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.”⁴ They have subsequently reaffirmed this commitment on repeated occasions.⁵ In the 1990 Copenhagen Document, the OSCE states acknowledged that the right to freedom of thought, conscience and religion “includes freedom to change one’s religion or belief.”⁶

The ICCPR does not allow any derogation from article 18, even in time of public emergency, and establishes that the freedom to manifest one’s religion or belief “may only be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the rights and freedoms of others.” When commenting on this provision, the UN Human Rights Committee has emphasized that “[l]imitations must be imposed by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.” The committee has further reminded states of the fact that the grounds listed as permissible grounds for limitations must be strictly interpreted and that restrictions on other grounds than those specified, such as national security reasons, are not allowed – even if they would be allowed as restrictions to other rights guaranteed in the covenant. The committee has also underscored that all

¹ The UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief was adopted by the UN General Assembly as Resolution 36/55 of November 25, 1981.

² European Court of Human Rights, *Kokkinakis v. Greece*, May 25, 1993 (00014307/88).

³ UN Human Rights Committee, *General Comment 22 -- The right to freedom of thought, conscience and religion (Art. 18)*, July 30, 1993.

⁴ “Declaration on Principles Guiding Relations Between Participating States” of Final Act of the Conference on Security and Cooperation in Europe, 1975, (Helsinki 1975), principle VII, par.3.

⁵ See Concluding Document of Madrid – The Second Follow-up Meeting, 1983, (Madrid 1983); Concluding Document of Vienna – The Third Follow-up Meeting, 1989 (Vienna 1989); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, (Copenhagen 1990); Concluding Document of Budapest, 1994; and Istanbul Document, 1999.

⁶ Copenhagen 1990, par. 9.4.

restrictions must be non-discriminatory in character and that they must relate directly and be proportionate to the aim they were introduced for.⁷

The ECHR lists the same conditions as the ICCPR as to acceptable limitations, with the addition that all restrictions must be “necessary in a democratic society.”⁸ According to the European Court of Human Rights, in order to meet this requirement, any restriction must correspond to a “pressing social need” and must be “proportionate to the legitimate aim pursued.”⁹ As regards the requirement that restrictions be “prescribed by law,” the court has observed that it does not only involve that a restrictive measure should be based on domestic law, but also that the law in question “should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct.”¹⁰

In the 1989 Concluding Document of Vienna, the OSCE states recognized that “the exercise [...] of the rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion and belief.”¹¹ A similar statement was included in the 1990 Copenhagen Document.¹²

Like all fundamental human rights, the right to freedom of thought, conscience and religion must be applied without discrimination of any kind.¹³ The OSCE states have explicitly undertaken to respect this right “without distinction as to race, sex, language or religion.”¹⁴ The UN Human Rights Committee has particularly stressed that ICCPR article 18 is not limited in its application to “traditional religions” and has expressed concern regarding “any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.” The committee has also emphasized that the fact that a certain religion is recognized as an official, traditional or state religion or that its adherents comprise the majority of the population must not result in any discrimination against followers of other faiths or non-believers.¹⁵ In this context, the European Court of Human Rights has concluded that the right to freedom of religion as guaranteed by the ECHR “excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”¹⁶

Moreover, the UN Human Rights Committee has pointed out that the freedom to manifest one’s religion or belief as protected by the ICCPR covers a broad scope of activities – not only ceremonies, rituals and teaching, but also practices vital to such acts, such as the construction of houses of worship, the observance of religious holidays, the establishment of religious schools as well as publication and distribution of

⁷ Ibid.

⁸ ECHR (article 9.2) states: “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

⁹ European Court of Human Rights, *Serif v. Greece*, December 12, 1999 (00038178/97).

¹⁰ *Hasan and Chaush v. Bulgaria*, October 26, 2000 (00030985/96).

¹¹ “Questions Relating to Security in Europe” of Vienna 1989, par. 17.

¹² Copenhagen 1990, par. 9.4.

¹³ UDHR article 2; ICCPR article 2; ECHR article 14.

¹⁴ “Declaration on Principles Guiding Relations Between Participating States” of Helsinki 1975, principle VII, par. 1;

“Questions Relating to Security in Europe” of Vienna 1989, par. 11.

¹⁵ UN Human Rights Committee, *op.cit.*

¹⁶ European Court of Human Rights, *Manoussakis and others v. Greece*, September 26, 1999 (00018748/91).

religious material. In the opinion of the committee, religious ceremonies, such as the wearing of distinctive clothing and the observance of dietary regulations, are also covered by ICCPR article 18.¹⁷ The European Court of Human Rights has, inter alia, remarked that freedom of thought, conscience and religion comprises the right of a believer to bear witness about his or her convictions – in words and in deeds – and the right of religious communities to function without arbitrary state intervention.¹⁸

The UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (article 6) specifically lists a number of freedoms that should be interpreted as included in the right to freedom of thought, conscience and religion. Among these are freedom “to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes”; “to write, issue and disseminate relevant publications”; “to teach a religion or belief in places suitable for these purposes”; “to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief”; “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief”; and “to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”

In a similar spirit, in the 1989 Vienna Concluding Document, the OSCE states pledged, among other things, to “respect the right of religious communities to establish and maintain freely accessible places of worship or assembly”; to “allow the training of religious personnel in appropriate institutions”; and to “allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials.”¹⁹ In the same document, the OSCE states undertook to “grant upon their request to communities of believers, practising or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries.”²⁰ This provision acknowledges the fact that it nowadays is of crucial importance for religious communities – as well as for other organizations – to have judicial status, since the right to engage in many collective activities is tied to such a status.²¹

The UN Human Rights Commission has repeatedly recognized “the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.” Accordingly, the commission has called on states to “refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service.”²² Likewise the Parliamentary Assembly of the Council of Europe has underscored that “[t]he right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.” The assembly has also stated that alternative service to military service should be of “a clearly civilian nature” and “should be neither deterrent nor punitive in character.”²³

¹⁷ UN Human Rights Committee, op.cit.

¹⁸ European Court of Human Rights, *Kokkinakis v. Greece*, May 25, 1993 (00014307/88); and *Hasan and Chaush v. Bulgaria*, October 26, 2000 (00030985/96).

¹⁹ “Questions Relating to Security in Europe” of Vienna 1989, par. 16.4, 16.8 and 16.10.

²⁰ “Questions Relating to Security in Europe” of Vienna 1989, par.16.3. See also “Questions Relating to Security in Europe” of Madrid 1983, par. 14.

²¹ See discussion by Krassimir Kanev in IHF, *Religious Freedom in South-Eastern and Central Europe*, March 2000, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1374.

²² See, for example, UN Human Rights Commission, *Resolution 1998/77*.

²³ Parliamentary Assembly of the Council of Europe, *Recommendation 1518 (2001) – Exercise of the right of conscientious objection to military service in Council of Europe member states*, May 2001.

Furthermore, article 20 of the ICCPR prohibits "any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence." In the 1989 Vienna Concluding Document, the OSCE states agreed to "take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms" and to "foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers."²⁴

²⁴ "Questions Relating to Security in Europe" of Vienna 1989, par. 16.1 and 16.2.

An overwhelming majority of the citizens of Armenia (95%) nominally belong to the Armenian Apostolic Church, membership in which is viewed as closely linked to Armenian ethnic identity. The country's law also recognizes the Armenian Apostolic Church as "national church," and the state gives it preferential treatment in comparison with other churches. At the same time so-called "non-traditional" religious communities, the number of which has increased rapidly since the fall of the Soviet Union, are subject to harassment and discrimination.

Among the privileges enjoyed by the Armenian Apostolic Church is the right, as the only religious community in the country, to offer religious instruction in schools. In addition, in 2002, the history of the Armenian Apostolic Church was introduced as a compulsory subject in several schools. In March 2000, the Armenian government and the Armenian Apostolic Church signed a so-called Memorandum of Understanding, which was aimed at providing the basis for a later agreement between the two parties to elaborate their relationship. As of this writing, an agreement is yet to be concluded.

The Armenian law "On the Freedom of Conscience and Religious Organizations," which was revised in 2001, requires that all religious communities except the Armenian Apostolic Church register with the authorities to obtain legal status. This status *inter alia* allows religious groups to rent meeting places, to publish newspapers and magazines and to sponsor visas of foreign visitors. One of the requirements for registration is that a group has at least 200 members, a requirement that has caused problems for some small religious groups. Moreover, the authorities have consistently refused to register the Jehovah's Witnesses, although this community has some 7,000 members. Since Armenia's independence in 1991, the community has filed several applications for registration, but each time the authorities have rejected the application, without providing any satisfactory explanation as to how the community has failed to meet the requirements imposed by law.²⁶

Moreover, during the last few years, there have been numerous cases where Jehovah's Witnesses, as well as members of other non-traditional religious communities, allegedly have been dismissed from their jobs or physically attacked because of their religious convictions. According to the Armenian Helsinki Association, the authorities have failed to duly investigate and prosecute such cases. The Armenian Helsinki Association has also received reports about cases where law enforcement and judicial authorities have acted in a discriminatory manner toward members of non-traditional communities. For example, police have declined to investigate criminal complaints filed by Jehovah's Witnesses who have fallen victim to violence and judges have shown open contempt for parents who are Jehovah's Witnesses when ruling on custody cases.

- In May 2003, a Yerevan court heard a child custody case, where the father demanded that he be granted the right to custody of his three children with the argument that their mother is not capable of granting them a good and proper upbringing since she is a Jehovah's Witness. Acting in a scornful manner toward the mother, the judge asked her a number of irrelevant and disrespectful questions and implied that the religious convictions held by Jehovah's Witnesses are aimed at "destroying families" and that all children should be brought up "in the spirit of the Armenian Apostolic Church." The judge did not pose a single question to the father before ruling in his favor.

²⁵ Unless otherwise noted, based on information from the Armenian Helsinki Association.

²⁶ Information from the Office of General Counsel of the Jehovah's Witnesses to the IHF, June 2003.

In some cases members of minority religious groups have also been criminally prosecuted on grounds which raise concern that they have been targeted solely because they confess non-traditional faiths. For example:

- In June 2001, the regional prosecutor's office in Armavir brought charges against Jehovah's Witness Lyova Margaryan under the then Criminal Code article 244, which criminalized "infringement of the rights of citizens under the guise of performing religious rituals." According to the prosecutor's office, Margaryan had "enticed" minors into participating in meetings organized by Jehovah's Witnesses in the town of Metsamor, close to the capital Yerevan. It was the first time in 20 years that charges were brought under this article, which was introduced in the Soviet Union in the 1960s and carried a maximum penalty of five years in prison. In September 2001, the regional court in Armavir acquitted Margaryan. This verdict was subsequently upheld on appeal by the Appeal Court in Yerevan and the Court of Cassation, which is the highest court in the country. The Cassation Court concluded that the charges against Margaryan were unfounded and stressed that the Constitution protects freedom of worship.

While the acquittal of Margaryan was welcome, it remains a matter of concern that such prosecutions are possible under the country's Criminal Code. Indeed, a new Criminal Code was adopted earlier this year, and will enter into force as of August 1, 2003. However, the new Code contains an article with the similar wording as that of the former article 244, although the maximum penalty that may be imposed under it has been decreased from five years to three months of imprisonment.

Moreover, the authorities continue to imprison Jehovah's Witnesses who refuse to serve in the army on conscientious grounds. When Armenia was admitted into the Council of Europe in January 2001, it made a commitment to "adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service."²⁷ In violation of this commitment, dozens of Jehovah's Witnesses have been held liable under Criminal Code article 75, which punishes refusal to carry out military service with up to three years in prison, since 2001. In some cases prison terms have been increased upon appeal and in others conscientious objectors have been convicted twice for the same "offense."²⁸ As of June 2003, 22 Jehovah's Witnesses were imprisoned as conscientious objectors, 13 of which had been convicted in 2003. The cases of three Jehovah's Witnesses were pending in court, while eight had been released after serving part of their sentence, but were requested regularly to report to police.²⁹

In 2002, the Parliamentary Commission on Defense, National Security and Internal Affairs drafted a law on alternative service. However, this draft has been seriously criticized by local NGOs and by OSCE experts. Most worrisome, the draft proposed by the commission only foresees alternative service in the form of unarmed military service and not in the form of civilian service. According to information received by the Armenian Helsinki Association, the government is currently preparing a new draft.

The IHF and the Armenian Helsinki Association are also concerned that representatives of the government have expressed mistrust and suspicion toward non-traditional religious communities. In September 2002, the

²⁷ Parliamentary Assembly of the Council of Europe, *Opinion No. 221 (2000), Armenia's Application for Membership of the Council of Europe*, paragraph ivd.

²⁸ Information from the Office of General Counsel of the Jehovah's Witnesses to the IHF, June 2003.

²⁹ Ibid.

prime minister stated that measures to prevent the spread of “dangerous sects” should be given priority to complying with commitments made to the Council of Europe as well as other international human rights standards. Arguing that “sects” threaten national security, he advocated that minority religious communities not be allowed to recruit new followers in the country and that their activities be restricted in other ways.³⁰ Such statements inevitably foster prejudices and hostility toward minority religions, and thereby undermine religious tolerance in Armenia.

³⁰ Keston Institute, “Prime Minister Widens Council of Europe Defiance,” September 25, 2002.

