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Freedom of religion and belief in Azerbaijan

Assessment of national legislation and its application

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Introduction

Azerbaijan is the largest country in the South Caucasus region, with a total population of 10 million. Azerbaijan's Constitution establishes the separation of state and religion, guarantees the equality of all religions, recognising the right of individuals to freedom of religious beliefs. Ninety-six per cent of the population of Azerbaijan is Muslim, of which approximately 65 per cent is Shia and 35 per cent Sunni. The remaining four per cent are Russian Orthodox Church, Georgian Orthodox Church, Seventh-day Adventists, Molokans, Roman Catholic Church, Jehovah's Witnesses, Jews and Baha'i, the International Society of Krishna Consciousness (ISKON) and those professing no religion.¹ According to the State Committee on Religious Associations (SCWRA), there are 942 registered religious communities in Azerbaijan, of which 35 are non-Islamic (Christian – 24; Jews – 8; Krishna - 1; Bahais – 2). There are 2250 mosques, 136 of which are situated in Baku, 14 churches and 7 synagogues.²

The Government of Azerbaijan prides itself for its cultural tolerance and its active role in promoting the importance of intercultural and interreligious dialogue to fight discrimination and intolerance.³ When it held the Chairmanship of the Committee of Ministers of the Council of Europe in 2014, it announced the 'promotion of intercultural and interreligious dialogue' as one of its Chairmanship priorities.⁴ However, domestic human rights groups report the growing persecution of Islamic activists. Since 2009 increasingly restrictive amendments have been introduced to national legislation on religious matters. According to the Working Group on the Unified List of Political Prisoners in Azerbaijan, in February 2019, 67 political prisoners were arrested on religious grounds.⁵ Restrictive domestic legislation has led to increased state surveillance of religious communities, and the Islamic community in particular, through measures including the banning of non-registered religious communities, restrictions on religious content, controlled access to worship places and limitations on the conduct of religious ceremonies.

The adoption of the Law on Combating Religious Extremism in December 2015 provided the authorities with the power to clamp down on certain religious communities by granting full impunity to the authorities for actions during special operations.⁶ Shortly before the Law entered into force, one such special operation was conducted in November 2015 in the village of Nardaran northeast of the capital Baku. Nardaran is the base for the Muslim Unity Movement (further MUM), an unregistered religious group whose leadership, in particular its Chairman Taleh Bagirov, has been outspokenly critical of the Government's authoritarian rule and issues of corruption. MUM members describe themselves as 'non-violent, conservative Shiites' who advocate for an increased role of Islam in the otherwise largely secular Azerbaijan. Known as the 'Nardaran operation', the special operation led to the arrests of dozens of MUM

1 Azerbaijan 2017 International Religious Freedom Report, US State Department, page 2 <https://www.state.gov/documents/organization/281126.pdf>

2 See the official webpage of the State Committee on Religious Associations of the Republic of Azerbaijan http://www.dqdk.gov.az/az/view/pages/306?menu_id=83, last opened on 20 November 2019

3 CoE News, 'Azerbaijan hosts 2014 Council of Europe Exchange on the religious dimension of intercultural dialogue, as a part of its Chairmanship at the Committee of Ministers, 28 August 2014

4 CoE news, 'Committee of Ministers' Chairman, Azerbaijani Foreign Minister Mammadyarov, presents communication to PACE', 23 June 2014

5 <https://www.humanrightsclub.net/siyasi-m%C9%99hbuslar/2019/az%C9%99baycanda-siyasi-m%C9%99hbuslarin-vahid-siyahisi-hesabat/>

6 Law of the Republic of Azerbaijan "on combating religious extremism" adopted on December 4, 2015. No. 27-VQ, available at <http://e-qanun.az/framework/31509>

members, many of whom reported being severely ill-treated and tortured. Many were subsequently convicted on charges such as murder, terrorism and attempts to seize power by violent means in trials marred by serious fair trial violations.⁷

This report analyses the existing national legislative framework regulating the exercise of the right to freedom of religion and belief in Azerbaijan, and its compliance with international legal standards, in particular the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR). The report identifies key areas of concern in the current legislation and, where possible, its application in practice. It goes on to provide recommendations to address the existing gaps or shortcomings in the current legislation and its implementation.

Research for this report was conducted by a team of Azerbaijani human rights lawyers, supported by international experts. The researchers used a number of research tools including desk research into the national legislation, national and international reports, official inquiries submitted to the relevant state structures, interviews with members of religious communities, defense lawyers, experts on freedom of religion and human rights defenders.

The report consists of five chapters. The first chapter provides an overview of existing legislative norms relating to the freedom of association of religious communities and organizations, i.e. obligatory state registration, grounds and procedures for refusal of the registration, and regulations relating to dissolution of such organizations. It also assesses the issue of autonomy of religious communities, and examines challenges related to communities' access to funding.

Chapter two provides an analysis of domestic legislation governing exercising freedom of religion with others, with a focus on the existing challenges to the right to organize places of worship, conduct religious ceremonies and other rituals, import and export religious literature as well as rights to religious attributes and clothing, and regulation regarding religious education in Azerbaijan.

Chapter three looks at the right to freedom of religious and belief in detention facilities and prisons in Azerbaijan. It provides an overview of the domestic legislation and normative acts and provides a brief comparative analysis of the situation in different closed institutions. Chapter four addresses the issue of a right to conscientious objection in Azerbaijan and the State's failure to ensure this Constitutional right in practice.

Chapter five examines the latest legislation aimed at combating religious extremism and its effect on the state's obligation to ensure and protect the right to freedom of religion and belief, as well as other rights.

Finally, the report provides recommendations to the Government, Milli Majlis (national parliament) and the judiciary of Azerbaijan on how to address the identified problems and gaps in legislation and practice.

⁷ Amnesty International statement, Azerbaijan: Torture And Travesty Of Justice In Nardaran Case, 6 February 2017, available at <https://www.amnesty.org/download/Documents/EUR5556332017ENGLISH.pdf>

Right to freedom of religion and belief: summary of scope and state international obligations

This section provides a brief overview of the scope of the right to freedom of religion and belief, and related state obligations.

The right to freedom of religion and belief is a fundamental right, universally recognised in international instruments, such as the United Nations Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950) and the United Nations International Covenant on Civil and Political Rights (1966).⁸ It includes the freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance.

By its nature, freedom of religion or belief is closely linked to other human rights and fundamental freedoms, such as, in particular, the freedom of expression, the freedom of assembly and association, and the right to non-discrimination.

The right to freedom of religion and belief contains two elements:⁹

- » The freedom to have or to adopt a religion or belief of one's choice. This right is absolute and unconditional. States cannot interfere with it, for instance by dictating what a person believes or taking coercive steps to make him/her change his/her beliefs;
- » The freedom to manifest one's beliefs alone or in private, and to practice them in community with others and in public. This right is not absolute since the manifestation by one person of his or her religious belief may have an impact on others, but may only be limited if each of the following criteria is fulfilled:
 - the limitation is prescribed by law;
 - the limitation has legitimate aims, such as protecting the fundamental rights and freedoms of others, or public safety, public order, health or morals;
 - the limitation is necessary to achieve one of these purposes and proportionate to the intended aim;
 - the limitation is not imposed for discriminatory purposes or applied in a discriminatory manner.

These limitations must not be applied in a manner that would violate the freedom of religion or belief. The application of such limitations by states should proceed from their positive obligation to protect the rights guaranteed under international instruments.¹⁰

8 The Universal Declaration of Human Rights (UDHR), Article 18; International Covenant on Civil and Political Rights (ICCPR), Article 18; the European Convention on Human Rights (ECHR), Article 9; the EU Charter of Fundamental Rights, Article 10

9 Ibid.

10 OSCE ODIHR and Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities, 2014, para 6

State obligations

States have both positive and negative obligations towards upholding the right to freedom of religion and belief.

As a part of their positive obligations, states shall ensure that everyone within their jurisdiction can enjoy the right to freedom of religion and belief. A state shall do so by protecting and promoting the right and creating an enabling environment in which people may exercise that right. Such measures shall include the adoption of a regulatory framework recognizing the respective right, and an enforcement mechanism facilitating the practical implementation of the right. It is the state`s obligation to protect religious organizations and their members from physical, verbal and symbolic attacks, and to ensure the prompt, impartial and effective investigation and prosecution of such actions.¹¹

States` negative obligations relate to their refraining from interfering with the right to freedom of religion and belief unless it is justified and in compliance with the above-mentioned limitations.¹² The list of legitimate aims listed in international instruments is strictly exhaustive and shall be applied in a restrictive manner. Such interference must be lawful, aimed at protecting a legitimate aim and be proportionate. Respect for the principle of the autonomy of religious organizations is central to states` negative obligations.¹³

By way of example, such interference may include the refusal to register a religious association, the dissolution of an association, imposing a criminal or administrative penalty for exercising the respective right, and physical interference in exercising the right.

Chapter I. Religious and Belief Communities and Organizations in Azerbaijan: legal status as recognition of existence

This chapter focuses on the legal framework and domestic context within which religious and belief communities and organizations operate as legal entities in Azerbaijan. Their ability to organise themselves as a religious community is core to their ability to manifest their religion and belief, without which all other aspects of the right would become vulnerable.¹⁴ Their right to freedom of association, including enjoying a state-recognised legal status, shall therefore be seen as a means by which communities can express their beliefs and maintain their religious traditions.

11 Guide on Article 9 of the European Convention on Human Rights, prepared by the European Court of Human Rights, updated 30 April 2019, p. 78

12 Ibid., p. 16

13 Ibid., p. 67

14 Ibid. 10, para 195

Both freedom of religion and freedom of association are guaranteed by the Constitution of Azerbaijan,¹⁵ and further regulated by the Law on Freedom of Religious Beliefs (hereinafter – Law on FRB).¹⁶ The Law on FRB underwent substantive changes since its adoption in 1992, with 56 amendments being adopted by national parliament after 2011.¹⁷ As our research shows, the majority of these amendments have significantly restricted freedom of religion and belief in Azerbaijan, and the exercise of freedom of association in particular.

The chapter is divided into five sections. Section 1.1 analyses the existing state registration procedures established by national legislation. Sections 1.2 and 1.3 address the grounds for refusal of state registration and for rescinding registration, and their legitimacy in light of the international standards. Section 1.4 discusses respect for the principle of self-determination and autonomy of religious organizations in Azerbaijani domestic law. Section 1.5 focuses on the issue of religious communities and organizations' access to funding in Azerbaijan, as a key prerequisite to their effective enjoying of the right to freedom of association.

1.1 State registration procedures

- » Religious organizations must obtain state registration; otherwise they are unable to operate and face administrative accountability
- » Registration procedures are overly burdensome

COMPULSORY STATE REGISTRATION, DUTIES AND OBLIGATIONS AND KEY STATE BODIES

The Law on FRB stipulates that a religious organization must obtain state registration and be included in the state register of religious organization organizations before it can operate in the country (Article 12 of the Law), thus making the ability to operate conditional on state approval. Failure to do so shall lead to administrative liability, punishable by a fine of 1500-2000 AZN (approx. 800-1070 EUR) for individuals and 7000-8000 AZN (approx. 3750-4280 EUR) for official representatives of religious organizations.¹⁸

15 Article 18 of the Constitution separates the state from religion, ensures the equality of all religions before the law, list the types of religious activities subject to prohibition, and emphasizes that the education system is secular. Article 48 of the Constitution recognizes everyone's right to freedom of conscience. The article stipulates the right to define his/her attitude to religion, to profess, individually or together with others any religion or to profess no religion, to express and spread one's beliefs concerning religion and defines limitations on freedom of conscience and religion. According to it, religious ceremonies constitute a part of the freedom of religion, unless they violate public order or contradict public morals. Moreover, the article further states that religious beliefs do not justify the violation of law. The article expressly states that no one can be forced to express his or her religion or beliefs, perform religious ceremonies, or participate in religious ceremonies against his or her will. Article 58 § 1 of the Constitution recognizes the right of everyone to freedom of association. The article 58 guarantees everyone's right to be a member of any union, recognize the free will of associations, prohibit enforced joining to any association and enforced remaining in a membership. Further, article 58 prohibits the use of illegal methods for the purpose of overthrowing legitimate state power in Azerbaijan and the activities of associations violating the constitution and law. Article also expressly states that the activities of the association can be terminated only upon court decision.

16 The Law on Freedom of Religious Belief, 20 August 1992

17 See the Law on Freedom of Religious Beliefs <http://www.e-qanun.az/framework/7649>

18 According to Article 515 of the Code of Administrative Offences, avoidance of registration of the religious organization, violation of the rules of organization of religious gatherings, marches and ceremonies and conduct activities outside of the registered legal address of religious organizations is punished by fine in the amount of one thousand five hundred to two thousand manats for individuals and a fine of seven thousand to eight thousand manats to officials.

In practice, the absence of state registration does not only deny religious organizations legal status but also severely hinders their ability to effectively operate: unregistered organizations cannot open a bank account, enjoy property and ownership rights (Article 16-19 of the Law on FRB), receive donations (Article 18), establish charitable funds (Article 23), open religious schools and institutions (Article 9), or engage in work (Article 25).

The same Law further stipulates that all religious issues fall under the competence of the State Committee for Work with Religious Organizations (SCWRO), established by Presidential decree on 21 June 2001.¹⁹ Its mandate includes safeguarding freedom of religion, developing a unified state policy on religious issues, providing religious education, and registering religious organizations.²⁰

The Caucasian Muslims Office (CMO) is actively involved in religious matters in the country and holds wide powers over Islamic religious organizations in Azerbaijan. The CMO, historically included the Shiite and Sunni denominations, and was led by Sheik-ul-islam who represented the Shia community.²¹ The CMO is a hybrid institution - it is not a state agency but it does not operate as an ordinary non-governmental organization. In 1959 the CMO was transformed from the Transcaucasian Muslims Spiritual Administration, created by the Russian Tsar in 1823 in the Caucasus,²² and retained its mandate.²³

As for its legal status, the CMO does not differ from other religious organizations (it has a registration certificate from the SCWRO in 2017),²⁴ however, the Law on FRB delegates broad powers to the CMO over Islamic religious organizations in Azerbaijan. For example, according to Article 8 of the Law on FRB, Islamic religious communities work under the control of the CMO in Azerbaijan. The CMO oversees the activities of registered Islamic organizations, including training and appointing clerics to lead Islamic worship,²⁵ periodically monitoring sermons, and organizing pilgrimages to Mecca.²⁶ Muslim communities must receive an approval letter from the CMO before submitting a registration application to the SCWRO.²⁷

According to information provided by the SCWRO, 942 religious organizations were registered in Azerbaijan since 2009, with 907 of them being Islamic.²⁸ No official statistics on organizations, which have been denied registration by the SCWRO are available.

COMPLIANCE WITH INTERNATIONAL STANDARDS

Mandatory state registration of religious organizations is incompatible with international standards,

19 See History of the Committee, http://www.dqdk.gov.az/az/view/pages/90?menu_id=26

20 See Article 29 of the Law on FRB and also Rights of the Committee, <http://www.dqdk.gov.az/en/view/pages/97/> and

21 See History of Caucasian Muslim Office <http://qafqazislam.com/index.php?lang=az§ionid=100&id=160> and <http://qafqazislam.com/index.php?lang=az§ionid=100&id=164>

22 See the history of the CMO in the Tsar Russia <http://www.qafqazislam.com/index.php?lang=az§ionid=100&id=163>

23 See the history of CMO in the USSR <http://www.qafqazislam.com/index.php?lang=az§ionid=100&id=164>

24 See the state registration certification of the CMO, page 1 - <http://www.qafqazislam.com/userfiles/files/QMi-NiZAMNAMƏSi%281%29.pdf>

25 See Article 8 of the Law on FRB <http://www.e-qanun.az/framework/7649>

26 See the Charter of the CMO, the Section II – The Rights and Duties of the CMO <http://www.qafqazislam.com/userfiles/files/QMi-NiZAMNAMƏSi%281%29.pdf>

27 See Article 1.11 of the Charter of the CMO, <http://www.qafqazislam.com/userfiles/files/QMi-NiZAMNAMƏSi%281%29.pdf>

28 In 2009, the government amended the Law on FRB requiring all registered groups to resubmit their registration applications. See State Department 2017 Report on International Religious Freedom: Azerbaijan, 29 May 2018, available at https://www.state.gov/reports/2017-report-on-international-religious-freedom/azerbaijan/#report-toc__section-2__subsection-2; see also Ibid 2.

which stipulate that state registration shall be voluntary, in line with the principle of autonomy of religious communities and organizations, as set out below.²⁹ Such a requirement enshrined in domestic law makes the exercise of the right conditional to state approval, thus severely limits religious freedom in Azerbaijan. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be subject to prior registration or similar procedures, since it is guaranteed to human beings and communities as rights holders and does not depend on official authorization. Procedures to prohibit or sanction unregistered religious activities therefore violate international human rights standards.

The OSCE /ODIHR and the Venice Commission Guidelines note that international human rights law protects religious and belief communities regardless of whether they have legal personality status or not and recognizes their desire to obtain a status of legal entity as a matter of choice.³⁰ The Guidelines call on States to refrain from interfering in religious freedoms on these matters.³¹

Furthermore, the absolute prohibition to operate without state registration and the imposition of administrative liability for failing to comply with it do not meet the requirements set out by the international law as the domestic law does not specify what legitimate aims such provisions intend to protect, and how this is necessary in a democratic society. The punitive mechanism and fines for failing to obtain state registration of 1500-8000 AZN (approx. 800-4280 EUR) is both excessive and disproportionate. The OSCE/ODIHR and Venice Commission Guidelines state that “although minor fines for minor breaches of an administrative regulation may be appropriate, it is not appropriate to punish a simple administrative mistake as if it were a violation of the criminal law or to make it punishable by punitive administrative penalties”.³²

Although it is justifiable under international standards for states to adopt regulations on the registration and operation of religious organizations, they cannot make the very existence of religious organizations conditional on state registration.³³

OVERLY BURDENSOME AND INTRUSIVE REGISTRATION PROCEDURES

The Law on FRB sets out overly burdensome procedures for obtaining state registration. Article 12 of the Law sets out the following requirements for religious communities:

1. A religious organization/community may commence its activities after its religious authority has been appointed by the CMO and the relevant executive authority has been informed;
2. The provision of a list of persons establishing the religious community with details of citizenship, place of residence and date of birth;
3. A description of the religious community, including the history of its establishment, its values and methods, traditions, attitude to family, marriage and education;
4. Information on the restrictions on the rights and duties of members of that community;
5. Other documents provided by the Law of the Republic of Azerbaijan On State Registration and State Register of Legal Entities

29 Ibid 10, para 10

30 Ibid 10, Part III, Paragraph 17

31 Ibid.

32 See OSCE/ODIHR and Venice Commission, Guidelines for review of legislation pertaining to religion or belief, June 2004, page 24

33 UN Human Rights Council, Resolution 6/37, Elimination of all forms of intolerance and of discrimination based on religion or belief, 14 December 2007, paras 12 (e) and 12 (h);
EU Guidelines on promotion and protection for Freeform of Religion and Belief, 24 June 2013, paragraphs 41-42

The same article stipulates that religious organizations may only operate after their leadership has been appointed. Article 8(2) of the Law states that clerics governing Islamic places of worship are appointed by the CMO and that the relevant executive authorities are notified. In practice, this means that the leadership of Islamic religious organizations shall be appointed by the CMO and not by the communities themselves.³⁴ Neither the Law nor the CMO Charter set out the criteria for the appointment of religious leaders, nor do they stipulate any grounds for their dismissal. The same Law provides that Islamic religious bodies shall submit reports to the CMO on their activities (Article 7). The Law does not stipulate such conditions with regard to non-Islamic communities. The Law provides the CMO with tight control over Islamic religious organizations, including their compliance with the law on religious freedom, management and other functions.

Such regulations appear to contradict Article 18 of the Constitution which states that ‘religion is separate from the state and all religious beliefs are equal before the law’; and the other provisions of the Law on FRB which stipulate that ‘the State does not entrust any of its activities to religious organizations and does not interfere with their activities’ (Article 5).

Furthermore, such an intrusive requirement which interferes with the organization and operation of religious organizations is not in line with international standards. In its case law, the ECtHR established that ‘States cannot legitimately denote religious beliefs or form of their manifestations’ and that ‘the determination by the state of any preference to any particular religious leader ... is a violation of religious freedom’.³⁵ The requirement for religious organizations to have a religious leader and for Islamic religious organizations to have mandatory registration from the CMO does not only excessively hinder the process of state registration, but also amounts to interference of the state and the CMO into their autonomy, contrary to the standards set out in the OSCE / ODIHR and Venice Commission Guidelines and other international documents.^{36, 37}

Among other excessively burdensome and intrusive procedures is the requirement to list all members of the religious organization in the application for state registration, indicating their full names, date of birth, and place of residence. The amendment to the Law on FRB of 11 June 2011 increased the minimum number of founding members for a religious organization from 10 to 50 (Article 12).³⁸ This requirement will make it unnecessarily difficult for newly established religious communities to operate and seek official status, and deter them from establishing themselves as organizations.³⁹

1.2. Refusal of state registration

- » No procedure to address identified deficiencies
- » No administrative complaint mechanism

The Law on FRB does not provide for procedures by which religious communities can rectify errors or omissions in the registration procedure after the application has been submitted to SCWRO, nor does it provide for any administrative mechanism for complaints against refusal of state registration by SCWRO.

34 According to Article 9 of the Law on FRB, the CMO is a united religious centre or office for all Islamic organizations and for non-Islamic religious organizations the center or the office is considered to be their organization.

35 ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, chamber judgment, of 13.12.2001, para 117.

36 Ibid 10, Part III, para 25

37 Ibid 33, para 9

38 Before the law was amended in June 2011, it required for at least 10 members.

39 Ibid 10, Part III, para 27

Once a decision to refuse state registration is made by SCWRO, the only course of action to appeal the decision is through the domestic courts, regardless of the grounds for rejection. The lack of opportunity to rectify errors and omissions before the decision is made or an available administrative complaint mechanism causes heavy burdens on religious communities in terms of cost and time, particularly in cases when straightforward errors or omissions in the application could be easily rectified. In such cases, pursuing complaints at refusal to register through domestic courts can take several months and is rather costly. A SCWRO administrative complaint mechanism should be an option available to applicants and must in no way hinder an organization's right to go to court.

1.3. Grounds for dissolution of religious organization organizations and legitimacy issues

- » Unlimited discretionary power of the state authorities in the interpretation of grounds for dissolution
- » Dissolution should be a measure of last resort

Article 12(1) of the Law on FRB stipulates that a religious organization can be dissolved voluntarily, by decision of its founders or a body authorized to do so by the charter of the association, or by a court decision on the basis of the application of the state body. Article 1(3) of this Law provides that a religious institution can be abolished judicially on the following grounds:

1. for carrying out activity, conflicting with the objectives of its establishment;
2. for propagating religion and religious ways of life through the use of force or threat of force, as well as the purpose of incitement to racial, ethnic, religious, social animosity and hostility, compulsion to demonstration of religion, performance of religious ceremonies or participation in religious ceremonies, dissemination and promotion of religions (sects), humiliating human dignity or contradicting the principles of humanity;
3. for breaching public safety or public order;
3.1 for engaging in religious extremist activities
4. for implementing actions aimed at terrorism, the financing of terrorism, sabotage or violent criminal acts;
5. for preventing secular education;
6. for inciting or forcing members of a religious organization and other persons to renounce their property in favour of the religious organization;
7. for preventing a person from leaving the religious organization with the use of violence or other illegal acts;
8. for use of individual penalties forcing them to abstain from performing duties prescribed by law and other illegal acts.
9. for a failure to comply with two written requests from the relevant executive authority for notification of changes made to the information or documents, required by this authority for state registration, within one year.

On 28 October 2016, new amendments to Article 12 of the Law on FRB were introduced, expanding the list of grounds for dissolution with that of 'involvement in religious extremist activity', in accordance with the law "On Combating Religious Extremism" adopted on 4 December 2015 (see also Chapter V of this report).

One of the main issues of concern relating to the dissolution of religious organizations is the broad and vague terminology in the Law that allow for wide discretionary interpretation of the above-mentioned grounds. For example, Article 12(1)(2) stipulates that ‘propagation of religious beliefs and religious lifestyle ... for the purpose of creating social hatred or hostility ... dissemination and promotion of religions (sects), humiliating human dignity or contradicting the principles of humanity’ gives grounds for the dissolution of a religious organization. Expressions like ‘social hatred’ and ‘humanism’ are very broad and vague and can lead to the arbitrary interpretation and application by the authorities.⁴⁰ The concept of ‘humanism’ is also included in Article 18 of the Constitution, but neither domestic laws nor the courts have clarified the legal meaning of the word. The concept of ‘social hatred’ is widely used without being clearly defined across the post-Soviet region, especially in Russia in the 2002 Law on combating religious extremism.⁴¹ Other grounds for liquidation entail overly vague and broad definitions open to different interpretation and wide discretion of the authorities, such as ‘dissemination and promotion of religions contradicting with humanity principles and humiliating human dignity’, ‘hindering secularized education’, or ‘incitement or forcing members of religious association and other persons to resign their property in favour of religious association’.^{42,43}

This issue was addressed by the ECtHR in its 2014 judgment in the case *Islam-Ittihad Association and Others v Azerbaijan* in relation to the term ‘religious activities’.⁴⁴ The Court ruled that that domestic law failed to provide a clear definition of what ‘religious activity’ entails and as a result ‘the local authorities were thus given an unlimited discretionary power in that sphere’.⁴⁵

Another matter of concern is the fact that the Law envisages dissolution as the main sanction for above listed violations when it should be applied as a measure of last resort. There is only one other sanction stipulated in the Law apart from dissolution, which is the change of founding members of a religious organization (Article 12(1)). The Law should introduce a range of sanctions of varying severity, such as official warnings, fines, and suspension of interim activities, in proportion to the violations committed.⁴⁶ Dissolution can have grave consequences for the whole religious community as it eliminates the entire religious organisation and makes it illegal in the country, without state registration.

1.4. Self-determination and autonomy of religious organizations

- » Wide state powers to interfere with the internal autonomy of religious organizations
- » Post-registration functioning limited to places of worship
- » Islamic religious organizations are not free to choose their place of establishment
- » Religious organizations are not free to choose their names

40 Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, CDL-AD (2012)022, para. 89

41 Lit Verlag, “Religious Intolerance and Discrimination in selected European Countries - Part II”, page 65, published on 11 January 2011

42 Ibid

43 See also Section 5.1.1 of Chapter V on vague definitions relating to regulations on religious extremism

44 *ISLAM-ITTIHAD ASSOCIATION AND OTHERS v. AZERBAIJAN*, 13 November 2014, (Application no. 5548/05)

45 Ibid, para 51

46 Ibid 40, para. 92

The Guidelines of the OSCE / ODIHR and the Venice Commission call upon States to refrain from interfering with the internal regulations of religious and belief associations.⁴⁷ Such interventions are considered possible in cases when there is a conflict of interests, e.g. the interests of the organization and other social interests are involved. Even in the event of a potential conflict, the state must demonstrate sensitivity and the intervention should be carried out without harming the autonomy of the religious organization.⁴⁸

POST-REGISTRATION FUNCTIONING LIMITED TO REGISTERED PLACES OF WORSHIP

Article 12 of the Law on FRB stipulates that religious organizations can only operate in places of worship in the location indicated in their application for state registration. Such a restriction limits their freedom to operate by confining the religious institution to one place. Commenting on the Law on FRB, the OSCE/ODIHR and Venice Commission concluded that this imperative requirement of the article is 'restrictive and did not meet the test of necessity in a democratic society'.⁴⁹

ISLAMIC RELIGIOUS ORGANIZATIONS ARE NOT FREE TO CHOOSE THEIR PLACE OF ESTABLISHMENT

According to Article 8(4) of the Law on FRB, 'Islamic religious communities are created in mosques by citizens of the Republic of Azerbaijan.' This provision interferes with the autonomy of religious organizations by limiting the establishment of Islamic religious organizations to mosques. It interferes with the wider right to freedom of religion of religious communities, which choose to worship mosques or not as such, based on their own religious doctrine.

Furthermore, the Law restricts the right to establish Islamic religious communities to citizens of the Republic of Azerbaijan and thus limits the right to freedom of religion of foreigners and stateless persons in the country.⁵⁰

RELIGIOUS ORGANIZATIONS ARE NOT FREE TO CHOOSE THEIR NAMES

Article 11 of the Law regulates matters relating to the charter of religious organizations. Article 11(4) stipulates that 'The title of the religious organization should reflect the religion it practices.' Such a requirement can be regarded as unreasonable interference in the autonomy of the religious organization, which should be free to choose the name it deems best represents its religious doctrine.

1.5. Access to funding of religious communities and organizations

- » Grant agreements of religious organizations cannot be implemented without official state approval
- » The Law on FRB is unclear as to whether only Azerbaijani citizens can make donations to religious organizations

The right to access resources, including funding, is recognised internationally as a fundamental element of the right to freedom of association. The Venice Commission and OSCE Joint Guidelines on Freedom of

47 OSCE/ODIHR and Venice Commission, Guidelines for review of legislation pertaining to religion or belief, June 2004, p. 15

48 Ibid.

49 Ibid 40, paras 80–82

50 Ibid 40, para 71

Association state that 'The right to freedom of association would be deprived of meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international.'⁵¹ In *Ramazanova v Azerbaijan*, relating to significant delays in the state registration of the applicant's association, the ECtHR emphasized that 'without proper financing, the association was not able to engage in charitable activities, which constituted the main purpose of its existence'.⁵²

According to the Law on FRB, religious organizations in Azerbaijan may receive financial assistance from donations (Article 18(4)), financial assistance from state or local self-governing bodies (Article 18 (5)).

GRANT AGREEMENTS OF RELIGIOUS ORGANIZATIONS CANNOT BE IMPLEMENTED WITHOUT OFFICIAL STATE APPROVAL

The right of religious organizations in Azerbaijan to access funding was severely restricted on 15 February 2013 when new amendments were introduced to the Law on Grants⁵³ and the Law on FRB, which provided that grant agreements for religious organizations require official state approval. According to Article 2(5) of the Law on Grants, in order for the grant to be approved by the state, the donor providing a grant will first have to register a representation or a branch office in Azerbaijan. Secondly, the relevant executive authority shall issue an opinion on the financial and economic viability of the respective grant, without further details about the criteria for such an assessment, thus granting wide discretionary powers to the state authorities. Only when these two requirements are met, can the religious organization seek state approval for the grant. In practice this severely restricts their right to seek funding.

THE LAW ON FRB IS UNCLEAR AS TO WHETHER ONLY AZERBAIJANI CITIZENS CAN DONATE TO RELIGIOUS ORGANIZATIONS

According to Article 18(4) of the Law on FRB, 'religious organizations may apply for voluntary donations and accept such donations.' Article 18(2) of the same Law states that 'religious organizations have ownerships right over the property acquired or created at their own expense, or by means donated by the state, organizations or by citizens as well as on property acquired on other grounds provided for by law.' The reference to the terms "citizens" is unclear as it is not specified if citizens of other countries can donate funds to religious organizations or if it is exclusively limited to Azerbaijani citizens, and if foreigners or stateless persons have the same rights in Azerbaijan. Although the regulation of donations of foreign nationals is a recognized procedure, the absolute prohibition on such donations may unnecessarily restrict the right to freedom of religion of such individuals, and of organizations seeking donations.

The Code of Administrative Offenses relating to violations of regulations on grants provides for heavy administrative penalties for religious organizations ranging from 500-2500 AZN (approx. 270-1330 EUR) for individuals and 5000-7000 AZN (approx. 2670-3750 EUR) for legal entities.⁵⁴

The OSCE/ODIHR and the Venice Commission Guidelines note that while the State may provide some limitations on financing, the preferred approach is to allow associations to raise funds provided that they do not violate other important public policies, and that such laws should not be discriminatory.⁵⁵

51 European Commission for Democracy (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Joint Guidelines on Freedom of Association, 17 December 2014, CDL-AD(2014)046, para. 195

52 *Ramazanova v Azerbaijan*, appl. No. 44363/02, 1 February 2007, para 59

53 Law on Grants, 17 April 1998, <http://www.e-qanun.az/framework/3527>

54 Article 432 of the Administrative Code

55 OSCE/ODIHR and Venice Commission, Guidelines for review of legislation pertaining to religion or belief, June 2004, page 20

Chapter II - Exercising of religious freedom with others

This chapter is dedicated to the analysis of domestic legislation on exercising of freedom of religion with others and its application in practice. In this chapter the report outlines the current challenges of the right to organize places of worship, to conduct religious ceremonies and other rituals, the import and export of religious literature, right to religious attributes and dresses, and religious education in Azerbaijan.

2.1. Organization of places of worship

- » Non-registered religious communities cannot have a place of worship and independent individuals or religious groups have no right to establish places of worship
- » Vague grounds for refusal to build or rebuild places of worship
- » Closures of public and non-public places of worship are commonly practiced

The right to freedom of religion enshrined in Article 18 of ICCPR and Article 9 of ECHR encompasses the right to provide, open and maintain religious places of worship. In its practice, the ECtHR established that deprivation of a possibility for religious communities to have a place for religious practices is in violation of their right to freedom of religion.⁵⁶

According to Article 21 of the Law on FRB, religious organizations have the right to protect, preserve and use places suitable for worship (liturgy), religious gatherings and sacred rituals.⁵⁷ According to the same legislation, establishing or maintaining places of worship is allowed only for registered religious organizations or communities, which thus denies other independent individuals or religious groups the right to establish places of worship.

Under Article 29 of this Law, the SCWRO has the authority to approve the establishment of a new place of worship or the re-establishment of an existing place of worship.⁵⁸ In absence of approval the place of worship is declared illegal and any such action entails administrative liability.⁵⁹ The “Guidelines on the Feasibility of the Construction of a Religious Place of Worship (liturgy) or its Rebuilding (Restoration, fundamental repair)”, adopted on 28 January 2010, stipulate that a person who wants to establish a religious place of worship, shall request permission from the SCWRO.⁶⁰ A committee will be set up, which will investigate the need for the establishment or construction of the place of worship or the reconstruction of an existing place of worship. The SCWRO makes a final decision on the application on the basis of the findings of the committee.

56 *Affair Association de solidarité avec les témoins de Jéhovah and others v. Turkey*, appl. nos. 36915/10 and 8606/13, 24 May 2016, para. 90

57 Law on freedom of religious belief article 21, <http://www.e-qanun.az/framework/7649>

58 *Id.*, article 21

59 According to Article 394.0.40 of the Code of Administrative Offences, construction of a place worship(liturgy) or reconstruction of the existing place of worship without the consent of the relevant executive authority, is punished by fine for individuals ranging from three hundred to five hundred manats, for officials from one thousand five hundred to two thousand five hundred manats, and for legal entities in the amount of fifteen thousand to twenty five thousand manats.

60 “Guidelines on the “Feasibility of the Construction of a Religious Place of Worship or its Rebuilding (Restoration, fundamental repair)” <http://www.e-qanun.az/framework/19324>

Article 12 of the Guidelines outlines the grounds for refusing an application, which are vague and therefore open for arbitrary interpretation. For example, under Article 12(7), the SCWRO may refuse to give permission if the construction or reconstruction of a place of worship (liturgy) 'does not seem to be feasible'. This provision is too vague as it is not clear what 'feasible' means in this context. This therefore results in a violation of the principle of foreseeability and legal certainty, which may lead to arbitrary application of the law by the state authority.

IMPLEMENTATION OF THESE PROVISIONS IN PRACTICE

Closure of public places of worship

There have been numerous instances where the Azerbaijani Government has closed places used for worship, such as mosques or Muslim prayer rooms in buildings belonging to private organizations. In 2009, the year when Baku was declared a capital of the Islamic Culture, three mosques were destroyed on the grounds that they were allegedly 'illegal constructions'.⁶¹ According to state officials, the documents of those mosques were not in order.⁶²

Most of the mosques closed or demolished by the authorities have been Sunni mosques. All Sunni mosques in Baku such as the Lezgin Mosque, the Abu Bekr Mosque, and the Martyrs' Mosque (also known as the Turkish Mosque) have been closed on ground of necessary repair.⁶³ A Sunni Mosque in Gobustan outside Baku was reportedly forced to give up its Sunni identity after the SCWRO warned its leaders that if they did not do so and hand back documents for the Mosque, and allow the Mosque leadership to be replaced, the State Committee would go to court to enforce liquidation. The authorities insisted that all mosques must be controlled by the CMO, which is widely perceived as a state-controlled organization.⁶⁴

Closures of non-public places of worship

The systematic campaign by the state to close Sunni mosques forces Sunni Muslims to find alternative venues to meet and pray together. For example, Zohrab Shikhaliyev opened a prayer room in his home in Sumgait as there is no Sunni mosque, but plain clothed police officers arrested nine Muslims – among them Shikhaliyev – as they arrived for prayers at his home on 13 November 2014.⁶⁵ Police claimed to have discovered weapons in the house and seized 500 items of religious literature and 210 computer discs. All those arrested claimed they were insulted and humiliated by the police before being released later the same day.

Use of places of worship of other religious communities

Other religious communities are also seeking to return to their historic places of worship, which were confiscated in Soviet times. For example, the Baptist community in Baku – some of whom still remember praying in the church before its enforced closure by the Soviet authorities – want the return of their place of worship, now a puppet theatre in the city center. The authorities have refused, on the grounds of the lack of a restitution law.⁶⁶

61 <https://az.trend.az/azerbaijan/society/1492012.html>

62 <https://az.trend.az/azerbaijan/society/1468391.html>

63 http://www.forum18.org/archive.php?article_id=2429

64 Ibid.

65 Azerbaijan: Behind tolerance facade Freedom of Religious or Belief Communities, Report of Norwegian Helsinki Committee, 2015, page 40.

66 <http://www.forum18.org/analyses.php?region=23>

- » Organization of any meeting by a group of religious people without state permission is illegal in practice and those who violate this face punishment
- » Foreigners or stateless persons are not allowed to perform religious ceremonies. A citizen studying abroad can only conduct a ceremony with the consent of the Azerbaijani authorities. The Criminal Code establishes criminal responsibility for the violation of this rule.

2.2 Conducting religious ceremonies, holidays and other rituals

Freedom of religion and belief implies the freedom to worship not only in private but in public places alongside others who share the same beliefs. Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted in 1981, implies freedom “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief”.⁶⁷ Article 9 of the ECHR lists various forms of activities such as worshipping, training and practice as a manifestation of religion or belief.⁶⁸ Article 9 protects the right of believers to come together for peaceful worship or to carry out other religious rituals, including celebrations and ceremonies. The UN HRC Resolution 6/37 recommends Member States to ensure that each individual has the right to freedom of religion and assembly and to establish and maintain places of worship for this purpose.⁶⁹

According to Article 21 of the Law on FRB, worship, religious rites and ceremonies can be carried out freely in places of worship, in sanctuaries, cemeteries, religious institutions, and citizens’ flats and houses. Only registered religious communities can hold such ceremonies. Furthermore, they can only be carried out by citizens of Azerbaijan. Citizens of Azerbaijan who received religious education abroad can conduct Islamic rituals and ceremonies upon agreement with the relevant executive authority only.⁷⁰ A violation of such a requirement establishes criminal responsibility and is punishable by a fine of 2000 to 5000 AZN (approx. 1070-2670 EUR) or imprisonment for up to one year.⁷¹ The same provision establishes that a foreigner or stateless person can be sentenced to imprisonment for a term of between one and two years. Such criminal sanctions are disproportionate and tighten state control over religious freedom in Azerbaijan.

IMPLEMENTATION OF THESE PROVISIONS IN PRACTICE

- » State censorship of religious literature and harsh administrative and criminal penalties
- » No normative definitions of ‘literature of religious purpose’, ‘religious goods and articles’ or ‘other religious materials’
- » SCWRO is responsible for the evaluation of religious literature. There is no alternative organization to provide an expert opinion in cases when legality of certain religious material is disputed in court.

67 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted in 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>

68 ECHR, Gulerand Ughur v. Turkey, app no. 31706/10 and 33088/10, 02 December 2014, para 35

69 Ibid 33, para g.

70 The Law of the Republic of Azerbaijan 29-VQD adopted on 04 December 2015 (Azerbaijan Newspaper, 06 december 2015, 269, Compilation of the Legislation of the Republic of Azerbaijan, 2015 year, 12, article1443)

71 Criminal Code of the Republic of Azerbaijan, Article 168-1

Arrest for leading Islamic prayers with foreign education

In July 2017 Sardar Babayev who led Friday prayers (namaz) with CMO permission was arrested under Article 168-1.3.1 of Criminal Code on the basis that he obtained religious education abroad.⁷² He completed theological studies at Al Mustafa University in the Iranian city of Qom in 2000 and has also studied Islam in Baku. At the invitation of the CMO, Sardar Babayev led the namaz (Friday prayers) at Masalli's Juma (Friday) Mosque since 2009. He was specifically charged for having led Friday prayers on 4 November, 18 November, and 9 December 2016. In late 2016, the head of Masalli District administration, Rafil Huseynov, wrote a complaint about Sardar Babayev to police and in a subsequent court case he was jailed for three years. Sardar Babayev had been under arrest since February 2017 and had been denied access to a Koran and a prayer mat.⁷³

2.3 Import / export of religious literature

The United Nations Human Rights Bodies and the ECtHR emphasize that freedom of religion or belief includes the right to 'prepare, produce and distribute relevant publications'.⁷⁴ The OSCE Vienna Concluding Document (1989) establishes that OSCE participating States have to respect rights of individual believers and communities, which include a right to acquire, possess, produce and use religious material.⁷⁵

Article 22 of the Law on FRB requires that a prior permission from the relevant state authority (SCWRO) shall be sought to import, publish, sell or distribute religious literature, religious items and other religious materials. SCWRO is tasked to assess religious literature, goods and other informational materials before it is approved for publication.⁷⁶ It is not entirely clear how SCWRO makes its decisions as expressions such as 'literature for religious purposes', 'religious goods and articles' or 'other religious materials' are too vague and general and subject to wide discretionary interpretation. SCWRO also decides on the number of copies of each named work that may be printed or imported and maintains a list of banned religious literature in Azerbaijan. Once it is approved, such literature can only be sold in certain retail points approved by the authorities.⁷⁷

When the legality of a certain religious material is disputed in court, in practice, only SCWRO experts are invited by courts to give their expert opinion, which undermines the objectivity of the expert evaluation and the overall fairness of the trial.

72 http://www.forum18.org/archive.php?article_id=2429

73 Ibid

74 UN Human Rights Committee Resolution 2005/40 on Elimination of all forms of intolerance and of discrimination based on religion or belief, 19 April 2005, para 4(d); also Ibid 33, para 9 (g);

UN Human Rights Committee's General Comment No. 22 07/30/1993, CCPR/C/21/Rev. 1/annex 4/para 4;

UN General Assembly on Elimination of all forms of religious intolerance 62/157 sayılı para 10 "c" (Adopted 18 December 2007)

ECHR, Kimlya and Others v. Russia, appl. no. 76836/01 and 32782/03, 1 October 2009, para 86

75 OSCE Vienna Concluding Document (1989) paragraph 16.9 and 16.10.

According to this document, this right includes to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief and allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials.

76 Statute of the State Committee for Work with Religious Organizations of the Republic of Azerbaijan (Was approved by the order № 544 of the President of the Republic of Azerbaijan on 20 July, 2001)

77 Article 22(3) of the Law on FRB

In December 2011, criminal liability was introduced for the production, import, sale or distribution of religious materials without official consent, along the already existing administrative liability.⁷⁸ Fines for such violations were increased from 200-400 AZN (approx. 105-215 EUR) to 5,000-7,000 AZN (approx. 2670-3750 EUR) and imprisonment was raised from two to five years. Additionally, the production of religious materials for retail purposes is also prohibited under Article 451 of the Code of Administrative Offenses.⁷⁹

Such tight regulations, including a requirement of state consent, interfere with the right to freedom of expression protected by the international human rights standards and amount to censorship. It provides the SCWRO an exclusive discretion to decide on the content and control what religious material is available to the public.

IMPLEMENTATION OF THE PROVISIONS IN PRACTICE

Possession of banned religious literature

On 18 May 2014, police detained Gulara Huseynova and one more member of Jehovah's Witnesses in the town of Gakh, accusing them of spreading their faith illegally, and confiscated a copy of the banned book "Muqeddes Kitab", a modern Azeri-language translation in Latin script of "the Old Testament".⁸⁰

The list of banned books also includes the 14-volume Risale-i Nur (Messages of Light) collection of writings by the Islamic theologian and Turkish scholar Said Nursi. For a long time, it has been forbidden to bring Said Nursi's books to Azerbaijan.⁸¹ Reports circulated in the country's media stating that the Ministry of Internal Affairs has confiscated religious literature by Said Nursi in operations carried out at various locations.⁸² In the case against Russia, Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia, ECtHR found that there was no legitimate reason to ban books by Said Nursi.⁸³

House searches, literature confiscation

In February 2019, the son of a Baptist couple, Safqan and Gulnar Mammadov, took Christian booklets to school and offered them to classmates without seeking his school approval in Sabirabad District. Police summoned Gulnar Mammadova on 25 February 2019 and searched the family home, seizing 106 books and booklets, including Bibles and New Testaments, as well as CDs with Christian songs. On 10 April 2019, police drew up charges against both Safqan and Gulnar Mammadov, relating to books they possessed. On 16 April 2019, Sabirabad District Court found both Safqan and Gulnar Mammadov guilty of violating the domestic law on the religious literature and religious gatherings⁸⁴ and ordered the

78 The Law of the Republic of Azerbaijan 14237-IVQD (Republic Newspaper, 13 December 2011, № 269,) Azerbaijan newspaper, 14 December 2011, 276, Compilation of the Legislation of the Republic of Azerbaijan, 2011 № 269

79 According to this Article, non-marked goods, products and information materials are subject to confiscation and offenders if they are natural persons shall be penalized in the amount of fifty manats, per item, officials in the amount of one hundred manats per item, legal entities in the amount of one hundred and fifty manats per item.

80 Statement by the European Association of Jehovah's Christian Witnesses for the OSCE Human Dimension Implementation Meeting, Warsaw, 22 September to 3 October 2014, <https://www.osce.org/odihr/124723?download=true>

81 <https://apa.az/xeber-az/dini-xeberler/risaleyi-nur-azerbaycanda-2012-ci-ilin-sonundan-qadagan-olunub-video.html>

82 <https://www.azadliq.org/a/24605755.html>

83 The issue whether books of Said Nursi were triggering hatred and hostility towards non-religious persons was discussed in the case of Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia, application No. 28621/11, 4 April, 2011, ECHR

84 Article 451 of Administrative Code punishes "Storing with the intention of sale or distribution, taking outside the place of production, or selling or distributing in any other way goods, products and informational material that should bear a control mark but do not have such a mark". Such items include alcohol, tobacco and religious literature.

couple to pay 1,500 AZN (approx. 800 EUR) approx. three months' average salaries).⁸⁵ The Mammadovs appealed this decision to Shirvan Appeal Court, but on 4 June 2019 the Appeal Court rejected their appeal.⁸⁶

2.4 Using religious attributes and clothing

- » The domestic law does not provide for any specific prohibitions or restrictive regulations on religious symbols and clothing in Azerbaijan; religious slogans and other religious attributes are however prohibited in public places outside of places of worship

International law gives wide margin of appreciation to states in terms of display of religious attributes. According to the ECtHR, a person who maintains his or her religious beliefs as a basic principle of life can wear symbols of the religion he or she follows or clothes symbolizing a certain belief. Wearing religious symbols and dresses stems from a person's religious convictions and manifests his/her faith, and is therefore protected by the ECHR.⁸⁷ The right to wear religious clothes or symbols is however not absolute and shall be balanced with the legitimate interests of other physical and legal persons.

With regard to the use of religious clothing in Azerbaijan, there are no specific legislative prohibitions or restrictive regulations. According to the Law on Education, everyone can access public buildings, private and civil entities and universities in the preferred clothing, except for regulations relating to school uniforms.⁸⁸ Article 21 of the Law on FRB however stipulate that 'religious slogans and other religious attributes (except religious attributes carried on a person) are prohibited in public places outside of the worship spaces'.⁸⁹ Religious flags can only be placed indoors, inside places of worship, religious centres and offices. The definition of 'religious slogans and attributes' used in the text of this provision is unclear as it is not legally defined.

Article 515.0.3 of Administrative Code punishes "clergy and members of religious associations holding special meetings for children and young people, as well as the organising or holding by religious bodies of organised labour, literary, or other clubs and groups unassociated with holding religious ceremonies" with fines for individuals of between 1,500 and 2,000 Manats.

85 http://www.forum18.org/archive.php?article_id=2487

86 http://www.forum18.org/archive.php?article_id=2487

87 ECHR, *Eweida and others versus United Kingdom*, Appl. nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013, paragraphs 89-94

88 Article 14.10 of the Law on Education provides that "the uniforms of the students in all educational institutions are determined by the charter of the educational institution", available here http://www.e-qanun.az/alpdata/framework/data/18/c_f_18343.htm

According to the "Unified Statute of the General(Secondary) School" approved by the Decree of the Cabinet of Ministers of the Republic of Azerbaijan dated January 13, 2011 the uniforms of the students of general education schools are determined by the regulations of each school, and the control of that process is carried out by the school itself, i.e. school uniforms are defined by the internal charter.

89 The Law of the Republic of Azerbaijan 29-VQD, Azerbaijan Newspaper, 06 December 2015, № 269, Compilation of the Legislation of the Republic of Azerbaijan, 2015 № 12, article 1493 <http://e-qanun.az/framework/31521>

IMPLEMENTATION OF THESE PROVISIONS IN PRACTICE

'Hijab' Protests

In 2010, under the pretext of introducing uniforms to secondary school Azerbaijan's Education Ministry forbade students from wearing hijabs (headscarves) in schools. The former Education Minister, Misir Mardanov, stated that girls should comply with official rules on school uniforms, which forbid the wearing of the Hijab.⁹⁰ Soon after this statement, thousands of Azeri Muslims held demonstrations across the country to protest against the new policy. Street protests in Baku were held in December 2010, May 2011 and October 2012. The October 2012 anti-hijab ban protest outside the Education Ministry ended in violent attacks on the demonstrators by police officials.⁹¹ As a result of these protests, the government arrested several leaders of the religious opposition and their supporters, and several participants in the demonstrations were sentenced to long prison terms.⁹²

2.5 Access to religious education

- » Law on FRB confines the right to religious education to "citizens" only
- » Religious studies of holy books must be carried out in accordance with charters of religious associations and subject to the consent of an authority within a religious organization. Individuals who are not members of religious centres and departments cannot establish religious educational institutions for the training of clergy and other religious staff.

Article 18 of the ICCPR gives special recognition to the parental bond regarding the freedom of religion of the child. Article 2 of Protocol 1 to the ECHR (right to education) determines that states must respect the rights of parents to ensure that school education and teaching is in conformity with their own religious and philosophical convictions. The ECtHR has placed emphasis on the need to give a broad overview of "other religions and philosophies together" serving the principle of pluralism and objectivity. The Court has in this respect also warned against having children exempted from certain parts of the curriculum as this could subject the parents concerned to a heavy burden with a risk of undue exposure of their private life, while the potential of conflict may be likely to deter them from making requests for exemption.⁹³

Article 6 of the Law on FRB states that 'the state educational system is separate from religion' and that 'religious studies, religious knowledge, religion and philosophy courses, and an overview of the teachings contained in religious texts may be included in the curricula of state educational institutions'. However, there is no provision for exemption from such teaching if it should be against the beliefs of the child, young person, or their parents or guardians. This contradicts the provisions of Article 1, which states that parents 'have the right to educate their children in accordance with their religion or their attitude towards religion'.

Article 6(3) of the Law confines the right to religious education to 'citizens'. This clause infringes both the right of 'everyone' to freedom of religion in Articles 18 (1) and 9 (1) of the ICCPR and ECHR respectively as well as the right to education in Article 2 of Protocol 1 to the ECHR. Article 9 of ECHR and Article 18 of ICCPR do not allow blanket restrictions of freedom of religion on the basis of citizenship.

90 <https://web.archive.org/web/20110523080147/http://www.presstv.ir/detail/156365.html>

91 <https://www.azadliq.org/a/2244300.html>, <https://modern.az/az/news/29526>

92 Azerbaijan: Behind tolerance facade Freedom of Religious or Belief Communities, Report of Norwegian Helsinki Committee, 2015, page 44.

93 ECtHR, *Folgerø and Others v. Norway*, Application no. 15472/02, 29 June 2007, Grand Chamber judgment

Additionally, Article 6(5) requires that ‘courses of religious associations for studying holy books by youth and the elderly shall be organized in accordance with charters of those associations under consent of religious centres and departments they obey’. The requirement that studies of holy books must be in accordance with charters of religious associations and subject to the consent of some religious/organizational authority within a religious organization constitutes interference with the right to freedom of religion through teaching, especially as this may effectively compel a religious group to function under a single leadership.⁹⁴ This requirement infringes upon freedom to manifest religion through teaching as well as the freedom of expression as protected under Article 10 of the ECHR and Article 19 of the ICCPR.

Article 10 of the Law provides that ‘only religious centres and departments may establish religious educational institutions for the training of clergy and other religious staff’. This provision interferes with the right to freedom of religion as in effect it violates the right of individuals who are not members of religious centres and departments to manifest, together with others, their religion through worship and teaching. Such a restriction is overly restrictive and is not necessary in a democratic society.

Article 167(1) of the Criminal Code, which was introduced in May 2009, criminalizes forcing individuals, including children, to take part in religious activity or religious education without specifying what ‘forcing’ entails. Individuals are punishable by a fine or up to two years’ imprisonment and officials by a larger fine or between two- and five-years’ imprisonment. Furthermore, Article 515.0.3 of Administrative Code punishes ‘clergy and members of religious associations for holding special meetings for children and young people, as well as the organizing by religious bodies of organized labour, literary, or other clubs and groups unassociated with holding religious ceremonies’ with fines for individuals of between 1 500 and 2 000 AZN (approx. 1070 EUR).

IMPLEMENTATION OF THESE PROVISIONS IN PRACTICE

Fines imposed for teaching Islam to children

On 30 September 2018, the Head of Sheki City Police drew up charges against Taleh Mammadov for teaching Islam to children. On 15 October 2018, Sheki District Court found Mammadov guilty of violating Article 515.0.3 of the Administrative Code and fined him with 1,500 AZN (approx. 800 EUR). Taleh Mammadov was punished for teaching Islam to children, although he had official approval from the local Gazi with the consent of the SCWRO.

Chapter III. Exercising freedom of religion and belief in detention facilities and prisons

- » Domestic laws regulating freedom of religion and belief of prisoners are more restrictive than those applicable to those arrested and detained in detention facilities
- » Only religious leaders of state registered religious organizations are allowed to detention facilities and prisons
- » Prisoners’ right to invite religious figures for worship is limited to situations of life-threatening health conditions

⁹⁴ ECtHR, *Metropolitan Church of Bessarabia and others v. Moldova*, 13 December 2001, application no. 45701/99, chamber judgment of 12.12.2001. para. 117.

- » Internal regulations fail to set out concrete terms under which worship places shall be set up in detention facilities and prisons, leaving it to the wide discretion of the authorities
- » Wide discretionary powers to prison authorities in assessing what literature promotes 'religious hatred' and 'radicalism'
- » Domestic law is silent on prisoners' right to religious diet

This Chapter analyses existing domestic legislation relating to detainees' and prisoners' ability to practice religion and enjoy rights deriving from this freedom, with a particular focus on the observance of dietary rules, access to religious literature and religious figures to conduct religious ceremony in detention facilities and prisons in Azerbaijan. Due to absence of any available information on the implementation of these rights in practice, as a result of the restricted access to detention facilities and prisons in Azerbaijan, the report limits itself to a study of the compliance of domestic legislation with international standards.

International standards relating to prisoners' and detainees' rights are well developed both on the regional (CoE) and international level.⁹⁵ For example, the CoE European Prison Rules ensure that 'Prisoners' freedom of thought, conscience and religion shall be respected' and that 'the prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.'

Azerbaijani legislation, in general terms, guarantees freedom of religion and belief both in detention facilities and in prisons. Article 21 of the Law on FRB provides for the conduct of worship and religious ceremonies in pre-trial detention facilities. Further regulations are set out in the Law On the Rights and Freedoms of Persons Held in Detention Facilities of 22 May 2012⁹⁶ and the Internal Disciplinary Rules of Detention Facilities of 26 February 2014^{97,98}; with regard to prisoners, it is regulated by the Code on Execution of Punishments of 14 July 2000⁹⁹ and by the Internal Disciplinary Rules of Penitentiary Institutions of the Ministry of Justice¹⁰⁰ on prisons of 29 December 2011.¹⁰¹ The Ministry of Justice Decree stipulates that providing assistance to prisoners in ensuring their freedom of religion and belief is one of the main forms of participation in the rehabilitation of prisoners (Article 4.1.4).

95 Committee of Ministers of the Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006, containing the (revised) European Prison Rules.

General Assembly, Resolution 70/175 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),' adopted on 17 December 2015. Hereinafter: Nelson Mandela Rules.

United Nations Human Rights Committee's General Comment 22 on Article 18 of the ICCPR 07/30/1993. CCPR/C/21/Rev., § 8.

96 Law of the Republic of Azerbaijan "On the Rights and Freedoms of Persons Held in Detention Facilities" adopted on May 22, 2012. No. 352-IVQ. Source: <http://e-qanun.az/framework/23933#>

97 The Decision of the Cabinet of Ministers of the Republic of Azerbaijan on 26 February 2014. No. 63 on "Internal Disciplinary Regulations of the Detention Facilities. Source: <http://e-qanun.az/framework/33805>

98 These are: temporary detention facilities, investigative isolators and military prisons.

99 The Code Of The Azerbaijan Republic About Execution Of Punishments Approved By The Law Of The Azerbaijan Republic Of July 14, 2000, No. 908-Ig. Source: <http://e-qanun.az/code/15>

100 The Decree of the Collegium of the Ministry of Justice on "Improving some normative documents of the Ministry of Justice" dated December 29, 2011. Source: <http://e-qanun.az/framework/23011>

101 Places considered for the convicted persons in accordance to the criminal law : 1) educational institutions for juveniles; 2) penitentiary institutions of different regimes for the prisoners; 3) prison and 4) Treatment facilities for persons deprived of their liberty.

3.1. Right to worship, access to worship place, religious literature and items

Both detainees and prisoners are granted the right to worship and access to places of worship by domestic legislation. Article 24.1 of the Law on the Rights and Freedoms of Persons held in Detention Facilities provides that those arrested and detained can carry out religious ceremonies in detention facilities, and use religious equipment and literature. It also tasks the authorities of the detention facility with creating the appropriate conditions for religious rites. Similar rights are ensured by the Internal disciplinary rules of investigative isolators' and Internal disciplinary rules of Temporary Detention Facilities.¹⁰²

Articles 10 and 13 of the Code of Execution of Punishment ensure prisoners' rights to participate in religious ceremonies and practise the religion they believe in. Prisoners are allowed to carry out religious ceremonies, use religious goods and literature in prisons, and prison administration shall allocate an appropriate place for that purpose (Article 13). According to Article 13(2) of the Code, prisoners in 'colony type' penitentiary institutions may be allowed to attend places of worship within the boundaries of the administrative unit where the sentence is executed. Prisoners serving their sentences in other types of prisons are provided access to places of worship by the prison administration as stated in Article 13.3 of the Code of Execution of Punishments (Article 13(2)).

However, neither the law, nor the internal prison or detention facility regulations stipulate the clear obligation of the prison authorities to ensure that a worship place is available in detention facilities, nor any criteria or terms, which such places should meet. The Internal disciplinary regulations determine the structure of penitentiary facilities, but they are silent on places of worship, leaving it to the discretion of the authorities to decide how to ensure that detainees and prisoners are able to exercise that right. Several lawyers interviewed for this report reported that in some detention facilities prisoners have set up places of worship themselves or and in others the authorities have designated them following requests.

The Internal Disciplinary Rules of Penitentiary institutions prohibit prisoners from receiving and possessing literature (including audio and video material) that promotes 'religious hatred' and 'extremism' (Article 61). The Rules however do not specify how such literature and materials are assessed and under what criteria. The lack of clear criteria and procedure grants wide discretionary powers to the prison authorities or law enforcement bodies in each individual case.

3.2. Access to clergy

The domestic legislation provides that only religious figures from state-registered religious associations can hold religious ceremonies, carry out religious counselling or other religious ceremonies at the request of detainees or prisoners.¹⁰³ Such regulations hinder detainees and prisoners' access to clergy of

¹⁰² Approved by the Decision of the Cabinet of Ministers of the Republic of Azerbaijan on 26 February 2014. No. 63 on "Internal Disciplinary Regulations of the Detention Facilities

¹⁰³ Article 24.2 of the same Law On the Rights and Freedoms of Persons Held in Detention Facilities guarantees a right to carry out religious ceremonies involving religious officials invited by the detention facility from religious associations registered in the manner prescribed by the legislation of the Republic of Azerbaijan.

Article 13(3) Code of Execution of the Punishments ensures a possibility to have religious figures of state-registered religious associations invited to prisons upon requests of prisoners. At the request of prisoners suffering from severe illnesses endangering their lives, religious figures may be invited to the penitentiary institutions to perform the necessary religious ceremonies (Article 13(5)).

religious communities and associations lacking state registration. Prisoners belonging to such religious communities and associations are thus not able to seek religious support (religious conversations, counselling, religious rituals, etc.) with the clergy of their own religious conviction.

Furthermore, domestic law severely limits prisoners' access to clergy compared to that of detainees. While detainees are granted the right to access clergy at any time during their detention, prisoners can only do so in situations of life-threatening health conditions.¹⁰⁴ It is not clear on what basis such a differentiation has been made in domestic law, and such a severe limitation of prisoners' rights to access clergy is disproportionate and unnecessary.

Lastly, the prisons' internal disciplinary regulations differ from those of detention facilities in that they fail to set out the terms and procedures under which access to clergy is arranged. 3.3. Access to religious diet

Article 20 of the Law on Rights and Freedoms of Persons Held in Detention Facilities stipulates that the religious beliefs of those arrested or detained shall be taken into account in relation to diet in detention facilities.¹⁰⁵ However, no such provisions are present in laws and regulations setting out prisoners' rights. Without a legal basis for such a right in domestic law, prisoners in Azerbaijan have no right to request an adapted diet in keeping with their religion. This violates international norms.

European Prison Rules stipulate that 'prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work' (Rule 22). The ECtHR has ruled that the refusal of the prison authorities to provide a convict with food in line with his religious views was a violation of the right to freedom of religion under Article 9 of the ECHR.¹⁰⁶ The UN Human Rights Committee has established that adherence to the rules of religious diet is a part of the exercise of freedom of religion and conscience as set out in Article 18 of the ICCPR.¹⁰⁷ Lack of respect towards the dietary requirements of prisoners who hold certain religious beliefs amounts to interference with the freedom of religion and conscience, and states should be able to reasonably explain the necessity and proportionality of this interference.¹⁰⁸

Absence of any regulation on this matter with regard to prisoners in Azerbaijan is therefore in clear violation of international standards.

Chapter IV. Right to conscientious objection in Azerbaijan

- » In absence of a specific law on alternative service, those objecting to military service on religious grounds are subjected to criminal liability in Azerbaijan
- » Azerbaijan fails to comply with its pending commitment to the CoE to adopt legislation on alternative service within two years since its accession to the CoE in 2001

104 Code on Execution of Punishments of the Republic of Azerbaijan Article 13.5.

105 Article 20 of the Law on the Rights and Freedoms of Persons Held in Detention Facilities. See also Article 11.1. of Internal Disciplinary Regulations of the Detention Facilities

106 *Jakobski v. Poland*, appl. no. 18429/06, 7 December 2010, para 53

107 Human Rights Committee, General Comment 22: Article 18 (48th session, 1993), para 4

108 Human Rights Committee, General Comment 22: Article 18 (48th session, 1993), para 8

The right to conscientious objection is internationally recognised as a fundamental element of the right to freedom of religion, thought and conscience where 'opposition to military service, [...] is motivated by ... a person's conscience or his deeply and genuinely held religious or other beliefs'.¹⁰⁹ In its General Comment No 22 of 1993, the UN Human Rights Committee established that that a claim of conscientious objection to military service could derive from the right to freedom of thought, conscience and religion in as much as the use of lethal force seriously conflicted with the individual's freedom of conscience and the right to manifest one's religion or belief.¹¹⁰

CONSCIENTIOUS OBJECTION IN AZERBAIJAN

Article 76 (II) of the Constitution of Azerbaijan provides for the possibility to undergo alternative service in instances 'stipulated by the law' where the convictions of citizens contradict regular military service. The Law On military rank and military service includes the same provision and envisages that recruits who underwent alternative service shall be freed from regular military service.¹¹¹ Article 4 of the Law on FRB further stipulates that no one can refuse or evade obligations set out by Law due to their religious beliefs, and that replacement of one duty with the other because of religious convictions shall be permitted only in cases provided for by the legislation of the Republic of Azerbaijan.

Article 321 of the Criminal Code provides for criminal liability for evasion of military service or an appeal for mobilization without lawful grounds, with the purpose of evading military service and envisages imprisonment of up to two years. If such an act is committed in wartime, he/she shall be punishable by imprisonment for from three to six years. Article 334 of the Criminal Code criminalizes desertion from the army and envisages imprisonment for from three to seven years.

In practice, in the absence of a specific law on alternative service, in line with Article 76(II) of the Constitution, individuals wishing to exercise their right to conscientious objection on religious grounds are faced with criminal prosecution as the current domestic laws do not recognize conscientious objection as a ground to refuse military service in Azerbaijan. Despite the Government's explicit commitment to adopt a law on alternative service within two years after joining the Council of Europe in 2001, this has not been done to date refusing to undergo military service due to religious views is effectively criminalised.¹¹² In August 2009, the UN Human Rights Committee,¹¹³ and in October 2012, the Venice Commission¹¹⁴

109 ECtHR Factsheet – conscientious objection, June 2018, available at https://www.echr.coe.int/Documents/FS_Conscientious_objection_ENG.pdf

Bayatyan v Armenia, application no. 23459/03, 20 July 2011; *Erçep v Turkey*, application no. 43965/04, 22 November 2011

110 UN Human Rights Committee, General Comment 22: Article 18 (48th session, 1993), para 11

111 Law on Military Rank and Military Service, Articles 3.3 and 23

112 Council of Europe, Parliamentary Assembly, Resolution 1398 (2004), Implementation of Recommendation 1358 (2004) on the functioning of democratic institutions of Azerbaijan, 5 October 2004.

113 Human Rights Committee, ninety-sixth session 13 – 31 July 2009. Concluding observations of the Human Rights Committee/ AZERBAIJAN. CCPR/C/AZE/CO/3. 3 August 2009

14. The Committee remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18).

The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22.

(...) Source: <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>

114 The Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (12-13 October 2012) recommended "introducing legislation so as to expressly allow for alternative civilian service for those who refuse to perform military service owing to their religious (or non-religious conscientious) beliefs".

further encouraged Azerbaijan to adopt legislation exempting conscientious objectors from compulsory military services and providing for alternative civil service but this has brought no results to date.

IMPLEMENTATION OF THE REGULATIONS IN PRACTICE

Jehovah's Witnesses have been imprisoned as a result of their refusal of compulsory military service on religious grounds:

According to the official website of the Jehovah's Witness community, Vahid Abilov refused of military service in 2018 and was sentenced to one-year imprisoned by Ganja Court of Appeal on 31 October 2018.¹¹⁵ He reported that he was invited to the Agdam Region Department of the State Service of Mobilization and Conscription soon after his 18th birthday where he provided a written explanation that he could not serve in the army due to his religious beliefs. The authorities denied his request and accused him of avoiding military service.

On 6 July 2018, Emil Mehdiyev, another member of Jehovah's Witness, was sentenced to one-year conditional imprisonment by Barda District Court on the same grounds. When he provided his explanation referring to his religious belief to the Barda District Office of the State Service for Mobilization and Conscription in December 2017, he was informed that there was no alternative civilian service in Azerbaijan and that the case would be sent to the Prosecutor's Office.¹¹⁶

In 2007-2013, a number of Jehovah's Witnesses - Samir Huseynov (2007),¹¹⁷ Mushvig Mammadov (2009),¹¹⁸ Farid Mammadov (2010),¹¹⁹ Fakhraddin Mirzayev (2012),¹²⁰ Kamran Shikhaliyev (2013),¹²¹ and Kamran Mirzayev (2013),¹²² have been subjected to imprisonment for refusing military service due to their religious beliefs.

Chapter V. Combatting religious extremism in Azerbaijan: assessment of 'extremism laws'

- » The national laws relating to fighting religious extremism contain overly vague, broad and ambiguous definitions; afford wide discretionary powers for their interpretation by national authorities; and fail to set out safeguards against arbitrary application
- » Impunity for state actions relating to right to life, health and property during special operations
- » Religious extremism as grounds for deprivation of citizenship even in cases where an individual will be stateless as a result (in violation of the 1961 Convention on the Reduction of Statelessness)

115 <https://www.jw.org/az/xeberler/jw/region/azerbaycan/ali-mehkeme-apellyasiya-eqidesine-gore-herbi-xidmetden-imtina-etmek-20181217/>

116 <https://www.jw.org/az/xeberler/jw/region/azerbaycan/mehdiyev-emil-mehkum-edilir-20180824/>

117 http://www.forum18.org/archive.php?article_id=1129

118 <https://www.wri-irg.org/en/node/8583>

119 <https://www.wri-irg.org/en/node/11024>

120 <https://www.wri-irg.org/en/node/20495>

121 <https://www.wri-irg.org/en/node/22886>

122 http://www.forum18.org/archive.php?article_id=2061

Since 9/11 the world has seen the swift development of counter-terrorism laws: between 2001 and 2018, at least 140 governments adopted legislation and administrative measures to combat terrorism and extremism.¹²³ This left little room for determination of the necessity and proportionality of the measures, which often lack a comprehensive definition of terrorism and of violent extremism, and a comprehensive assessment of the human rights impact of the newly adopted measures.¹²⁴ In 2002, the late Secretary-General Kofi Annan advised the UN Security Council that counter-terrorism measures 'do not unduly curtail human rights, or give others a pretext to do so'.¹²⁵ An ongoing conflict between States' obligations to ensure the security of individuals in the light of religious radicalism and the fight against terrorism on the one hand, and the protection of individual rights and freedoms on the other has had adverse repercussions for rights and freedoms across the world. As the OSCE/ODIHR and the Venice Commission noted in their Guidelines for Assessing Laws Affecting Religion and Belief in 2004:

The concern, of course, is that States may use 'extremism' as a rationale not only for responding to groups that are genuinely violent and dangerous, but that they may use the rhetoric of 'extremism' to suppress legitimate religious expression or to target groups whose beliefs may simply be different or unusual".¹²⁶

These developments have also led to considerable a decline in freedom of religion and belief. In 2018, the UN Special Rapporteur on freedom of religion or belief expressed his concern that "strategies to prevent violent extremism have tended to alienate a range of religious or belief communities, undermining the enjoyment of several fundamental freedoms and defeating the ultimate objectives of enhancing public safety, tolerance and mutual understanding".¹²⁷

In Azerbaijan, this process began with the introduction of restrictive amendments to the Law on Religion and Belief in 2009.¹²⁸ These increased government control over many areas of the freedom of religion, including the registration of religious organizations, restrictions on the content, production, import, distribution and sale of religious texts, and state approval of religious education for clergy.¹²⁹ The tightening of legislation has continued, and led to occasional clashes between religious communities and the state authorities. The more notable clashes include Azerbaijani law enforcement officials dispersing and arresting dozens of Islamic activists on 6 May 2010¹³⁰ and 5 October 2012¹³¹ during the so-called 'hijab protests' against the government-imposed hijab ban in schools.

The years 2013-2014 were marked by a brutal crackdown on secular groups, such as NGOs and human rights defenders, active members of the Muslim communities became more outspoken in criticizing

123 Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders, A/HRC/40/52, 18 February 2019, para 3

124 Ibid, para 6

125 Ibid, para 6

126 OSCE/ODIHR and Venice Commission Guidelines for legislative reviews of laws Guidelines For Legislative Reviews Of Laws Affecting Religion Or Belief Adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004)

127 Elimination of all forms of religious intolerance - Interim report of the Special Rapporteur on freedom of religion or belief, (A/73/362), 5 September 2018, para 10

128 May 8, 2009, No. 812-IIIQD

129 United States Commission on International religious Freedom Annual Report 2019. Azerbaijan Chapter - 2019 Annual Report. Source: https://www.uscifr.gov/sites/default/files/Tier2_AZERBAIJAN_2019.pdf

130 <https://modern.az/az/news/29526>

131 https://www.bbc.com/azeri/azerbaijan/2012/10/121009_hijab_arrests_official

the wrongdoings of the government, particularly the Muslim Unity Movement (MUM), an unregistered religious group established in January 2015 in the Nardaran village outside capital Baku. The founder and Chairman of MUM, Irani-educated Azerbaijani Shiite scholar Taleh Bagirzade, has been a vocal critic of state religious bodies, and has accused the government of authoritarian rule and corruption.¹³² MUM members describe themselves as “non-violent, conservative Shiites” who advocate for the increased role of Islam in the otherwise largely secular Azerbaijan.

On 4 December 2014, the Azerbaijani Parliament adopted a Law on Combating Religious Extremism (LCRE), which entered into force on 5 December 2015.¹³³ It was adopted several days after a special security operation against the MUM members and supporters, which was known as the ‘Nardaran operation’, and which involved the arrest of dozens of MUM members, many of whom reported being severely ill-treated and tortured. Many were later convicted to prison terms under numerous charges such as murder, terrorism and attempts to seize power by violent means after trials marred by serious fair trial violations, including use of self-incriminating statements.¹³⁴

In February 2019, the Working Group on the Unified List of Political Prisoners in Azerbaijan, consisting of independent lawyers, human rights defenders and journalists, introduced an updated version of the report on the “Unified List of Political Prisoners” where it documented 67 political prisoners in Azerbaijan who had been arrested on religious grounds.¹³⁵ Among them are MUM members and people associated with them arrested during the Nardaran operation in 2015, those imprisoned for their participation in the Hijab Freedom campaign,¹³⁶ Muslim activists arrested in Masalli District in 2012,¹³⁷ as well as other religious activists. Following the release of 52 political prisoners under the Presidential pardon on 16 March 2019, the group reports that 49 religious activists remain in prison convicted under trumped up charges such as terrorism, illegal possession of weapons, a violent attempt to change the constitutional system, resistance to the police and others.^{138, 139}

132 Amnesty International, Azerbaijan: Torture and Traversy of Justice in Nardaran case, 6 February 2017, <https://www.amnesty.org/download/Documents/EUR5556332017ENGLISH.pdf>

133 Law on combating religious extremism adopted on December 4, 2015. No. 27-VQ. <http://e-qanun.az/framework/31509>

134 Ibid 133

135 <https://www.humanrightsclub.net/siyasi-m%C9%99hbuslar/2019/az%C9%99baycanda-siyasi-m%C9%99hbuslarin-vahid-siyahisi-hesabat/>

136 In 2012, Azerbaijani secondary schools started not to allow pupils with head scarves to attend, demanding pupils to respect the school dress code. This practice caused anger among Muslim communities in Baku. About 200 Muslim activists protested a ban on the wearing of head scarves in the secondary schools in front of the Ministry of Education. According to reports, 72 people were arrested as a result of clashes with police. See: <https://www.nytimes.com/2012/10/06/world/asia/azerbaijan-sees-clashes-over-hijab-ban.html>

137 In 2012, during International Folklore Festival, the incident between local police and Muslim activists then led to arrest of seven Muslim activists in the district. According to official charges, Muslims activists were accused with the weapon and drug possession charges.

138 <https://www.humanrightsclub.net/siyasi-m%C9%99hbuslar/2019/siyasi-m%C9%99hbus-kimi-taninan-daha-70-n%C9%99f%C9%99r-h%C9%99bsd%C9%99-qalib/>

139 Article 120.2.12 (homicide, with the motive of national, racial, religious hatred or enmity), 29 (attempted crime), 214.2.1 (terrorism, committed by a group of people on preliminary arrangement, an organised group or a criminal community/organization), 28 (preparing to commit a crime), 214.2.3 (terrorism, committed with use of fire-arms or objects used as a weapon), 214-2 (open calls for terrorism), 220.2 (incitement to active insubordination to lawful demands of a representative of authority and to mass disorders, as well as to violence against citizens), 283.2.3 (instigation of national, racial, social or religious hatred and hostility, committed by an organised group), and 315.2 (resistance to or use of violence against a representative of authority) of the Criminal Code.

5.1. Critiquing the new legislation to combat religious extremism in Azerbaijan

5.1.1. VAGUE DEFINITIONS

The LCRE determines the legal and organizational basis for the fight against religious extremism and sets out rights and obligations of state bodies and citizens in that regard. It grants absolute powers to the state authorities to take all necessary measures to fight extremism, and justifies harming health, life, or damaging property in the course of special operations against religious extremism. Under this new Law, everyone is obliged to inform the relevant authorities about details which will facilitate identification of cases of religious extremism, religious fanaticism and religious radicalism, and minimize the damage. The law further envisages that persons engaged in religious extremism bear responsibility in accordance with the Criminal, Administrative and Civil Codes.

The LCRE uses a number of overly broad, vague or ambiguous terms, which raises serious concerns over the possibility of wide interpretation by the national authorities and deliberate misuse in their application as well as about the absence of strong safeguards. Below we discuss some of these terms, as defined in the Law, and the problematic issues that it raises.

Religious extremism

‘Religious extremism (religious extremist activity)’ is defined as a series of acts committed on the ground of religious hostility, religious radicalism or religious fanaticism, listed in Article 1 of the Law:¹⁴⁰

- 1.1.1.1. Committing acts aimed at forced change of the constitutional system of the Republic of Azerbaijan, including its secular nature, or the interference with territorial integrity or forcible seizure of power;
- 1.1.1.2. Establishment of illegal armed formations or groups, participation in these formations or groups;
- 1.1.1.3. terrorist activities;
- 1.1.1.4. participation in armed conflicts outside of the borders of the Republic of Azerbaijan;
- 1.1.1.5. actions intended to incitement of national, social or religious hatred, humiliation of national dignity, restriction of the rights ... of citizens on national, racial, social or religious feature; compulsion of person to shirking of religion (religious trend), including to implementation of religious practices and rituals or participation in such ceremonies and rituals, and also coercion to receipt of religious education;
- 1.1.1.6. open appeals for actions specified in Articles 1.0.1.1 - 1.0.1.5 these Laws;
- 1.1.1.7. preparation, storage or distribution of the religious and extremist materials the, that is the materials calling for implementation of religious and extremist activities either proving, or justifying such activities;
- 1.1.1.8. financing of religious extremism.

The list consists of violent criminal acts but also acts of non-violent nature and acts that do not bear criminal responsibility in Azerbaijan, which may amount to religious extremism. For example, the Law states that acts such as “humiliating national dignity”,¹⁴¹ ‘compromising religion’¹⁴² and ‘preparing,

¹⁴⁰ Law on Combat with Religious Extremism, Article 1.0.1

¹⁴¹ Law on Religious Belief, article 1.0.1.5.

¹⁴² Law on Religious Belief, article 1.0.1.6.

storing and disseminating religious extremist material¹⁴³ amount to religious extremism. Expressions such as ‘national dignity’ or ‘humiliation of national dignity’ are non-legal concepts that are not defined in the domestic laws and therefore are subject to broad interpretation by the authorities, leading to misinterpretation and arbitrary application.

Article 1.0.1.6 of the LCRE refers to ‘forcing someone to practice any religion (religious belief), including performing religious ceremonies and rituals as well as to religious education’ as an act of religious extremism, which is equally problematic and may lead to confusion in relation to the spreading of religious beliefs and inviting others to join, as a part of exercising freedom of religion. The absence of any clear definitions in the legislation exacerbates this confusion. As the ECtHR ruled, freedom of religion and the freedom to change religion include activities aimed at persuading others to change religion.¹⁴⁴

Extremist materials

The Law considers the “preparation, storage or dissemination of religious extremist material, or materials calling for carrying out religious extremist activity or justifying such activity or justifying the necessity of such activity” as a ‘religious extremist activity’.¹⁴⁵ The term ‘religious extremist material’ is also overly broad and in the absence of any clear definition or criteria on how this provision should be interpreted and applied, national authorities are given broad discretion to interpret each individual situation. This paves the way for the abusive application of the Law against any alternative, unpopular or otherwise unpopular religious groups. Production of religious material is an essential part of the activities of religious communities, and it has been recognised as a part of the right to freedom of religion to ‘prepare, produce and disseminate relevant publications’ religious affairs.¹⁴⁶

Religious Radicalism

Article 1.0.2 of the LCRE defines religious radicalism as ‘behaviour characterized by demonstrating extreme commitment to certain religious views, uncompromising consideration of religious exclusiveness of these religious views, the use of aggressive methods and means to spread those views’. Expressions like “extreme commitment to religious views” and “uncompromising consideration of religious exclusiveness of these religious views” raise similar concerns in terms of potentially broad interpretation in application. There is a need to strike a balance with the right to freedom of religion and conscience as otherwise the legislation may lead to the criminalization of activities such as proselytism and missionary activities which are protected by freedom of conscience and religion. As the Venice Commission noted on the relationship between freedom of expression and freedom of religion in 2008, ‘ideas of superiority of a

143 Law on Religious Belief, article 1.0.1.8.

144 *Kokkinakis v. Greece*, Application no. 14307/88. Para. 31. The Court notes that “According to Article 9 (art. 9), freedom to manifest one’s religion is not only exercisable in community with others, “in public” and within the circle of those whose faith one shares, but can also be asserted “alone” and “in private”; furthermore, it includes in principle the right to try to convince one’s neighbour, for example through “teaching”, failing which, moreover, “freedom to change [one’s] religion or belief”, enshrined in Article 9 (art. 9), would be likely to remain a dead letter.”

See also Venice Commission CDL-AD(2012)016 Opinion on the Federal Law on Combatting Extremist Activity of the Russian Federation, §40

145 Law on Combat of Religious Extremism, Art 1.0.1.8.

146 See: UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 para 4, Art 18, available at: <https://www.refworld.org/docid/453883fb22.html> [accessed 29 May 2019]; UN Commission on Human Rights, Resolution 2005/40 on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 19 April 2005, E/CN.4/RES/2005/40, (para 4(d)) available at: <https://www.refworld.org/docid/429c37774.html> [accessed 29 May 2019] and *Ibid* 33, para 9(g)

religion are acceptable, as it is possible for the believer of the 'inferior' religion to refuse to follow some ideas and even to switch to the "superior" religion.¹⁴⁷

Religious fanaticism

Article 1.0.3 of the Law defines religious fanaticism as '.... the extreme approach to religious beliefs to a degree of exclusion of any critical approach accompanied by rigid application of religious norms.' Such a definition contains overly broad and ambiguous expressions providing broad discretion to the state authorities and potentially allowing for the labelling of religious views which may differ from official perceptions of the religion or views which are not favoured by the authorities, as 'religious fanaticism'.

Religious extremist

Article 1.0.4 of the Law describes a religious extremist as a 'person participating in any form of religious extremist activity'. As discussed above, the use of 'religious extremism' in the context of non-legal terms has the risk that the law could be applied in such a way that it would lead to unjustified interference with the freedom of religion and conscience. Expressions that do not have a specific legal definition such as 'religious extremism', 'religious fanaticism', 'religious radicalism', 'humiliation of national dignity' provide the authorities with broad discretion in the application of restrictions on peaceful enjoyment of the freedom of conscience and religion.

After the adoption of the LCRE, the Criminal Code was amended to introduce 'actions committed for reasons of religious hostility, religious radicalism or religious fanaticism' aggravating circumstance¹⁴⁸ to a number of criminal acts such as violent seizure of power, terrorism, or creating illegal armed groups.¹⁴⁹ Two new articles were introduced to the Criminal Code criminalising 'the production, storage, distribution of extremist materials or financing such activities'¹⁵⁰ and holding religious rituals and ceremonies held by a citizen of the Republic of Azerbaijan who obtained a religious education abroad.¹⁵¹

5.1.2. LIQUIDATION OF EXTREMIST ORGANIZATIONS

Article 1.0.5 of the LCRE stipulates that a 'religious extremist organization' is an organization created with the purpose of carrying out religious extremist activity or carrying out religious extremist activity to achieve its goals. It further states that 'if one of the structural units is engaged in extremist activity with the consent of any governing body of the organization, the organization is considered as religious extremist organization'.

147 CDL-AD(2008)026-e Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)§§60-61

148 With the Law of the Republic of Azerbaijan No. 365-VQD of 28 October 2016 new Article 167-3 (Preparation, Storage, Distribution or Financing of Religious Extremist Materials) had been added to the Criminal Code. With the Law of the Republic of Azerbaijan No 31-VQD of December 4, 2015 another article 168-1 (religious propaganda, violation of the rules on conduct of religious rituals and ceremonies)

149 Articles 167(1), 167(2), 214, 278, 279, 283(1), 283(1) of the Criminal Code of Azerbaijan

150 Amendments to the Criminal Code of the Republic of Azerbaijan dated October 28, 2016 (№ 365-VQD), Article 167-3 of the Criminal Code

151 According to the law on Amendments to the Criminal Code of the Republic of Azerbaijan dated December 4, 2015 (No. 1037-VQD), Article 168-1 of the Criminal Code now prohibits religious rituals and ceremonies held by a citizen of the Republic of Azerbaijan who obtained a religious education abroad. Such act is punished by a fine ranging from two thousand to five thousand manats or imprisonment for a term up to one year.

Both the LCRE and the Law on RFB provide that an organization engaging in religious extremist activity shall be dissolved by court decision (Articles 14 and Article 12(1) respectively).¹⁵² Given the vagueness of the term of 'religious extremist activity' discussed above, the respective domestic laws fail to protect religious organizations from the arbitrary interpretation and application by the authorities who have wide discretionary powers. They thus jeopardise the Constitutional and Convention right to freedom of association. Furthermore, this may result in a situation where statements or actions by leaders of governing bodies of religious organizations, when qualified as extremist activity, can serve as grounds to liquidate the whole religious organization on extremism charges, a tool that may be used against unpopular or unfavoured organizations.

5.2 Religious extremism as a ground for loss of citizenship

In its 26 September 2016 referendum, Azerbaijan amended its Constitution to establish that a citizen of the Republic of Azerbaijan can be deprived of his/her citizenship in 'cases specified by law', thus ending the era of absolute constitutional protection of the right to citizenship (Article 53). The same article further ensures that 'a citizen of the Republic of Azerbaijan may in no case be deported from the Republic of Azerbaijan or extradited to a foreign state'. On the same day that the LCRE was adopted, a number of amendments were introduced to the Law "On Citizenship of the Republic of Azerbaijan" setting the grounds for the loss of citizenship:¹⁵³

- participation in terrorist activities or actions aimed at forcible change of the constitutional order of the Republic of Azerbaijan;
- participation in religious extremist activity;
- including the spread of religious sects to spread hatred or participation in the armed conflict in a foreign state under the guise of religious rites or other personal involvement in the conflict, or the creation of a group for that purpose;
- military training of a citizen of the Republic of Azerbaijan under the name of religious education in a foreign state.

As a result, an Azerbaijani citizen found to be engaged in 'religious extremist activity', amongst other grounds, can be deprived of his/her citizenship regardless of the legal situation in which he or she would find him or herself.

Such indiscriminate legal provisions run contrary to the principles set out in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, establishing a right to a nationality and obliging states to establish safeguards in their domestic laws to prevent statelessness. The 1961 Convention on the Reduction of Statelessness further envisages that a State may not deprive an individual of their nationality if doing so would render the individual stateless as the right to a nationality is of paramount importance to the realization of other fundamental human rights.

¹⁵² Article 14 of the LCRE states that "legal entities engaged in religious extremist activity should be liquidated and their activity is prohibited". Article 1 of the Law defines the religious extremist organization as "an organization that has been created for the purpose of pursuing religious extremist activity or achieving extremist goals".

According to Article 12-1 of the Law on FRB, religious organizations may be dissolved based on the decision of the court when proved that they engage in religious extremist activities.

¹⁵³ Paragraphs 3-1 and 3-2 are added to the Article 18 of the Law on Citizenship of the Republic of Azerbaijan with the "Law On Amendments to the Law of the Republic of Azerbaijan "On Citizenship of the Republic of Azerbaijan" December 4, 2015, No. 28-VQD. Source: <http://e-qanun.az/framework/31515>

In light of the concerns of overly broad and vague definitions of religious extremism and religious extremist activities, the amended provisions relating to citizenship stipulating ‘religious extremist’ as a ground for its loss offer no legal safeguards against arbitrary interpretation and application of such laws.

According to the official data provided by the Cabinet of Ministers and the State Security Service, 188 individuals were removed from citizenship of the Republic of Azerbaijan due to their alleged religious extremist activity in 2018¹⁵⁴, 151 individuals in 2017¹⁵⁵ and 103 in 2015¹⁵⁶. No information has been provided on the Government's efforts to ensure that these individuals do not remain stateless. According to various media reports, many of those deprived of their citizenship were Azerbaijani citizens who travelled to Syria and Iraq to join the war, and it is widely believed that they became stateless following the loss of their citizenship.

On 25 January 2019, in resolution 2263 ‘Withdrawing nationality as a measure to combat terrorism: a human-rights compatible approach?’, PACE recalled that the right to a nationality was recognised as the “right to have rights” and is enshrined in international legal instruments such as the Universal Declaration of Human Rights, ICCPR and the European Convention on Nationality (ETS No. 166) (para. 3), and noted that, under international law, statelessness should be prevented and eliminated and arbitrary deprivation of nationality should be prohibited. (para 4). The PACE resolution called on member states to review their legislation in the light of international standards prohibiting arbitrary deprivation of nationality, and repeal any laws that would allow it (9.1)) as well as abolish or refrain from introducing administrative procedures allowing for the deprivation of nationality not based on a criminal conviction (9.7).

Although the right to citizenship is not explicitly established in the ECHR, deprivation of citizenship shall fall under Article 8 of the Convention protecting a right to private life when such deprivation has a negative effect on the individual's ‘social aspect of the private life’.¹⁵⁷ The ECtHR established that citizenship is ‘a fundamental element of the individual's personality and may have an adverse and disturbing effect on the individual who is concerned about the recognition of citizenship status and identity’.¹⁵⁸

5.3. State accountability in special operations to combat religious extremism

Article 8 of the LCRE bestows unlimited powers to the authorities in their actions to fight ‘religious extremism’. It states that ‘during special operations against religious extremism it shall be allowed to inflict damage to life, health or property of religious extremists.’ It further grants absolute protection for members of such special operations from accountability for their actions: ‘a person participating in the fight against religious extremism is not responsible for any damage to the life, health or property of religious extremists during a special operation against religious extremism’. Such provisions run counter to the principles and guarantees offered by the Constitution of Azerbaijan and contradict other national laws and international treaties protecting right to life and prohibition of ill-treatment and torture.

Both the Constitution and the ECHR have set very clear boundaries regarding the deprivation of life:

¹⁵⁴ <https://mikroskopmedia.com/2019/03/14/insan-v%C9%99t%C9%99ndasliqdan-cixarilrsa-n%C9%99-bas-verir-izah-edirik/>

¹⁵⁵ <http://kaspi.az/az/dtx-terrorcu-teskilatlarin-terkibinde-dyusen-151-nefer-azerbaycan-vetendasliindan-cixarilib/pages/config/xml/pages/q/pdf/pages/config.xml>

¹⁵⁶ <http://femida.az/az/news/20744/103-n%C9%99f%C9%99r-v%C9%99t%C9%99nda%C5%9F%C4%B1qdan-%C3%A7%C4%B1xar%C4%B1%C4%B1b>

¹⁵⁷ *Karashev v. Finland*, application no. 31414/96, decision of 12 January 1999 and *Genovese v. Malta*, application no. 53124/09, judgment of 11 October 2011.

¹⁵⁸ *Menneson v. France*, application no. 65192/11 Decision of 26 June 2014

Article 27 § 4 of the Constitution stipulates that the use of weapons against human beings is only possible 'in the case of ... required defence, urgency, capture and detention of a criminal, prevention of a convict's escape from places of confinement, prevention of a revolt or a coup against the State, armed attack on the country'. Article 2.2 of the ECHR provides that use of force leading to deprivation of life is justified only when 'absolutely necessary': (a) in defence of any person from unlawful violence; (b) in order to affect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. Article 3 of the ECHR further protects prohibition of torture as an absolute right, which states can derogate from in no instances whatsoever.

The respective LCRE provisions granting automatic legitimisation of the actions of special operations, and guaranteeing their absolute protection from accountability runs contrary to the constitutional and ECHR norms, as well as basic principles of the rule of law. It establishes normative protection from illegal actions and impunity for violations of fundamental rights such as a right to life and prohibition of torture, and grants unlimited powers to the authorities. It deprives those affected of their right to be protected from the arbitrary actions of the state authorities guaranteed by Article 68 of the Constitution and the other national laws.¹⁵⁹ Such bald provisions which provide blanket protection to the state authorities for its actions and which are presented as being aimed to combat religious extremism in fact open the way to further arbitrary use against unfavoured religious groups, such as the Nardaran case cited above.

Key recommendations

General recommendations

- » Ensure that the rights to freedom of religion and belief are fully protected and promoted without discrimination in Azerbaijan, and that the regulation is aimed at facilitating and not hindering its exercise;
- » Ensure that any legal or policy measures restricting freedom of religion or belief are directly related and proportionate to the legitimate aim being pursued and constitute the least intrusive means to achieve that aim, in line with international human rights standards;
- » Seek expert assistance from the Venice Commission to ensure that relevant domestic laws are compliant with the international standards on a right to freedom of religion and belief;
- » Invite the UN Special Rapporteur on freedom of religion or belief to Azerbaijan to assist the Azerbaijani authorities to review the current situation regarding the right to freedom of religion and belief in the country and assist with necessary reforms

¹⁵⁹ Article 68 § 2 of the Constitution provides that every person shall have the right to get compensation from the State for the damage rendered to him/her as a result of illegal actions or inaction of government bodies or their officials.

Law "On Compensation of Damages Caused to Physical Persons as a result of Illegal Actions of Investigation, Preliminary Investigation, Prosecution and Judicial Bodies" ensures that the State compensates damages incurred as a result of misconduct or abuse of the investigation, preliminary investigation, prosecution and judicial bodies of the Republic of Azerbaijan, available at <http://e-qanun.az/framework/5104>

State regulation of religious and belief communities

- » Acquisition of legal personality status as a pre-condition for religious and belief communities to exercise the right to freedom of religion or belief should be lifted and administrative liability for operation without state registration should be removed;
- » A clear and accessible registration system should be put in place aimed to facilitate activities of religious or belief communities;
- » Overly broad control powers of the Caucasian Muslims Office (CMO) over Muslim organizations in Azerbaijan should be removed and regulation of state relations with such organizations should be limited to the State Committee for Work with Religious Organizations (SCWRO);
- » Introduce administrative procedures allowing religious communities in the process of applying for state registration to address any identified deficiencies;
- » Adopt an administrative complaint mechanism to allow for appeals against decisions to refuse state registration before the case reaches judicial review;
- » Amend the Law on FRB listing grounds for dissolution of religious organizations to ensure that such grounds are sufficiently clear and are not open to misuse in excessively discretionary or discriminatory way;
- » Ensure that dissolution is only used as a last resort and that grounds for dissolution are clearly set out with detailed definitions in the law; put in place strong safeguards against arbitrary application;
- » Amend the Law on FRB to include a range of sanctions of varying severity, such as official warnings, fines, suspension of interim activities, in proportion to the contravention committed;

Self-determination and autonomy of religious or belief organizations

- » Ensure that current wide state and CMO powers to interfere with the internal autonomy of religious organizations are reduced to enable self-administration of such organizations as an important aspect of the autonomy of religious or belief communities;
- » Amend the Law on FRB to allow registered religious organization to operate in more than one place of worship;
- » Amend the provisions of the Law on FRB limiting places of establishment of Islamic religious organizations to mosques;
- » Simplify the state registration procedure for grants of religious organization and thus facilitate and enable their right to access funding;

Exercising of religious freedom with others

- » Allow non-registered religious or belief communities to have their own places of worship;
- » Cease the practice of prior state approval for religious groups to hold meetings by replacing it with a system of notification and ensure that sanctions for failing to comply with such provisions are proportionate and not overly punitive;
- » Amend the Law on FRB to ensure that grounds for refusal to construct/reconstruct places of worship are clear to avoid arbitrary interpretation of such grounds;
- » Put an end to the ongoing practice of closing public and non-public places of worship in Azerbaijan;
- » Ensure that foreigners or stateless persons are allowed to perform religious ceremonies without discrimination;

- » Ensure that Azerbaijani citizens who obtained education abroad are allowed to conduct religious ceremonies;
- » Cease the current practice of strict state censorship of religious literature and imposition of harsh administrative and criminal penalties, and introduce clear definitions of the terms and procedures on the basis of which such assessments shall be conducted;
- » Discontinue the practice of SCWRO being the only body conducting such assessment and involve independent experts to interpret religious literature;
- » Introduce a clear definition of the terms of 'religious slogans and attributes' as a safeguard against the arbitrary application of the prohibition to religious slogans and attributes in public spaces;
- » Amend the Law on FRB to ensure the right to religious education to everyone and not only to Azerbaijani citizens; cease prosecution of individuals who are not members of established religious centres for teaching religion;

Freedom of religion and belief in detention facilities and prisons

- » Amend domestic laws and policies to ensure they facilitate the full exercise of the right to freedom of religion and belief for detainees and prisoners, without discrimination;
- » Ensure that detainees and prisoners are allowed visits by leaders of all religious and belief communities of their choice, and not only in situations of life-threatening health conditions;
- » Amend internal regulations to set out the clear terms under which places of worship shall be set up in detention facilities and prisons, thus reducing the wide discretion of the authorities;
- » Introduce clear safeguards to ensure that the current broad discretion for interpretation by the authorities as to what literature promotes 'religious hatred' and 'radicalism' is not misused and that assessments are carried out in line with international standards on freedom of religion and belief; independent experts should be involved in such assessments;
- » Amend domestic law and internal prison regulations to stipulate that prisoners' rights to religious dietary requirements should be respected.

Right to conscientious objection

- » A law on alternative civil service, clearly establishing a right to conscientious objection, should be adopted as a matter of priority, to comply with the CoE accession commitments set in 2001;
- » Criminal prosecution of those objecting military service on religious grounds under Article 321 of the Criminal Code (evasion of military service) should be immediately ceased;

Combatting religious extremism

- » Clearly define the terms used in domestic law to fight religious extremism, avoiding vague and ill-defined terms which leave room for broad interpretations and arbitrary application; establish strong safeguards against the arbitrary application of such terms;
- » Eliminate the absolute protection of and lack of accountability of state officials violating a right to life, health and property during special operations provided by the Law on Combatting Religious Extremism;
- » Amend the Law on Combatting Religious Extremism to ensure that religious extremism as a ground for the deprivation of citizenship shall not be applicable to cases where individuals would be deprived of their only nationality and thus rendered stateless.

