Religious Freedom in Armenia

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The present Law on Religious Organizations of Armenia has been in operation since 1991. It has many problematic provisions and as such it is in conflict with the Constitution of Armenia. At present, there are three drafts in circulation and the Venice Commission together with the OSCE/ODIHR has issued opinions on the drafts. There is a very clear reason why we have such a situation. One the one hand, it is the powerful lobby of the Holy Apostolic Armenian Church (HAAC) supported by the Prime Minister, and on the other hand are the international standards. I would describe the present situation as a wall blocking the reforms.

On June 2009, the Venice Commission and the OSCE/ODIHR issued opinions on two draft laws about Amending the Law on Freedom of Conscience and Religious Organizations and the Criminal Code of Armenia. However, the draft laws were never enacted by the government of Armenia. Instead, in 2010 the Armenian authorities developed a new draft Law about Making Amendments and Supplements to the Law of the Republic of Armenia on Freedom of Conscience and Religious Organizations. The Venice Commission and the OSCE/ODIHR issued an interim opinion on the proposed draft in December of 2010. However, this second draft law was also not adopted by the Armenian authorities. In August 2011 the Armenian authorities drafted an entirely new draft law (the third draft) and again asked the Venice Commission to comment on this last draft. On October 17, 2011 the Venice Commission issued its third opinion (Opinion 643/2011, document CDL-AD(2011)028) in which it noted that even though the government of Armenia had made a "marked improvement" compared to the previous draft laws of 2009 and 2010, the draft law was yet far from being in line with international standards since certain fundamental problems, that had been noted by the Commission and the OSCE in their previous opinions, still remained in the draft. For this reason the Commission decided to comment only on fundamental problems rather than on the issues that had been amended in the third draft.

In its opinion, the Commission recommended to amend the definition of "proselytism" in the law in order to avoid negative stereotyping of all forms of missionary activity. The Commission therefore recommended defining that the law prohibits only the "improper proselytism" and not the "proselytism" in general. This is based on the case of the European Court under article 9 of the Convention under which the Court defined for the first time that a distinction had to be made between two forms of proselytism; proper and improper where the former prescribes an essential mission and a responsibility of every Christian and every Church whereas the latter represents corruption or deformation of it by such activities as exerting improper pressure on

people in distress or in need or even with use of violence or brainwashing.[1] As an alternative, the

Commission recommended deleting from the law any references on "proselytism" and even on "advocacy influence". Indeed, proselytism is such a concept that no proper or accurate definition is possible to prescribe under law in order to handle in practice all possible situations where the missionary activity may amount to improper exertion of pressure on the people of other faith. For that very reason many countries avoid prescribing under law any definition of proselytism and leave it for the courts to decide on each individual case whether the given missionary action may give rise to a violation of the rights of others.

It is general practice in Armenia, which is openly supported by the government, to name all religious unions or organizations other than the dominating Holy Apostolic Armenian Church" as sects. Their followers are strongly criticized by the wide public as betraying the national belief of Armenians.

One of the key aspects of religious freedom in Armenia is that both the government and the HAAC tend to unify the ethnic and religious identity of Armenians. This is the reason why HAAC is widely accepted by the public as being a national church and the belief system of HAAC is considered to be a national belief. Such is the general perception of the majority of Armenians. This approach leaves almost no alternatives to those Armenians who are the followers of other faiths or beliefs. The authorities eagerly agitate ordinary citizens to name such people as victims of the sects that are funded by the western countries. The concept of religious conspiracy is widely accepted by majority of Armenians as a result of the growing agitation and influence by the HAAC. As a result of this, one of the main problems in the current public education system is that the belief system of the Holy Apostolic Armenian Church is presented in an indoctrinated manner in school textbooks. In addition to this, public schools offer no alternative teaching mechanisms for pupils of other beliefs. This approach entails to a slowly growing trend of practicing some religious rites and some elements of religious rites under belief system of HAAC during classes even though Armenia is a secular state and preaching at schools is prohibited under the Constitution. The above also explains why the textbook of "Armenian Church History" teaches the belief system of the Holy Armenian Apostolic Church instead of the history of religion in general. It is a general practice of asking pupils by questionnaires whether they are members of a sect. Thus, in public schools the democratic principles of objectivity and pluralism in religious teaching are not observed at all. The methodology and the purpose of the religious teaching in public schools are aimed at

[1] Kokkinakis v. Greece, no. 14307/88, 25/05/1993, § 48.

indoctrinating the system of the belief of the HAAC. **For example, attendance to religious classes, in which the belief system of HAAC is taught, is mandatory which is in contradiction with the article 2 of the Protocol 1 of the European Convention of Human Rights under which the States have obligation to establish alternative teaching mechanisms.**

One of the key points to be noted, which has been continually criticized by the Venice Commission, is the "Law on the Relations Between the Republic of Armenia and the Holy Armenian Apostolic Church". This law should be read and interpreted as *lex specialis* in the context of the Law on Freedom of Conscience and Religious Organizations. Under this law, the government and the HAAC agree that the latter **has absolute privilege in teaching religious history and other religious subjects in all educational institutions** including the public schools of Armenia, including such activities as "contributing to the spiritual education of the Armenian people"; and "undertaking charitable and benevolent activities". Since the above activities are listed as *"exclusive" missions of the Holy Armenian Apostolic Church",* it is understood that other religious associations will not be allowed to engage in such activities. The Venice Commission clearly stated in its opinion that this restriction violates the international standards on freedom of religion or belief and on the prohibition of non-discrimination. No explanation was given in the law as to why no such privileges were given to other religious associations besides the HAAC. In recent years the government gave wide opportunities to the HAAC for playing a decision-making role in the religious education branch of the public education system to the extent of recruiting school teachers for teaching religious education at schools. Moreover, at present the HAAC has wide powers for dismissing the teachers from their work who are not the followers of the HAAC. Even though this is a violation of the Constitutional principle of secularism, the government takes absolutely no action in keeping the church away from the sphere of state regulation of the public educational system. Moreover, this trend now goes even wider by evolving into other spheres of state regulation.

Religious defamation is another problem in Armenia. Since 2010 when the law on defamation was decriminalized, two major trials were instituted by religious organizations against media on facts of defamation and hate speech. In the case of *Jehova's Witnesses Religious Organization v. Public TV* the latter was accused of spreading hate speech in the address of the organization by alleging that a young man who had murdered his parents (who was later diagnosed by doctors with mental incapacity) was a member of the Jehova's Witnesses organization. The media anchor in that case had openly abused the organization verbally during the late evening television show by labeling them with nasty words and openly calling for intolerance against them. The trial ended this year by which the parties settled the dispute and the administration of the Public TV refuted the information and apologized. In the second court case, which is still

pending, the newspaper published defamatory article about "Kyanqi Khosq" religious organization in which it blamed the organization in spreading immorality and pedophilia among its members. The first instance court rejected the appeal brought by the organization by stating that the media had acted in good faith in publishing the information since the journalist had simply reproduced what others had said. At present the proceedings are pending in the Court of Appeal. The organization will apply to the European Court of Human Rights once the proceedings are over and in case no remedies are achieved in domestic level.

The above two cases show the general attitude of the media against religious minorities. It is wide practice to label by media the minority religious groups and organizations as western funded "sects" which are enemies of the state and present danger to national security. Some higher state officials, such as the Minister of Education, openly criticize religious minority groups by calling them as sects that undermine the national belief of Armenians. Another example was the secretary of the National Security Council Artur Baghdasaryan who openly announced about the creation of a special committee which would be working on a new strategy of fighting against *"destructive and totalitarian sects"*. According to him, such "sects" presented one of the most significant threats to national security.

In the criminal case instituted on the fact of physical assault by the member of the Jehova's Witness organization against the priest of the Armenian church, the former was eventually convicted of preventing the priest's "right to preach" near a church and his "right to prevent" the defendant from proselytizing near the church. Under the facts of this case, the priest had approached and verbally accused the defendant after spotting him discussing the Bible on a public walkway in the vicinity of the church where the priest served. Despite the defendant had complained that he priest had hit him once, threatened him, and took his cell phone, the prosecutor declined to open a criminal investigation into the priest's conduct and only pursued charges against the Jehova's Witness. In his legal submissions to court, the priest had stated that he was sure the court would prove the expectation of millions of Armenians that the Jehovah's Witnesses in Armenia practice *"antisocial, anti-state, anti-national, and . . . anti-democratic activity"* in Armenia.[2] This case is an example of the selective justice which the court administered in order to emphasize the factor of the religious intolerance against minority groups.

The government continues the practice of criminal prosecution of conscientious believers for refusal to undergo alternative military service. The government in this respect has elaborated a new draft law on alternative military service under which the service will come under control

[2] See the text of the judgment at www.datalex.am court website.

of three government bodies; the Ministry of Defense, the Ministry of Health and the Ministry of Labor and Social Security. This legislative initiative was in response to the Council of Europe's policy that the alternative military service should be of non-combat and civilian nature and that the alternative military service should not be solely under the control of the military. This conclusion is brought also in the section of the draft law in which the drafters justify the necessity of adoption of such law. At present the draft law is in circulation in the national parliament. It was put in circulation in the beginning of this year but then its transfer to the agenda of parliamentary hearings was postponed for 90 days.

The above situation concerning the civil nature of the alternative military service is addressed also in the trial proceedings that are pending before the European Court of Human Rights instituted on the basis of the complaint brought by nineteen Jehova's Witnesses who were charged and put under continuing detention for refusal to serve alternative military service plan. Eventually they were acquitted by the prosecutor on the basis of lack of *corpus delicti* (at the material time the Armenia law didn't prescribe punishment for deserting the place of alternative military service. Such an offence was incorporated in the Criminal Procedure Code only by the amendments introduced on 1 June 2006). The Court has not made a decision yet. In this case the applicants argue that the criminal proceedings against them violated the guarantees of Article 9 of the European Convention of Human Rights (Freedom of Religion) and Article 14 of the Convention (discrimination) in conjunction with the Article 9 of the Convention. If the judgment comes before the adoption by the National Parliament of the above law, it will have a positive impact on the enactment of the above law.

The current legal framework and the evolving domestic practice, including the generally formed public opinion, seriously jeopardize the freedom of the thought and the right to nondiscrimination, which are safeguarded by the international treaties to which the Republic of Armenia is a party and the Constitutional and national laws of the Republic of Armenia