Analysis of the Legislation on Religious Associations that is in effect in the Left-Bank Region of the Republic of Moldova

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Contents

Analysis of the Legislation on Religious Associations that is in effect in the Left-Bank Region of the Republic of Moldova [1]

Introduction

1) This study contains an analysis of the compliance of certain provisions of the left-bank region legislation[2] on the freedom of association with the standards (norms) of the international human rights law. The legal provisions covered by this study concern the establishment, registration, re-registration and dissolution of religious associations.

2) Other issues related to the legislation concerning religious associations, as well as the issues of practical implementation of this legislation are not within the scope of this study.

3) To our knowledge, studies of this kind have not previously been published, so this work is the first study presenting a detailed and comprehensive analysis of the aforementioned aspects of the left bank's legislation.

4) This study does not claim to be an exhaustive analysis of the examined legislation. Other studies may raise other questions and extend the analysis of questions raised in this work. It would be useful to study the practice of the authorities' implementation of the legislation analysed in this work.

5) To conduct this study, we used the left-bank region's normative acts contained in publicly available sources. The main method of study was a comparative analysis of the left bank's normative acts and the standards of the international human rights law. The sources of international law used in the study were international treaties on human rights applied in Europe, the general principles of human rights, the documents of intergovernmental organisations and of their bodies, as well as the works of the most qualified specialists in international human rights law.

[1] Research conducted by Evgeniy Goloshcheapov, LL.M. - Master of International Human Rights Law (University of Essex, UK), attorney, independent human rights expert.

[2] The study is devoted to the analysis of legislation in the sphere of the freedom of association that is in force on the territory of the left bank of the river Dniester, also known as "Transdniestrian Moldovan Republic", "TMR", "self-proclaimed Transdniestrian Moldovan Republic" and "Transdniestria" ["Pridnestrovskaya Moldavskaya Respublica" or "Pridnestrovie" in Russian]. However, no territorial disputes or questions about the status of this territory are within the scope of this study, since it focuses on the analysis of only the legal issues regarding the freedom of association. For this very reason, in order to distance ourselves from political aspects, the term used in this study is the maximally neutral of all possible – "left-bank region". In quotes of normative acts the terms used in them were either left unchanged or omitted without prejudice to the meaning.

The study analyses the legislation that *de facto* exists and is applied in the left-bank region and is different from the legislation that is in force in the right-bank region.

Nothing in this study should be understood or interpreted as recognition or non-recognition of any status of the left-bank region, or challenging of the territorial integrity of the Republic of Moldova.

6) The first part of the study provides an overview and characterisation of international standards in the field of the freedom of religion and freedom of association. Key international standards for this study are the provisions of Articles 18 and 22 of the International Covenant on Civil and Political Rights (ICCPR) and of Articles 9 and 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which also contain criteria for permissible *restrictions* on the freedom of religion and freedom of association.

7) The second part of the study is the most voluminous and substantial in terms of comparative analysis. It analyses in detail the provisions of the Constitution and of other normative acts of the left-bank region concerning the establishment, registration, re-registration and dissolution of religious associations (RAs) in terms of compliance with international standards. Thus, analysis is made of the following provisions:
   - on establishment and selection of the formal or informal legal status for RAs;
   - on the possibility to become founder, member and participant of a RA and restrictions in this sphere;
   - on the necessary number of founders of a RA and their types;
   - on the goals behind establishment and operation of RAs, especially in connection with the fight against extremism;
   - on state registration procedures for different types of RAs in order to attain legal personality, as well as registration of their subsidiaries and representative offices; these procedures are also analysed in terms of the provisions of the Law on the State Registration of Legal Entities;
   - on payment of the state tax for various registration actions in terms of their accessibility, understandability and practicability; payment of the state tax is a part of registration, but this aspect required special attention, because its analysis required us to study a large number of normative acts and to take into consideration other details;
   - on cases of re-registration of RAs, a procedure that is similar to the registration of a RA; more attention is given to the analysis of mandatory re-registration of RAs in order to bring their statutes into compliance with the provisions of the new Law on the Freedom of Conscience and Religious Associations, and to the analysis of time limits for such mandatory re-registration;
   - on the possibility of legal action and appeal in case of refusal to register and re-register;
   - on the dissolution of RAs on the grounds specified in the Law on the Freedom of Conscience and Religious Associations and in the Law on Countering Extremist Activity.

8) The third part of the study opens with general conclusions and recommendations regarding the analysed legislation. Further, a summary is given of the main conclusions made in the course of study concerning distinct provisions of the legislation regulating the issues of establishment, registration, re-registration and dissolution of RAs. For a correct and complete understanding of the main conclusions they should be read and examined together with the arguments presented in the second part of the study.

9) This study is primarily intended for persons engaged in lawmaking in the left-bank region and in work with the left-bank region in the field of legislation. The study can also be of interest to founders, members and adherents of religious associations, employees of international and intergovernmental organisations, researchers, students, teachers, and other persons interested in the standards of international human rights law and legislation in the field of the freedom of religion and freedom of association.

1. Brief Overview of International Standards of the Freedom of Religion and Freedom of Association

1) Key International Standards

10) Key international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights (ECHR)), guarantee both the freedom of religion and the freedom of association.

11) Thus, Article 18 of the UDHR[3] states that:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

12) Further, Article 20 of the UDHR states that:

> "1. Everyone has the right to freedom of peaceful assembly and association.
>
> 2. No one may be compelled to belong to an association."

13) The provisions of the ICCPR[4] further developed and refined the norms of the UDHR. In particular, Article 18 of the ICCPR developed the provisions on the freedom of religion:

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

[3] The Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly of 10 December 1948, <http://www.un.org/en/documents/udhr/ >, <http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml>.

[4] International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, <http://www2.ohchr.org/english/law/ccpr.htm>, <http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml>.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

14) Further, Article 22 of the ICCPR developed the provisions on the freedom of association:

"1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

15) The ICCPR provisions are interpreted and developed in the decisions of the UN Committee on Human Rights (UNCHR or HRC) and the General Comments adopted by the HRC. The HRC has a developed practice on freedom of thought, conscience and religion, including General Comments no. 22 on Article 18 of the ICCPR.[5] However, the HRC practice on the Freedom of Association is just beginning to develop, and the Committee has not yet made General Comments on Article 22 of the ICCPR.

16) In its turn, Article 9 "Freedom of thought, conscience and religion" of the ECHR contains provisions regarding the freedom of religion:[6]

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

[5] General Comments no. 22 on Article 18 of the ICCPR (freedom of thought, conscience and religion), adopted by the UN Human Rights Committee , 48th session, 1993, HRI/GEN/1/Rev.9 (Vol.I), p. 262 - 265, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=HRI/GEN/1/Rev.9(VOL.I)&Lang=R>.

[6] European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols No.11 and No.14) of 04 November 1950, entered into force on 3 September 1953, (commonly known as the European Convention on Human Rights (ECHR)), <http://conventions.coe.int/treaty/en/treaties/html/005.htm>, <http://coe.ru/main/echr/>.

17) Article 11 of the ECHR, Freedom of Assembly and Association, contains provisions on the freedom of associations:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

18) The European Court of Human Rights (the Court) has the authority to interpret and develop the provisions of the ECHR, which it makes in its judgments on applications sent to the Court. Court jurisprudence on the freedom of religion and freedom of association is well developed as the Court examined a large number of applications under Article 9 and Article 11 and issued judgments on them.

19) Also, several other UN treaties and documents issued by the institutions of the Council of Europe (Committee of Ministers, PACE) and the OSCE clarify the standards of the freedom of religion and freedom of association as a whole or standards applicable to certain types of associations. Links to these documents will be shown below, if necessary.

2) Brief Description of International Standards

20) For religious associations the right to freedom of religion is of paramount importance, as this right contributes to the protection of the goal for which religious associations are created: the possibility to manifest a religion in community with others. Besides, the freedom of association also plays a significant role for believers, "since religious communities traditionally exist in the form of organised structures."[7]

21) The practice of the UN HRC and of the European Court of Human Rights shows that if these bodies detect violation of the freedom of religion when examining applications claiming violation of Articles 18 and 22 of the ICCPR and of Articles 9 and 11 of the ECHR accordingly, they do not find it necessary to further examine possible violation of the freedom of association. However, the HRC and the Court also stress that when applied to religious associations, the standards of the freedom of religion are often closely related to the freedom of association.[8] The Court has also

[7] *Metropolitan Church of Bessarabia and Others v. Moldova*, Application No. 45701/99, European Court of Human Rights judgment of 13 December 2001, paragraph 118.

[8] *Malakhovsky v Belarus*, Communication No. 1207/2003, views of the UN HRC as of 26 July 2005, UN Doc. CCPR/C/84/D/1207/2003, paragraph 7.4. In this case the HRC recognised the violation of the freedom of religion (Article 18 (1) of the ICCPR), and did not find it necessary to consider the claims of violation of the freedom of association (Article 22 of the ICCPR). However, in its Views, the HRC noted that in this case "the

repeatedly stressed in its judgments that the standards of the freedom of religion, when applied to religious associations, must be interpreted in the light of the standards of the freedom of association so as to protect these associations of any unjustified State interference.[9, 10] For this very reason the analysis of the studied legislation is primarily based on the standards of the freedom of association as set out in Article 22 of the ICCPR and Article 11 of the ECHR.

22) When characterising the standards of the freedom of association, attention should be paid to the following aspects. Article 22 of the ICCPR and Article 11 of the ECHR do not stipulate the *goals behind establishment* of associations, therefore the provisions of these articles apply to the associations created for various purposes,[11] including social, political, and religious.

23) The word *"freedom"* in the right to the freedom of association indicates that individuals are able to exercise this freedom and to use it without any actions from authorities. Accordingly, this human right is primarily a *negative right* and the authorities have a *negative obligation* – to not interfere with the exercise of this freedom. However, as we know from the theory of human rights, the authorities have three types of obligations with respect to each human right, whether negative or positive: *to respect, protect, fulfil*.[12] With regard to the freedom of religion and freedom of association, these obligations will, above all, mean the following:
    - To respect, i.e. the authorities themselves must not interfere with the exercise of these freedoms;
    - To protect these freedoms from interference by third parties;
    - To fulfil, i.e. develop and adopt the minimum of legal norms necessary for the exercise of the freedom of religion, and for the establishment and operation of various associations.[13]

24) However, the freedom of association is not an absolute right, and Article 22 of the ICCPR and Article 11 of the ECHR provide for essentially identical grounds for the *restriction* of this freedom under certain conditions. In accordance with these provisions, any restrictions are permissible if they meet the following criteria:
    - They are prescribed by law;

limitations placed on the authors' right to manifest their belief consist of several conditions which attach to the registration of a religious association", and thus the HRC found a connection between the freedom of religion and the freedom of association.

[9] See above, *Metropolitan Church of Bessarabia and Others v. Moldova*, paragraph 118. In this case the European Court of Human Rights noted that "since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention."

[10] *Hasan and Chaush v Bulgaria*, Application No. 30985/96, European Court of Human Rights judgment of 26 October 2000, paragraph 62. In this case, the Court noted the following: "The Court recalls that religious communities traditionally and universally exist in the form of organised structures... Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention."

[11] M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl, N.P. Engel, 1993), p. 386.

[12] P. Hunt, Reclaiming Social Rights: International and Comparative Perspectives (Dartmouth, Ashgate, 1996), pp. 31-34.

[13] See above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 387.

- They should serve the realisation of one of the permissible goals listed in Article 22 (2) of the ICCPR or Article 11 (2) of the ECHR:

ICCPR, Article 22 (2)	ECHR, Article 11 (2)
• in the interests of national security or public safety, • public order (ordre public), • the protection of public health or morals or • protection of the rights and freedoms of others	• in the interests of national security or public safety, • for the prevention of disorder or crime, • for the protection of health or morals or • for the protection of the rights and freedoms of others

- They are necessary in a democratic society: the word "necessary" requires that the intervention be consistent with a "pressing social need" and "proportionate to the legitimate aim pursued".[14]

25) It must be noted that the freedom of association in the case of religious associations is a means for realisation of the external aspect of the freedom of religion of believers and must be interpreted through the freedom of religion. Therefore, besides the restrictions permissible for the freedom of association, consideration must first be taken of the restrictions permissible for the freedom of religion. These restrictions should also
    1) be prescribed by law;
    2) serve the realisation of one of the permissible goals listed in Article 18 (3) of the ICCPR or Article 9 (2) of the ECHR:

ICCPR, Article 18 (3)	ECHR, Article 9 (2)
• to protect public safety, • order, • health or morals, or • the fundamental rights and freedoms of others.	• in the interests of public safety, • for the protection of public order, • health or morals, or • the protection of the rights and freedoms of others

    3) be necessary in a democratic society.

26) However, when compared with the standards of the freedom of association, these documents provide for a shorter list of permissible goals. For instance, it is inadmissible to restrict the freedom of religion in the interest of state or national security.

[14] *Freedom and Democracy Party (Özdep) v. Turkey*, Application no. 23885/94, ECHR judgment of 08 December 1999, para. 43.

2. The Analysis of the Left-Bank Region's Legislation on the Establishment, Registration, Re-registration and Dissolution of Religious Associations regarding its Compliance with International Standards

2.1. Constitutional Norms and Field-Specific Legislation

27) Article 9 of the Constitution[15] stipulates the following:
"The Transdniestrian Moldovan Republic is a secular state. No religion may be established as mandatory state religion. Religious associations shall be separated from the state and shall be equal before the law."

28) Article 30 of the Constitution guarantees the freedom of religion:
"The freedom of conscience shall be guaranteed for all. Everyone has the right to manifest any or no religion. Forced propagation of religious views shall be inadmissible."

29) Therefore, the left-bank region is secular; the freedom of religion in its territory is guaranteed, and authorities must be unbiased to all religious associations. These provisions comply with international standards. It should be noted that the Constitution guarantees the freedom of religion "to all", and so contains no restrictions as to the range of persons.

30) Article 33 of the Constitution is devoted to the freedom of associations:
"The citizens of the Transdniestrian Moldovan Republic have the right to associate in trade unions, political parties and other associations, to participate in mass movements, not prohibited by law."

31) Thus, the Constitution directly lists the associations that can be established to pursue professional and political goals, and the phrase "and other associations" refers to an open list of associations that can be established for a variety of other goals. Particularly, other articles of the Constitution refer to, albeit in a different context, associations established for social and religious goals: "social organisations" in Article 8 and "religious associations" in Article 9.

32) In Article 33 attention is drawn to several provisions relating to restrictions on the freedom of association.

33) First, it is the word *"citizens"*. It can be concluded that the Constitution guarantees freedom of association only for citizens, but not for others, such as foreigners, stateless persons or refugees. It is contrary to international standards (norms) in the field of the freedom of association. Thus,

[15] The Constitution of the Transdniestrian Moldovan Republic was adopted at the national referendum of 24 December 1995, signed by the President on 17 January 1996, amended according to modifications introduced by the Constitutional Law 310-КЗИД of 30 June 2000.

Article 22 of the ICCPR and Article 11 of the ECHR use the word "everyone"[16], and so guarantee the possibility of association to all, regardless of nationality.

34) Restriction of the freedom of association is possible, but any restrictions must meet three criteria (three-step test) as listed above: 1) they must be prescribed by law, 2) they must serve the realisation of one of the listed permissible goals, and 3) they must be necessary in a democratic society. Restriction of the possibility to form associations for all those who are not citizens of the left-bank region is definitely not compatible with this three-step test.

35) However, international standards on the freedom of association themselves sometimes set certain restrictions to the range of persons. For example, Article 16 of the ECHR allows the restriction of the "political activity of aliens", but does not provide for such restrictions for social or religious activities. Article 15 of the UN Convention Relating to the Status of Refugees [17] restricts the refugees' right to association into political organisations, but requires according to refugees the right to form non-political and non-profit-making associations on equal terms with foreigners.

36) Second, the phrase *"not prohibited by law"*. It can be concluded that the Constitution provides for the possibility to restrict the freedom of association according to a single criterion – that the possibility of restriction can be prescribed by law, i.e. introduced by a wilful decision of the legislator. However, as it was already shown above, restrictions must correspond to the three-step test, therefore such single-step restriction does not fully meet international standards.

37) Third, the provision that "citizens … have the right to associate … and … participate in mass movements, not prohibited by law". The issue of prohibition of associations is examined in greater detail further in sections "Establishment and Activity Goals" and "Dissolution". The Constitution itself details the list of prohibited goals of operation in Article 8:

> "It is prohibited for public organisations, their bodies and representatives to carry out activities directed against the sovereignty of the Republic, at a violent change of the constitutional system, at disruption of national security, at the creation of illegal armed groups, at incitement of racial, ethnic and religious animosity."

38) Article 18 of the Constitution is devoted to the possibility of restricting human rights, which is "allowed only in cases prescribed by law, in the interests of national security, public order, protection of morals, health, rights and freedoms of others."

[16] In Russian translation Article 11 of the ECHR uses the word "everyone", and Article 22 of the ICCPR uses the phrase "every person". When comparing with the English versions of these documents, one can see that they both use the word "everyone". So, the text of Article 22 of the ICCPR in Russian unjustifiably narrows down the scope of the freedom of association and recognises it only for people, i.e. individuals. However, it contradicts the English text, in which the freedom of association is guaranteed to all persons, not only individuals, but also legal entities.

[17] Convention Relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entered into force on 22 April 1954, < http://www2.ohchr.org/english/law/refugees.htm >

39) Such wording relating to restrictions is inconsistent with international standards. First, in contradiction to Article 22 of the ICCPR and Article 11 of the ECHR, Article 18 of the Constitution contains only a two-step test and does not include the element requiring restrictions to be "necessary in a democratic society". Second, Article 18 of the Constitution extends the possibility to impose restrictions on all human rights formalised in the Constitution. However, permissible restrictions on various human rights are not identical. For example, the right to freedom and personal inviolability is subject to other permissible restrictions. Moreover, for a number of human rights no restrictions are allowed, for example, freedom from torture, prohibition of detention in slavery or servitude, the right to a fair trial.

40) Thus, the Constitution formalises the right to the freedom of association. However, it restricts the freedom of association to a range of persons in violation of international standards, and the restrictions of this freedom do not fully meet international standards.

41) Besides Constitution, general and specialised laws were adopted and function in the left-bank region, which regularise the issues of establishment, registration, re-registration and dissolution of public associations, political parties and religious associations:
    1) Law on Public Associations (hereinafter the Law on PAs);[18]
    2) Law on Political Parties (hereinafter the Law on PPs);[19]
    3) Law on the Freedom of Conscience and Religious Associations (hereinafter the Law on RAs);[20]
    4) Law on the State Registration of Legal Entities and Individual Entrepreneurs in the Transdniestrian Moldovan Republic" (hereinafter the Law on the State Registration of Legal Entities").[21]

42) This study is dedicated to religious associations. Therefore, the norms of the above-mentioned and other laws will be analysed below regarding their compliance with international standards on human rights in the part related to the establishment, registration, re-registration and dissolution of religious associations.

2.2. Establishment and Selection of the Legal Status

43) The freedom of association includes the freedom to establish or not establish associations, as well as the possibility to select their legal form and establish both formal (registered) and informal (unregistered) associations. In this sense, Article 22 of the ICCPR and Article 11 of the ECHR do not provide for restrictions on the selection of the legal form and the provisions of these articles protect both types of associations. Also, authorities have a *positive obligation* to develop the legal basis for the possibility to establish associations with formal legal personality.[22]

[18] Law on Public Associations of 4 August 2008, no. 528-3-IV (CA3 08-31), with amendments and additions as of 05 June 2009, 30 December 2009, 22 July 2010 and 11 May 2011.

[19] Law on Political Parties of 28 January 2000, no. 239-3 (C3MP 00-1), with amendments and additions as of 30 May 2006, 22 November 2006, 12 June 2007 and 09 June 2009.

[20] Law on the Freedom of Conscience and Religious Associations of 19 February 2009, no. 668-3-IV (CA3 09-8), with amendments and additions of 30 December 2009 and 22 July 2010.

[21] Law on the State Registration of Legal Entities and Individual Entrepreneurs in the Transdniestrian Moldovan Republic of 11 June 2007, no. 222-3-IV (CA3 07-25), with amendments and additions of 08 January 2009, 05 August 2009, 23 September 2009, 11 December 2009 and 08 December 2010.

[22] See above, M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 386-387.

44) The law provides that a religious association (RA) can be created in the form of a ***religious group*** "without state registration and acquisition of legal personality",[23] and in the form of a "***religious organisation***" (RO), registered as a "legal person".[24] Thus, the law provides for the possibility to establish and operate both formal and informal RAs, which is consistent with international standards.

45) The Law on RAs contains no formal requirements for persons to fulfil in order to establish a religious group. It only requires to notify the town or district authorities "about the establishment and inception of activity" of a religious group in case "the citizens who created the religious group" intend to further transform it into a RO.[25]

46) Thus, on the one hand, the law allows creation of both registered and unregistered RAs. On the other hand, the law contains a restriction on the transformation of a religious group into a registered RO within 10 years after the notification of local authorities about the creation and inception of activity of a religious group (the issue of the 10-year term is analyzed in the section "Registration (acquisition of legal personality)").

47) In the studied international standards the issue of establishment of informal organisations is still insufficiently developed, though there are certain starting points. Also, account must be taken of the fact that the European Court of Human Rights independently interprets the term "association", i.e. the Court at its own discretion determines whether a certain organisation is association for the purposes of Article 11 of the ECHR or not. To do so, certain actual criteria are important for the Court, such as a common goal for all members of the group, a certain degree of stability and an organisational structure, even if informal, so that the persons joining it to be considered as belonging to this association. The Court can also consider unacceptable the conditions prescribed by national law that must be met so that a unit be recognised an association. [26, 27, 28]

48) Thus, the law provides for the possibility of establishment and operation of unregistered and registered RAs. The requirements regarding the establishment of unregistered religious groups comply with international standards.

[23] See above, Law on RAs, Article 7 (1).
[24] See above, Law on RAs, Article 8 (1) (italics and bold type added by author).
[25] See above, Law on RAs, Article 7 (2).
[26] Джереми Макбрайд, «Международное право и судебная практика в поддержку гражданского общества» в «Свобода объединения: правовые и практические аспекты. Сборник материалов», - Алматы, Казахстан, Инициатива «Право общественных интересов» (PILI), БДИПЧ/ОБСЕ, 2007 (русское издание), - стр. 17-18. // Jeremy McBride "International Law and Legal Practice in Support of the Civil Society" in "Freedom of Association: Legal and Practical Aspects. Collection of materials", - Almaty, Kazakhstan, Public Interest Law Institute (PILI), ODIHR/OSCE, 2007 (Russian edition), - pp. 17-18.
[27] D. Harris, M. O'Boyle, C. Warbrick, Law of the European Convention on Human Rights, 2nd edition (New-York, Oxford University Press, 2009), p. 526.
[28] CoE Expert Council on NGO Law, First Annual Report, Conditions of Establishment of Non-Governmental Organisations, January 2009, OING Conf/Exp (2009) 1, para. 21.

2.3. Founders, Members and Participants

49) Article 22 of the ICCPR and Article 11 of the ECHR guarantee the freedom of association to "everyone".[29] Thus, these international treaties guarantee the freedom of association to all persons, including not only natural persons, regardless of citizenship, but legal persons as well. The freedom of association also plays a significant role for believers, "since religious communities traditionally exist in the form of organised structures."[30]

50) The Constitution guarantees the freedom of religion "to all" (Article 30), while the freedom of association only to "citizens" (Article 33). However, as it has already been shown above in the analysis of constitutional provisions, the freedom of association must be guaranteed to all individuals, regardless of their citizenship. To a certain extent this provision is amended in preamble to the Law on RAs, stating that this law "guarantees the right of everyone to the freedom of conscience and the freedom of religion." Article 3 of this law also states that "[f]oreign citizens and stateless persons legally residing on the territory of the Transdniestrian Moldovan Republic shall exercise the right to the freedom of conscience and freedom of religion on equal terms with the citizens of the Transdniestrian Moldovan Republic."

51) However, despite these specifications, the law provides that religious groups shall be created by "citizens."[31] The Law on RAs sets no requirements for the authorities to control compliance with this requirement, therefore this limitation is inappropriate. Moreover, this requirement is inconsistent with international standards, for they guarantee the freedom of association and religion to "everyone", regardless of citizenship. Also, the Law contains no citizenship requirements for members and participants[32] of a religious group, who can join it after its establishment.

52) Founders of a RO can also be only the citizens of the left-bank region.[33] The authorities verify compliance with this requirement, since when submitting documents for RO registration, the list of founders must contain specification of their citizenship.[34] As it has been noted in the previous paragraph, international standards guarantee the freedom of association and religion to "everyone", therefore restriction of RO establishment on the basis of citizenship is inconsistent with international standards.

[29] In Russian translation Article 11 of the ECHR uses the word "everyone", and Article 22 of the ICCPR uses the phrase "every person". When comparing with the English versions of these documents, one can see that they both use the word "everyone". So, the text of Article 22 of the ICCPR in Russian unjustifiably narrows down the scope of the freedom of association and recognises it only for people, i.e. individuals. However, it contradicts the English text, in which the freedom of association is guaranteed to all persons, not only individuals, but also legal entities

[30] See above, *Metropolitan Church of Bessarabia and Others v. Moldova*, paragraph 118.

[31] See above, Law of RAs, Article 7 (1).

[32] The Law on RAs uses the terms "member" (Article 4 (6), Article 11 (2) letter f), Article 16 (2) letter i)) and "participant" (Article 7 (1); Article 8 (3) and (6); Article 10 (2) letter a); Article 11 (2) letter f)), but the difference between them is not specified. In addition, the Law uses the term "follower" (Article 6 (1) letter c); Article 7 (3); Article 11 (2) letter f), Article 16 (2) letter i)).

[33] See above, Law of RAs, Article 9 (1).

[34] See above, Law of RAs, Article 11 (2) letter b).

53) At the same time, the Law states that a religious organisation is a "voluntary association of citizens of the Transdniestrian Moldovan Republic, and other persons permanently and legally residing on the territory of the Transdniestrian Moldovan Republic."[35] Thus, foreigners and stateless persons can be members and participants of ROs only on condition that they "permanently and legally" reside on the territory of the left-bank region.

54) First, the Law on RAs sets no requirements for the authorities to control compliance with the requirement that members or participants of ROs can be only those foreigners that "permanently and legally" reside on the territory of the left-bank region. Membership and participation in ROs are not fixed, and authorities cannot verify the citizenship and "permanence" of the residence of RO members and participants. Therefore, this restriction is inappropriate and impracticable.

55) Second, foreigners and stateless persons must have the possibility to be members and participants of ROs without necessarily needing to be physically present on the territory of the left-bank region or to permanently reside there. The issue of membership in a RO relates to the beliefs of a person and to the internal rules of this RO. Besides, to maintain the connection and contacts with a RO, the person's physical participation in the activity of the RO is not necessary. In this context, membership and participation of a person in a RO does not depend on his place of residence.

56) Third, this limitation is inconsistent with international standards, for it does not comply with permissible restrictions (the three-step test): the "necessity" of this limitation in a "democratic society" is unclear.

57) As for legal entities, the Law does not allow them to create religious groups and to establish ROs. On the one hand, it may seem to be a violation of international standards, for the freedom of religion and freedom of association are guaranteed for "everyone". On the other hand, not all human rights standards apply to legal entities. For example, human dignity, conscience, religious or other beliefs are characteristic only of people. These phenomena are not characteristic of legal entities, such as business enterprises. Accordingly, creation of religious groups and establishment of religious organisations are justified only for natural persons. A single exception from this rule must be legal entities created by believers for collective exercise of the freedom of religion. In the left-bank region these are local and centralised ROs. It appears that these "specialised" legal entities must have the possibility to establish other ROs. This right is provided to centralised ROs, but not to local ROs, which is hardly a necessary and justified limitation.[36]

2.4. The Number of Founders

58) The very meaning of the word "association" suggests interaction of at least two or more persons. Article 22 of the ICCPR and Article 11 of the ECHR stipulate that "everyone" (any natural or legal person) has the right to the freedom of association with "others" (natural and (or) legal persons),

[35] See above, Law of RAs, Article 8 (1).
[36] See above, Law of RAs, Article 11 (4).

but they do not directly state the minimum number of persons necessary to establish an association.[37]

59) The practice of the UN HRC and the European Court of Human Rights has not yet addressed the question whether it is permissible to set a required minimum number of persons to establish religious associations. At the same time, judging from the analogy of law, in relation to public associations (PA) the Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe notes that "[t]wo or more persons should be able to establish a membership-based NGO."[38] The Recommendation further details that where legal personality of a PA is to be acquired "a higher number can be required, so long as this number is not set at a level that discourages establishment".

60) The Law on RAs does not stipulate the number of persons who can create a religious group. As for the creation of local ROs, their creation and registration require not less than 10 participants aged at least 18.[39] The registration of a centralised RO requires at least three local ROs of the same religion.[40]

61) The above standards can lead to the following conclusions. First, the number of persons required to create a RA without legal personality complies with international standards. Second, the number of persons required for a RA to acquire legal personality has been set at a reasonable level (10 persons), and it hardly impedes establishment and registration of RAs; therefore, it complies with international standards. Third, it appears that natural persons are devoid of the possibility to create or participate in creation of centralised ROs, since they can be created and registered only by specific legal entities (at least three local ROs). This requirement can be inconsistent with international standards, for they guarantee equal content of the right to the freedom of association to all persons, whether natural or legal.

2.5. Establishment and Activity Goals

62) International standards have repeatedly emphasized that "there is no democracy without pluralism", and therefore "for the proper functioning of democracy" both political and non-political associations, which in their activity may pursue any lawful aims, are equally important.[41] In this sense, one can be guided by the following rule: if pursuance of goals and activity is not forbidden to one person, it should not be forbidden to a group of persons or to an association.[42]

[37] On the other hand, based on the lexical analysis of these articles, it can be concluded that an association must be established by at least three persons: "everyone" is a singular word, i.e. it is one person, who has the right to the freedom of association with "others", a plural form, which is at least two other persons, so the total is 1+2=3.

It also seems reasonable that if the law allows for one founder to establish a legal person to operate a business (Article 53 (1) item 3 of the Civil Code), similar possibilities should be provided for the establishment of other types of legal persons, such as PAs.

[38] See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, item 17.

[39] See above, Law of RAs, Articles 8 (3) and 9 (1).

[40] See above, Law of RAs, Articles 8 (4) and 9 (2).

[41] *Gorzelik & Others v. Poland*, Application no. 44158/98, ECHR Grand Chamber Judgment of 17 February 2004, para. 92.

[42] See above, CoE Expert Council on NGO Law, para. 33.

Any restrictions of goals and activity should meet the criteria of permissible restrictions of the freedom of association.

63) The Law on RAs states that RAs are created "for the purpose of manifesting and spreading a belief in communion."[43] Besides, the Law also indicates three necessary signs of a RA, which are used by authorities to decide on whether a RA has the above purpose:

"a) religion;

b) officiating of divine services and other religious rites and ceremonies;

c) teaching of religion and religious education of followers."[44]

64) In addition, the Law directly indicates a restriction on the establishment of RAs: "The establishment and operation of religious associations whose purposes and actions contradict the legislative acts of the Trandniestrian Moldovan Republic shall be forbidden."[45] Another restriction is contained in the Law on Countering Extremist Activity, which indicates that "the establishment and operation of the public and religious associations and other organisations whose goals and activity are aimed at extremist activity shall be forbidden."[46] The Law on Countering Extremist Activity also contains the concept of "extremist activity" and "extremism",[47] which is rather voluminous and leads to the possibility of its broad interpretation and, therefore, abuse.[48] For example, extremism is defined as "incitement … of religious and social discord and intolerance, associated with violence and calls for violence", propaganda of "exclusiveness, superiority or inferiority of citizens on the grounds of their attitude to religion, … religious, social … affiliation", propaganda of "religious, social hostility and (or) intolerance," etc.[49]

65) Without going into great detail about anti-extremist legislation and other prohibitions, it should be noted that when deciding on the legality of a RA's goals and activity, authorities should proceed from conclusive and sound reasons, and not from "mere suspicion about the true intentions of the founders of the association".[50, 51] International standards do not allow for authorities to declare illegal any goal or activity that they dislike.[52, 53]

[43] See above, Law on RAs, Article 6 (1).
[44] Ibidem.
[45] See above, Law on RAs, Article 6 (4).
[46] Law on Countering Extremist Activity of 27 July 2007, N 261-3-IV (CA3 07-31), Article 9 (1).
[47] See above, Law on Countering Extremist Activity, Article 1 a).
[48] For more information on anti-extremist legislation and the freedom of association see the section "Dissolution".
[49] See above, Law on Countering Extremist Activity, Article 1 a) item 1.
[50] *Sidiropoulos and Others v. Greece*, Application no. 57/1997/841/1047, ECHR Decision of 10 July 1998, para 45. In this case the European Court of Human Rights examined a case when Greek authorities refused to register a public association, which in its memorandum of association indicated that its aim was to preserve and develop traditions and folk culture of the Macedonian minority. The authorities of Greece considered that the true aim of this association was to undermine the territorial integrity of Greece by questioning the Greek identity of Macedonia (North-West part of Greece) and its residents. The Court came to the conclusion that the authorities did not present "conclusive … evidence" to support the refusal to register this public association, and that the presented evidence was not more than "mere suspicion" about true intentions of the association. Had the results of this association's activity proved that it really pursued illegal goals, the authorities could have

2.6. Registration (acquisition of legal personality)

66) The essence of the freedom of association is the pursuit of common goals of a group of persons. These goals can be achieved through these persons acting in their individual legal capacities. But in practice these interests are easier to achieve by joining forces within a legal entity with its own distinct legal personality. In this sense, the European Court of Human Rights noted the following:

> "The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning."[54]

67) When examining the issue of registration of religious associations, the European Court of Human Rights added the following to the above general rule:

> "Where the organisation of the religious community is in issue, a refusal to recognise it also constitutes interference with the applicants' right to freedom of religion under Article 9 of the Convention […]. The believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention."[55]
>
> "Moreover, since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference [...]. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords."[56]

filed an application to court regarding its dissolution. The Court decided that refusal was disproportionate to the pursued goals and violated the applicants' freedom of association, as enshrined in Article 11 of the ECHR.

[51] In some cases the documents of an association may "conceal objectives and intentions different from the ones it proclaims". To verify that it is not the case, the content of the documents "must be compared with the actions of the party's leaders and the positions they defend". For details see case *Refah Partisi (The Welfare Party) and Others v. Turkey*, Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of the Grand Chamber of the ECHR of 13 February 2003, para. 101.

[52] *Zvozskov et al v Belarus*, Communication no. 1039/2001, Views of the UN Human Rights Committee of 17 October 2006, paragraph 7.4. In this case the UN HRC concluded that the authorities of Belarus violated Article 22 of the ICCPR, for they have not advanced "any argument as to why it would be *necessary*, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members".

[53] See above, CoE Expert Council on NGO Law, para. 35.

[54] See above, *Gorzelik & Others v. Poland*, para. 88.

[55] *Moscow Branch of the Salvation Army v. Russia*, Application No. 72881/01, ECHR judgment of 5 October 2006, paragraph 71.

[56] See above, *Metropolitan Church of Bessarabia and Others v. Moldova*, paragraph 118.

68) The establishment of an association with legal personality may require going through a registration process.[57] The examined international law standards contain no requirements for this process in relation to religious associations. However, judging from the analogy of law, it is possible to depart from the requirements applicable to the registration of public associations: *information about the registration procedure* must be accessible, the *procedure* itself must be easy to understand, and the *formal requirements* must be foreseeable, easy to satisfy, and they must not grant an excessively high margin of discretion to the authorities in deciding on the issue of registration of associations.[58, 59, 60] It is difficult to imagine that contrary requirements would be applied for RA registration.

69) The Law on RAs specifies mandatory registration for local and centralised ROs as legal persons.[61] Besides, all modifications and additions "introduced into the statutes of religious organisations are subject to state registration and enter into force for third parties from the day of state registration."[62] In certain cases a RO can be refused registration (for more information see section "Refusal to Register"). Below we will examine key elements associated with the RO registration procedure.

70) The *information about the registration procedure* does not appear to be fully accessible. On the one hand, the information about the registration procedure is contained in the Law on RAs (Article 11 and others). On the other hand, the provisions of the Law on RAs related to the issue of RO registration contain reference norms to other laws, such as the Law on the State Registration of Legal Entities and Individual Entrepreneurs, the Law on Countering Extremist Activity and the Law on State Tax. The most indicative example of the complexity of access to information is the issue of paying the state tax for RA registration, which is examined below in the section "State Tax".

71) Thus, the norms for RA registration are not concentrated in one normative act. Therefore, interested persons should have some knowledge in the field of law so as to independently understand all the subtleties of the information on RA registration. It especially applies to determining the size of the tax to be paid for RA registration. Besides, although the normative acts and amendments to them are published in the left-bank region in the "Compilations of Legislative Acts" (CLA), it appears that the region has no publicly accessible and reliable electronic database of normative acts, amendments and additions to them. [63]

72) The *registration procedure* is described in Article 11 of the Law on RAs. In particular, the law:
- Stipulates that the issues of RO registration are under the jurisdiction of judicial authorities;
- Lists the documents required for RO registration.

[57] See above, See above, CoE Expert Council on NGO Law, paras. 46-47.

[58] See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, item 29.

[59] *Koretskyy and Others v Ukraine,* Application no. 40269/02, ECHR judgment of 03 April 2008, para. 47.

[60] See above, CoE Expert Council on NGO Law, para. 52.

[61] See above, Law on RAs, Article 8 (1).

[62] See above, Law on RAs, Article 11 (8).

[63] When preparing this study we faced the problem of access to the current normative acts, amendments and additions to them. For example, the existing official legislative databases of authorities contained the texts of laws that are void, and did not contain the texts of laws that are currently in force or amendments and additions to laws.

73) Further, the Law on RAs indicates that judicial authorities examine the documents submitted for the registration of ***ROs*** and for the registration records of a ***representative office of a foreign RO*** [64] within one month after submission day.[65] Judicial authorities adopt one of the following decisions:
   1) On the registration of the RO[66] and of the representative office[67] (meanwhile, the Law does not clearly specify the time when the document confirming registration should be issued, although it does indicate the times of interaction between different authorities at various stages of registration);
   2) On extending the time of "examination of documents to six months in order to perform theological expert evaluation" for the purposes of RO registration,[68] while for the registration records of a representative office they "are entitled to request additional information", in which case the time of document examination can be extended to six months;[69]
   3) In relation to a RO they can "leave the application without examination, of which the applicant (applicants) shall be notified in writing" "if the applicant (applicants) fail to comply with the requirements provided by items 2 to 4" of Article 11 of the Law on RAs, which lists the documents that must be submitted to judicial authorities for the registration of local and centralised ROs;[70]
   4) On refusal to register a RO, of which "the applicant (applicants) shall be notified in writing and indicated the grounds of refusal" (the text of the law is not sufficiently clear as to the time limits in which applicants shall be notified about the refusal to register the RO),[71] and also on refusal in registration records of a representative office.[72] (These issues are analysed in the section "Refusal to Register").

74) Thus, *the registration procedure* as described in Article 11 of the Law on RAs appears to be understandable. The time when authorities shall issue the document confirming the registration of a RO (and the registration records of a representative office), as well as the notification about refusal to register, is not, however, evident, which introduces an element of uncertainty. Therefore, the registration procedure in the part concerning time cannot be considered foreseeable. Besides, the Law on the State Registration of Legal Entities stipulates that "the registration of legal persons shall be performed within not later than 10 (ten) working days after the day of submission of documents to the registration authority".[73] At the same time, the documents for the registration of a RO are examined during one month, i.e. three times longer. Thus, one can raise the question of why it is necessary to set a longer period for RO registration. This factor can be applied in international standards for the examination of the issue of excessive delay in decision-making, and, accordingly, can lead to recognition of the violation of the freedom of association.[74]

[64] It should be noted that the Law on RAs uses both the term "registration records" (Article 13) and "registration" (Article 14) for representative offices. Despite this inconsistency in legislation, the study uses the term "registration records", for representative offices are not legal persons and the term "registration records" is used for representative offices in Article 20 of the Law on the State Registration of Legal Entities.
[65] See above, Law on RAs, Articles 11 (5) and 14 (6).
[66] See above, Law on RAs, Article 11 (5) and (7).
[67] See above, Law on RAs, Article 14 (6) and (7).
[68] See above, Law on RAs, Article 11 (5).
[69] See above, Law on RAs, Article 14 (5) and (6).
[70] See above, Law on RAs, Article 11 (6).
[71] See above, Law on RAs, Article 12 (2).
[72] See above, Law on RAs, Article 14 (9).
[73] See above, Law on the State Registration of Legal Entities, Article 17 (1).
[74] See above, Jeremy McBride "International Law and Legal Practice in Support of the Civil Society"

75) As for *formal requirements* for registration, they can be conventionally confined to two steps: establishment of a religious group and then preparation of documents required for the transformation of the religious group into a registered local RO and their submission to judicial authorities.

76) The Law stipulates no formal requirements for the creation of a ***religious group*** except that it must be created by the citizens of the left-bank region.[75] A religious group operates without state registration. However, if members form a religious group intending to further transform it into a religious organisation, they must notify about its creation and inception of operation the executive authorities of the town or district.[76] Subsequently, on the basis of this notification authorities issue a document confirming the existence of the religious group on a certain territory,[77] which is a mandatory condition for the transformation of an unregistered religious group into a registered RO.

77) Another mandatory condition for such transformation is the existence of the religious group on a certain territory for more than 10 years, a fact that authorities also indicate in the document that they issue. Thus, authorities introduced a ten-year ban on the transformation of a religious group into a religious organisation.

78) First, the purpose pursued by authorities when introducing this 10-year limitation for the transformation of a religious group into a RO is unclear. It is also unclear why the time is 10 years and not some other. The conclusion that can be reached is that this limitation is inconsistent with the three-step test, for it does not serve the realisation of any permissible goal.

79) Second, there is no "pressing social need" in this limitation. The former Law on the Freedom of Conscience and Religious Organisations of 1995,[78] which was in force until early 2009, contained no such limitations as to the time of registration of various religious organisations.[79] This situation raises the question of why it was formerly possible to register a RO without a 10-year waiting period and now it is not. As it is known, the left-bank region saw no significant social changes in the latest years entailing a "pressing social need" to introduce this limitation in 2009. This circumstance speaks of a significant change for the worse as regards the possibility to exercise the freedom of religion in the left-bank region.

80) Third, according to the Law on RAs, religious groups cannot conduct the same activities as registered ROs. For example, religious groups cannot establish their own educational institutions,[80] produce, purchase, and disseminate religious literature and other items used for religious purposes,[81] etc. All these activities are part of the right to manifest one's beliefs.[82] It results that in this case the right to manifest one's religious beliefs is limited by the requirement

[75] See above, Law on RAs, Article 7.
[76] See above, Law on RAs, Article 7 (2).
[77] See above, Law on RAs, Article 11 (2) e).
[78] The Law on the Freedom of Conscience and Religious Organisations of 23 August 1995 was abolished with adoption of the Law on RAs of 19 February 2009.
[79] Ibidem. See, for example, Article 14, Particulars of state registration of religious organisations created by establishment.
[80] See above, Law on RAs, Article 5 (3).
[81] See above, Law on RAs, Article 19 (1).
[82] See above, *Malakhovsky v. Belarus*, paragraph 7.2.

inseparably attached to the registration of a religious organisation.[83] However, a RO cannot be registered within 10 years after creation of a religious group, which entails an impossibility to perform the above actions. For this reason the ban on registering a RO within 10 years after creation of a religious organisation amounts to a limitation of the right to manifest one's religion. This limitation is disproportionate,[84] and therefore violates Article 18 (1) of the ICCPR and Article 9 (1) of the ECHR.

81) Further, at the second step, the following documents for the registration of a ***local RO***, prepared in one of the official languages, shall be submitted to the judicial authority:[85]

"a) Application for registration;

b) List of founders who create the religious organisation, indicating their citizenship, place of residence, date of birth, and information about compliance of founders with the requirements in items 1 and 3 of Article 8 of this Law;

c) Statute of the religious organisation;[86]

d) Minutes of the constitutive congress;

e) Document confirming the existence of the religious group on a certain territory for at least 10 (ten) years, issued by the executive authorities of the town or district, or confirming its joining a centralised religious organisation, issued by its administrative body;

f) Information about the foundations of the religious teaching and its practice, including the history of the religion manifested by members of the religious organisation, about the history of the association, the forms and methods of its activity, attitude towards family and marriage, education, particulars of attitude to health of the religion's followers, restrictions for members and attendants of the organisation as regards their civil rights and obligations;

g) Information about the address (location) of the permanent administrative body of the created religious organisation, which serves for communication with the religious organisation;

h) Document confirming the payment of the state tax".[87]

82) Thus, the list of documents required for the registration of a RO is exhaustive (closed), which corresponds to the criteria of foreseeability of formal requirements and their clarity. It also appears that the requirement of submitting these very documents is not excessive. Evidently, the persons desiring to register a RO will have to make certain efforts in order to prepare all the necessary documents. These requirements, however, are realisable, and it is unlikely that they would create obstacles for the registration of a RO, except for the document confirming the payment of the state tax because of some problems described below in the section "State Tax".

[83] Ibidem, paragraph 7.4.
[84] Ibidem paragraph 7.6.
[85] See above, the Law on the State Registration of Legal Entities, Article 11 (2). The Constitution does not indicate official languages; Article 12, however, lists three official languages: "The status of official language on equal basis is granted to the Moldovan, Russian, and Ukrainian languages."
[86] Article 10 of the Law on RAs contains detailed requirements for the contents of the statute of a RO.
[87] See above, Law on RAs, Article 11 (2).

83) In addition to the general procedure of registration of local ROs, the law sets additional or other formal requirements for the registration of:

1. Local ROs with a higher administrative body (centre) located outside the left-bank region (Article 11 (3));
2. Centralised ROs (Article 11 (4));
3. Subsidiaries and representative offices of ROs and foreign ROs (Articles 13 and 14).

84) As for the requirements for the registration of ***local ROs with a centre outside the left-bank region***, they are identical to the requirements for the registration of local ROs, except for one additional requirement: the above documents shall be supplemented by a "copy of the statute, copy of the registration certificate or other official documents and acts confirming the legal personality of the foreign religious organisation, and their translation into one of the official languages of the Transdniestrian Moldovan Republic, certified in the prescribed manner." [88] The expression "other official documents and acts confirming the legal personality of the foreign religious organisation" indicates the open character of the list of required documents. On the one hand, it is inconsistent with the criteria of foreseeability and clarity and potentially inconsistent with international standards. On the other hand, should there be an exhaustive list of documents required to confirm the legal personality of foreign ROs, such ROs could face the impossibility to meet these requirements. It may be, for example, due to the fact that other jurisdictions may issue other documents confirming legal personality than the ones that might be required by the Law on RAs for the registration of local ROs with a centre outside the left-bank region. Therefore, the phrasing with an open list of documents confirming legal personality can be considered reasonable and permissible. However, in this case the registration authority acquires elements of discretionary power and much will depend on how these provisions will be implemented in practice.

85) For the registration of ***centralised ROs*** the same requirements are made as for the registration of local ROs, except for several details. First, centralised ROs can be created and registered only by the already registered local ROs (at least three) manifesting one religion. Therefore, copies of statutes and documents of registration of local ROs that act as founders of the centralised RO shall be submitted for registration instead of the information and copies of ID cards of individuals.[89] Second, it is necessary to submit "a relevant decision of an authorised body" of each of the founders,[90] i.e. the resolution of the administrative bodies of local ROs on the establishment of the centralised RO. Third, it is also necessary to submit "the statutes of at least 3 (three) local religious organisations that are part of its structure, and information about other religious organisations that are part of the indicated structure."[91] This requirement partially duplicates the requirement of submitting the statutes of local ROs that act as founders, since founders definitely are part of the structure of an established centralised RO. As for the former two requirements, they can also be considered justified, for they are necessary in order to establish legal facts for the purpose of the registration of the legal entity.

86) The Law on RAs provides for a special form of registration for the ***subsidiaries*** and ***representative offices of foreign ROs*** [92] – registration records.[93] The Law on RAs itself does not stipulate any

[88] See above, Law on RAs, Article 11 (3).
[89] See above, Law on RAs, Article 11 (4) b) and e).
[90] See above, Law on RAs, Article 11 (4) f).
[91] See above, Law on RAs, Article 11 (4) item 2.
[92] The question may arise about the difference between a subsidiary and a representative office. The Law on RAs says nothing about it and contains no reference norms. However, a person having knowledge in the field of

formal requirements for the registration records of subsidiaries and representative offices of ROs. However, Article 13 of the Law on RAs contains a reference norm to the Law on the State Registration of Legal Entities, according to which the following documents shall be submitted to the judicial authority for the registration records of subsidiaries and representative offices of ROs:

1) Application in the prescribed form;
2) Resolution on the establishment of the subsidiary and (or) representative office of the RO;
3) Documents, confirming, in accordance with the Law on the State Registration of Legal Entities, the applicants' authority (originals or their certified copies);
4) Document confirming the payment of the state tax.[94]

87) The list of these formal requirements is exhaustive (closed); they comply with the criteria of foreseeability and clarity. These requirements are also practicable, and they create no obstacles for the registration of subsidiaries and representative offices of ROs, except for the document on the payment of the state tax because of some problems, described below in the section "State Tax".

88) The Law on RAs provides for the possibility to register ***representative offices of foreign ROs***. For this purpose, the following documents must be submitted to the judicial authority:

"a) Application on opening a representative office, signed by the authorised person (persons) of the foreign religious organisation, indicating information about this religious organisation, the purpose and main forms of its intended activity, location (address) of the representative office;

b) Resolution of the authorised body of the foreign religious organisation (organisations) on the intention to open its representative office in the Transdniestrian Moldovan Republic;

c) Copy of the registration certificate or other official documents and acts confirming the legal personality of the foreign religious organisation, with their translation into one of the official languages of the Transdniestrian Moldovan Republic, certified in the prescribed manner."[95]

89) Although this list does not include the document on the payment of the state tax, it must surely be submitted, as it is required for the registration records of representative offices according to the Law on the State Registration of Legal Entities.[96]

90) The above formal requirements are reasonable and justified. Also, the above comments for the registration of local ROs with a centre outside the left-bank region are applicable for them as to the submission of additional documents confirming the legal personality of a foreign RO.

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law can find the answer in Article 57 of the Civil Code. According to this article, first, subsidiaries and representative offices are not legal persons, and, second, they have different levels of authority: representative offices only represent the interests of the legal person and protect them (which is also stipulated in Article 14 (2) of the Law on RAs), while subsidiaries perform all the functions of the legal person or a part of them, including the function of representation.

[93] See above, Law on RAs, Article 13.

[94] See above, Law on the State Registration of Legal Entities, Article 46 (1).

[95] See above, Law on RAs, Article 14 (4).

[96] See above, Law on the State Registration of Legal Entities, Article 46 (1).

91) However, besides the above requirements for the registration of a representative office of a foreign RO, the judicial authority "is entitled to request additional information and to verify the authenticity of the information contained in the submitted documents", and in doing so to extend the time of examination of documents to six months.[97] Yet, the Law does not even specify the range of issues that can require submission of this additional information, nor does it stipulate reasonable grounds for it. This fact clearly indicates that authorities are given too wide discretional powers (in the form of request of "additional information") regarding the registration of representative offices of foreign ROs. Therefore, the list of such "additional information" for the registration records of representative offices of foreign ROs is groundlessly non-exhaustive (open), in violation of the criteria of foreseeability and clarity of formal requirements.

92) The Law on RAs contains neither formal requirements for the registration of ***subsidiaries of foreign ROs***, nor reference norms to other normative acts that could regulate their registration. Thus, the issue of registration of subsidiaries of foreign ROs is apparently not legally regulated and, therefore, practically impossible. At the same time another form of associations – public associations – have the possibility to register subsidiaries of foreign public associations.[98] This situation raises the question of why it is necessary to restrict foreign ROs in the possibility to register their subsidiaries, while foreign public associations in similar circumstances have this possibility.

2.7. State Tax

93) International standards allow fees to be charged for the registration of associations. The rate of such fees, though, should be reasonable; the size of fees should not be set at a level that is an obstacle for submission of applications for registration of associations.[99] The payment of fees is related to the issues of registration, therefore fee issues should comply with the criteria required for registration: *information about the registration procedure* must be accessible, the *procedure* itself must be easy to understand, and the *formal requirements* must be foreseeable, easy to satisfy, and they must not grant an excessively high margin of discretion to the authorities in deciding on the issue of registration of associations.[100,101, 102]

94) In the left-bank region such fees are paid in the form of state tax. Article 11 (9) of the Law on RAs indicates that this tax is charged for the "state registration of a religious association, modifications introduced in its statute", and for the registration records of the subsidiary or representative office of the RO.[103, 104] In addition, the Law on the State Registration of Legal Entities indicates that the tax must also be paid for the "registration of a legal entity in connection with its dissolution upon the decision" of the entity itself,[105] as well as exclusion of information about the legal entity

[97] See above, Law on RAs, Article 14 (5) and (6).
[98] See above, Law on PAs, Article 25.
[99] Ibidem, item 33.
[100] Ibidem, item 29.
[101] See above, *Koretskyy and Others v Ukraine*, para. 47.
[102] See above, CoE Expert Council on NGO Law, para. 52.
[103] See above, Law on RAs, Article 13.
[104] See above, Law on the State Registration of Legal Entities, Article 46 (1) d).
[105] See above, Law on the State Registration of Legal Entities, Article 43 (1).

being in the process of dissolution from the state register of legal entities.[106] Thus, the formal requirement of payment of state tax is foreseeable for various actions related to RO registration.

95) As for the accessibility of information about the state tax, although the requirement to pay it is contained in the Law on RAs, its amount in this document is not indicated. Article 11 (9) of the Law on RAs contains a reference norm about the state tax being charged "in the manner and amount prescribed by the Law of the Transdniestrian Moldovan Republic on the State Tax". The Law on State Tax itself indicates that legal entities are charged with the state tax for the following actions and in the following amounts:
    1) For registration of legal entities ï 40 PMW;
    2) For registration of legal entities in connection with their reorganisation through merger ï 20 PMW;
    3) For the registration of legal entities in connection with their dissolution ï 10 PMW;
    4) For the registration of modifications introduced into the constitutive documents of the legal entity ï 15 PMW;
    5) For introduction into the register of legal entities of data about the establishment or termination of operation of a subsidiary or representative office of a legal entity ï 15 PMW. [107]

96) Although the abbreviation PMW is not well-known, the law does not explain what exactly PMW is. Also, the law does not indicate the amount of 1 PMW in any currency, so as to make it possible to calculate the amount of the tax for RO registration. Moreover, the law does not contain any reference norms to other normative acts on PMW. Therefore, it is fairly evident that a person without special knowledge in the field of law or finances will most probably be unable to independently determine the amount of the tax that is to be paid for RO registration and other related actions. Accordingly, the information about tax payment is not accessible. Also, the examined laws do not indicate the manner in which the state tax is to be paid, whether at the judicial authority's office, through the bank, or by other means, i.e. the tax payment procedure is unclear. Thus, the legislation on state tax is inconsistent with at least two criteria for registration (information about the tax is inaccessible and the payment procedure is unclear), therefore it is unlikely to be in compliance with international standards.[108]

97) The study author's knowledge in the field of law allowed him to learn that the abbreviation PMW is used as a replacement of the expression "points of minimum wage",[109] and the PMW is set annually in the yearly budget laws. Article 59 of the Law on the Republican Budget for 2011 sets different sizes of PMW for different purposes, and apparently the rate of 1 PMW for the payment of the state tax for the registration of a legal entity is set at 9.25 roubles.[110] Accordingly, the size of the state tax, for example for RO registration is 9.25x40=370 roubles, which practically equals

[106] See above, Law on the State Registration of Legal Entities, Article 44 (4).

[107] The Law on State Tax of 30 September 2000 (as amended on 10 December 2010), no. 345-ЗИД (СЗМР 00-3), Article 5-1 (1) letters a)-e).

[108] Most likely, the interested persons are informed by judicial authorities about the size of the state tax to be paid and the payment method. However, the law must be formulated clearly and accessibly, so that anyone could with sufficient ease find in the legislation answers to these questions.

[109] Law on the Republican Budget for 2011 as of 08 December 2010, no. 242-3-IV (СА3 10-49), Article 18.

[110] Ibidem, Article 59 (2) letter e).

EUR 25 or USD 36.[111] For comparison, the average wage in July 2011 was 2,799 roubles (about EUR 188 or USD 269), and the average cost of living was 1,126.60 roubles (about EUR 76 or USD 108).[112] Taking into consideration these calculations, one can conclude that the amount of the state tax for RO registration is substantial for the left-bank region. However, the amount of the state tax should not be burdensome when distributed among all founders, whose number should be at least ten individuals for the registration of a local RO.

98) Besides, reasoning from Article 5-1 of the Law on State Tax it becomes clear that the state tax for registration is set at the same level for all legal entities, i.e. for both commercial enterprises and ROs. Thus, when setting the tax size no differentiation was made so as to take into consideration that ROs are, in essence, non-profit organisations. At the same time, such differentiation was made for individual entrepreneurs and peasant (farming) enterprises, which make profit out of their activity but pay a registration tax of only 10 PMW,[113] i.e. four times less than ROs.

99) Generalizing the above information it can be concluded that the state tax issues are potentially inconsistent with international standards, primarily because of the inaccessibility of information about the state tax and incomprehensibility of the payment procedure.

2.8. Refusal to Register

100) Refusal to register, which results in refusal to grant legal personality, is an interference with the freedom of association and its restriction. As it was related above, a restriction can be considered permissible only if it complies with the three-step test criteria, contained in Article 18 of the ICCPR and Article 9 of the ECHR. Also, according to international standards refusal to register must be executed in writing and must include reasons for refusal.[114]

101) According to the Law on RAs, judicial authorities examine documents for one month after their submission, and can refuse to register a RA, of which fact they "inform the applicant (applicants), indicating the grounds for refusal."[115] The registration records of a representative office of a foreign RO can also be refused in writing; at that, the Law on RAs contains no requirements as to the motivation of such a refusal.[116] In this sense the described procedure of refusal to register complies with international standards, for the legislation contains the requirements of written form and motivation. However, the procedure of refusal in registration records of a representative office of a foreign RO is inconsistent with international standards, as it contains no requirements on the motivation of refusal. Besides, the procedure of refusal in registration records of a subsidiary of a foreign RO is altogether absent in the Law on RAs and in the Law on the State Registration of Legal Entities.

[111] Transdniestrian Republican Bank: weighted average exchange rates in 2011, by the month: in June 2011: EUR 1=14.8631; USD 1=10.3871, <http://www.cbpmr.net/resource/svcmonthoctober2011.pdf>. //.

[112] «А цены растут и растут…», газета «Профсоюзные вести» от 20 августа 2011, <http://profvesti.org/2011/08/20/6349/>. // "And the prices keep growing…", newspaper "Profsoyuznye vesti", 20 August 2011.

[113] See above, the Law on State Tax, Article 5-1 (1) letters h) and j).

[114] See above, Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers, item 38.

[115] See above, Law on RAs, Article 12 (2).

[116] See above, Law on RAs, Article 14 (9).

102) Refusal to register is not an obstacle for repeated submission of documents for RO registration, which are examined according to the standard procedure.[117] It appears that these norms are also in compliance with international standards, for automatic and arbitrary refusal to examine RO registration documents, even if submitted repeatedly, would practically entail an impossibility to establish a legal entity, and therefore would in itself be an evident and unfounded interference with the freedom of association and its restriction.

103) However, the main question regards the degree of consistency with permissible restrictions of the freedom of religion and freedom of association of the reasons for which ROs can be refused registration, and, therefore, acquisition of legal personality.

104) Article 12 (1) of the Law on RAs contains a reference norm regarding the fact that refusal in registration of a RO and in registration records of subsidiaries and representative offices of ROs is permissible only in cases provided by the Law on the State Registration of Legal Entities,[118] taking into consideration the particulars contained in Article 12 (1) of the Law on RAs (in essence, these particulars are additional grounds for refusal). Also, and quite unexpectedly, Article 18 of the Law on the Republican Budget for 2011contains provisions related to the examined question. We shall consider the most problematic points of restrictions contained in the above-mentioned articles.

105) With regard to Article 12 (1) of the Law on RAs it is necessary to note the following. First, according to letter a), RO registration, registration records of subsidiaries and representative offices can be refused if "the goals and activity of the religious organisation are in conflict with the Constitution of the Transdniestrian Moldovan Republic and the legislative acts of the Transdniestrian Moldovan Republic." The issue of goals and activity was examined in greater detail in section "Establishment and Activity Goals", therefore the conclusions made there are applicable here as well.

106) Second, according to Article 12 (1) b), RO registration can be refused if "the created organisation has not been recognised religious." Judicial authorities can reach this conclusion on the basis of the expert opinion produced by the Expert Council under the Presidency of the left-bank region, prepared in accordance with the results of the state theological expert evaluation.[119] The fact that judicial authorities formulate their decisions on refusal to register ROs on the basis of the opinion of the specialised expert body is a positive moment. The problem can be in the following circumstances: are the members of the Expert Council qualified specialists who can prepare such an expert opinion, and how independent are they in their activity from the state administration? However, these issues are beyond the scope of this study. Yet on the whole, this ground for refusal is appropriate, as an organisation must be religious if it is to exercise the freedom of religion.

107) Third, according to Article 12 (1) c), the registration of ROs and registration records of subsidiaries and representative offices can be refused if "the statute and other submitted documents are inconsistent with the requirements of the current legislation of the Transdniestrian Moldovan Republic or if the information in them is not authentic." In this case it is not specified whether it means the conflict of the statute and other documents with the

[117] See above, Law on RAs, Article 12 (2).
[118] See above, Law on the State Registration of Legal Entities, Article 62.
[119] Presidential Decree on Approval of the Procedure for the State Theological Expert Evaluation, 30 March 2009, N 207 (CA3 09-14).

substantive aspects of the requirements set in legislation or textual inconsistency of the organisation's statute and other documents with other legislative acts as well. Consequently, this requirement of the Law on RAs is not clear (foreseeable) from the point of view of comprehension by applicants, and can enable authorities to adopt arbitrary decisions on refusal to register. In such a situation even the applicants' appeal to court might not prevent an arbitrary refusal to register a RO, subsidiary, or representative office.[120] Thus, too much depends on how this provision is interpreted and applied, and therefore it is potentially inconsistent with international standards.

108) Fourth, according to Article 12 (1) d) and e), the registration of a RO and the registration records of subsidiaries and representative offices can be refused if "another organisation with the same name had previously been registered in the state register of legal entities," and if "the decision on establishment of a religious organisation was adopted by persons who are not accordingly authorised." These restrictions can be considered complying with international standards, as they can be necessary in a democratic society, for example for the protection of public order.

109) In addition, attention is drawn by the restrictions on the range of persons for registration of a RO, set out in the Law on the State Registration of Legal Entities. Thus, according to Article 62 (1) letters e) and f) of the Law on the State Registration of Legal Entities, refusal to register is permitted in cases of registration of a legal entity whose founders are:

- "A legal entity with debts to the budget and extrabudgetary funds in amounts exceeding 5,000 (five thousand) PMW";
- "An individual who is founder of another legal entity with debts to the budget and extrabudgetary funds in amounts exceeding 5,000 (five thousand) PMW";
- "An individual entrepreneur,[121] in respect of whom proceedings were commenced to recognise him insolvent (bankrupt)".

110) Thus, there are ***restrictions on the possibility*** of an individual or legal entity ***to be founder of a RO depending on fulfilment of their financial obligations*** (in case of debts to the budget and extrabudgetary funds) ***or on their general financial standing*** (in case of the bankruptcy procedure). First, international standards guarantee the freedom of religion to individuals and ROs, and the freedom of association to all individuals and legal entities without any discrimination, and any restrictions must comply with the criteria of permissible restrictions of the freedom of religion and freedom of association (three-step test), examined in the section "Brief Description of International Standards". Accordingly, authorities will have to prove why the restriction of the freedom of religion and association of these very persons is necessary in a democratic society, and how it will contribute to achieving one of the permissible goals set out primarily in Article 18 of the ICCPR and Article 9 of the ECHR. But it is already now evident that the established restrictions are disproportionate to the pursued goal. Thus, these restrictions could be set in the interests of the public order in the form of compliance with the tax legislation and tax collection. This goal, however, can be efficiently achieved by other means, which do not restrict

[120] See above, *Koretskyy and Others v Ukraine,* para. 48.

[121] According to Article 3 item a) of the Law on the State Registration of Legal Entities, individual entrepreneurs are individuals carrying out business activities without forming a legal entity, i.e. they act as individuals. Accordingly, for the purposes of human rights the fact that they do business activities should not diminish their human rights, like any other individual's. Among other arguments made further in the text, their limitation in the possibility to be founders of non-profit associations solely by virtue of the fact that they can be recognised financially insolvent, will raise the issue of discrimination against them on the grounds of their financial situation or standing.

the freedom of religion and freedom of association in any way: imposition of penalties, use of other financial sanctions or legal action to recover debts.

111) Second, these provisions restrict the possibility to become founder of all types of legal entities and do not take into consideration the goals and specificity of RO activity. It can be assumed that these restrictions are necessary in order to make it impossible to pursue the goal of deriving profit under a new legal entity – commercial enterprise, and at the same time to not pay the debts of the former legal entity. However, ROs are in essence non-profit organisations, and they do not pursue commercial goals. Thus, when setting these restrictions no differentiation was made between commercial enterprises and ROs so as to take into consideration the non-profit character of the goals and activity of ROs.

112) Third, these restrictions are inconsistent with international standards in connection with an even more fundamental reason. Thus, Article 47 of the Constitution[122] stipulates the following: "The exercise of rights and freedoms is inseparable from the fulfilment by a citizen and a person of his obligations to society and the state". Further, Article 52 of the Constitution clarifies that one of every person's obligations is the obligation to "pay taxes and local fees, established by the law". Thus, the norms of the Constitution and then the norms of the Law on the State Registration of Legal Entities make the possibility to exercise human rights conditional on the persons' fulfilment of their obligations, in this case financial, whose non-fulfilment entails restriction of human rights, in this case restriction of the freedom of religion and freedom of association. However, neither in the human rights theory nor in international standards persons' exercise of their human rights is conditional on these persons' fulfilment of their obligations. Therefore, both the above-mentioned norms of Article 62 of the Law on the State Registration of Legal Entities and Article 47 of the Constitution are inconsistent with international standards.

113) Another restriction for the registration of legal entities and, therefore, registration of ROs is contained in Article 18 of the Law on the Republican Budget for 2011. According to this article, the tax authority "does not assign a fiscal code to a newly established legal entity" if:

- ñA founder (participant) of a newly established legal entity is a founder (participant) of other legal entities with debt to the budgets of various levels and to the state extrabudgetary funds in amounts exceeding 25 points of minimum wage (hereinafter ï PMW)ò;
- ñAlso, if a founder (participant) of a newly established legal entity is a legal entity with debt to the budgets of various levels and to the state extrabudgetary funds in amounts exceeding 25 PMWò.

114) It turns out that a legal entity is registered, but not assigned a fiscal code due to the financial indebtedness of their founders (participants) or legal entities established by them. As is known, the fiscal code is one of the attributes of a legal entity, which is needed, for example, when opening a bank account, performing payments, executing documents, etc. Therefore, the existence of the fiscal code is a necessary condition for the normal operation of any legal entity. In its turn, the lack of the fiscal code does not cause refusal to register a legal entity, but it entails actual impossibility of normal operation of the established legal entity, which makes the use of

[122] See above, the Constitution of the Transdniestrian Moldovan Republic.

legal personality inefficient and in our case the freedom of religion and the freedom of association – "theoretical or illusory".[123]

115) In this connection, the provisions of Article 18 of the Law on the Republican Budget for 2011 again make the possibility of using human rights conditional on the persons' fulfilment of their financial obligations. It is inconsistent with international standards, and the conclusions indicated two paragraphs above for Article 62 of the Law on the State Registration of Legal Entities and Article 47 of the Constitution are applicable for this situation as well.

2.9. Re-registration

116) Protection of standards in the field of the freedom of association lasts for an association's entire life.[124] Accordingly, the issues of re-registration of associations are included in this field, just like the issues of registration. If registration is connected with acquisition of legal personality, re-registration is connected with the issue of maintaining this personality and the possibility to continue normal operation. Therefore, re-registration must be subject to the same standards as the above-examined standards for the registration of associations.

117) The Law on RAs prescribes the necessity of an actual re-registration procedure in several cases:
1) To introduce modifications in the statute of a RO (Article 11 (8));
2) To reorganise a RO (Article 15);
3) To bring statutes in compliance with the new provisions of the Law on RAs (Article 29 (2)).

118) According to the Law on RAs, introduction of modifications into the statute of a RO[125] occurs in the same manner and within the same time limits as the registration of RAs, i.e. according to Article 11 of the Law on RAs. The reorganisation of ROs[126] also occurs in the same manner and within the same time limits as the registration of ROs and differs only by several formal requirements regarding submission of other or additional documents according to the Law on the State Registration of Legal Entities.[127] In this regard the comments and conclusions made above for the registration procedure apply for these procedures, too. The only addition is that in order to carry out these two procedures judicial authorities must not require ROs to repeatedly submit information or documents. Such requests shall be considered unfounded, since the legal authority already has certain information or documents as a result of initial registration of the RO. Thus, it relates to the request of submitting information about founders, as well as the documents confirming the authority to use in its name the personal name of a citizen, symbols protected by the law on the protection of intellectual property or by copyright. In this regard one can observe potential inconsistency with international standards.

[123] According to a known approach of the European Court of Human Rights to the exercise of human rights, established in the ECHR, "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective". See, e.g., ECHR judgment in the case *Artico v. Italy* of 13 May 1980, Application no. 6694/74, para. 33.

[124] *United Communist Party of Turkey and Others v. Turkey*, Application no. 133/1996/752/951, ECHR judgment of 30 January 1998, para. 33.

[125] See above, Law on RAs, Article 11 (8).

[126] See above, Law on RAs, Article 15.

[127] See above, Law on the State Registration of Legal Entities, Chapter 5.

119) In addition, Article 29 (2) of the Law on RAs contains the requirement of bringing statutes in compliance with the new Law on RAs.[128] This article is of interest due to its two provisions.

120) First, this article sets the time limit for bringing RO statutes in compliance with the provisions of the new Law on RAs with exemption from the state tax. And this time limit, after its establishment, has been extended:

Date and reasons for establishing the time limit	**The time limit and its duration**
19 February 2009 (adoption of the new Law on RAs)	31 December 2009 (i.e. 10.5 months)
22 July 2010 (introduction of modifications into the Law on RAs)[129]	31 December 2010 (i.e. extended for 4.3 months more)[130]
Total: 1 year and 2.8 months	

121) It should be acclaimed that authorities granted exemption from the state tax for the ROs which will bring their statutes in compliance with the provisions of the new law within the set time limit. It is important and correct, since the actual need for re-registration was caused by authorities and not decisions of ROs themselves. However, the initially established time for these actions was insufficient. Thus, legal entities usually hold their congresses, conferences or general meetings where they can adopt resolutions on the modification of their statutes only once per year. Therefore a time limit of less than one year will most likely be insufficient for many ROs from the organisational point of view. The same conclusion can be reached from the financial point of view, for such annual events in medium and large ROs often require substantial financial expenses and significant work of the ROs full-time staff. It is necessary to note that authorities apparently made concessions to ROs, for they extended the indicated time limit, which was an absolutely necessary step. However, it is necessary to take into consideration that the initial time limit for re-registration ended on 31 December 2009, and it was extended only on 22 July 2010. Thus, between 1 January and 22 July 2010 the ROs that failed to re-register because of insufficiently long re-registration time limit had to pay the state tax when submitting documents for re-registration. Also, on 22 July 2010 the time limit was extended to 31 December 2010, i.e. for about 4.3 months, which is again an insufficient time for re-registration without perception of the state tax.[131] Thus, these provisions can potentially be in conflict with international standards, as because of insufficiently long time limits for re-registration without perception of the state tax,

[128] This requirement appeared in connection with the adoption of a new active Law on RAs, which replaced the earlier Law on RAs of 23 August 1995.

[129] Law on Introduction of Modifications and Additions into the Law on the Freedom of Conscience and Religious Associations, 22 July 2010, N 138-ՀՌ-IV (ՀՓՀ 10-29).

[130] See above, Law on RAs, Article 29 (2) item 3.

[131] The legislator tried to alleviate this situation by granting retroactive force to the provision of exemption of the state tax for the re-registration of ROs beginning with the date of adoption of the new Law on RAs, i.e. from 19 February 2009. See above, the Law on Introduction of Modifications and Additions into the Law on the Freedom of Conscience and Religious Associations, 22 July 2010, Article 2.

i.e. for objective reasons, potentially not all ROs that might have wanted to re-register without paying the state tax could do so.

122) Second, this article contains a provision on the dissolution by judicial procedure at the request of judicial authorities of those ROs, whose statutes are not brought in compliance with the new Law on RAs. The issue of RO dissolution shall be examined below in the section "Dissolution"; here we will only briefly note that such requirement of dissolution is inconsistent with international standards in view of the fact that dissolution is disproportionate to the pursued goal.

2.10. Appeal against Refusal to Register and Re-register

123) Judicial control is an important guarantee for preventing and combating human rights violations. In particular it applies to unreasonable refusals to register associations and protection against them. International standards stipulate that authorities must ensure "that any person whose rights or freedoms … are violated shall have an effective remedy",[132] and that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal". [133]

124) According to the Law on RAs refusal to register a RO can be challenged in a judicial procedure.[134] Similarly, the Law on the State Registration of Legal Entities notes that "[t]he decision on refusal to perform registration can be challenged in a judicial procedure,"[135] which clearly demonstrates that it is also possible to appeal against the refusal to re-register a RO. Thus, legal provisions are in compliance with international standards, for they provide applicants with the possibility to challenge in court the refusals to perform various registration procedures, including the refusal in registration records of subsidiaries and representative offices of ROs. It is also relevant to mention that these potential appeals to court must be easy to perform and they must be examined within a reasonable time. Should these conditions fail to be met, it may lead not only to a violation of the freedom of association, but also to a violation of the right to fair trial and effective remedy.[136]

2.11. Dissolution

125) Dissolution of an association is an evident interference with the freedom of association and its most severe restriction. It is an extreme and excessive measure leading to complete cessation of activity and the dissolution of the established association. Therefore, authorities should proceed from the principle of proportionality and first, if necessary, apply other sanctions provided by the law, which would achieve the necessary goal but at the same time least of all restrict the freedom of religion and association. For example, it could be demands to correct violations, administrative or criminal prosecution of the persons who committed violations or of the association itself. As to the dissolution of an association, it should be an exceptional measure, applied in extreme cases only, when the association's activity leaves no other choice.[137] The dissolution must comply with

[132] See above, ICCPR, Article 2 (3).
[133] See above, ECHR, Article 6 (1).
[134] See above, Law on RAs, Article 12 (2).
[135] See above, Law on the State Registration of Legal Entities, Article 64 (4).
[136] See above, Jeremy McBride "International Law and Legal Practice in Support of the Civil Society", p. 50.
[137] Ibidem, page 58.

permissible restrictions of the freedom of religion and association as set out in Articles 18 (3) and 22 (2) of the ICCPR and in Articles 9 (2) and 11 (2) of the ECHR, i.e. it must be provided by law, necessary in a democratic society, and proportionate to the pursued permissible goal. The reasons for dissolution must be particularly strong, evidently "relevant and sufficient."[138]

126) The Law on RAs stipulates that the decision about dissolution can be made either by the RO itself or by court. The legislation also indicates a number of reasons for the dissolution of a registered RO or prohibition of activity of an unregistered religious group.

127) Thus ROs can be dissolved:

1) "Upon court judgment in case of repeated or gross violations of the norms set out in the Constitution of the Transdniestrian Moldovan Republic, this Law, and other legislative acts, or in case of systematic performance by the religious organisation of activities that are in conflict with its establishment goals (statutory goals)";[139, 140]
2) Upon court judgment on the basis of petition of judicial authorities in case the RO repeatedly failed to submit within the set time limit updated information, necessary for introduction of modifications into the state register of legal entities.[141]

128) The reason for dissolution of a RO indicated in item 1) partially complies with international standards. Thus, leading researchers have noted that the circumstances for the dissolution of an association are likely to include cases of anti-constitutional activity and continued illegal activity after receipt of a corresponding warning with the possibility to correct irregularities.[142]

129) However, it would be inconsistent with international standards to request dissolution of a RO in connection with its activity being systematically conducted contrary to its statutory goals. This issue must be foremost an internal affair of a RO and a matter of concern for its members and followers. Upon analogy with the standards applied to public associations, in this situation the interference of authorities with a demand to dissolve the RO can be considered permissible if the RO conscientiously conducts activities that are inconsistent with the goals of establishment of religious associations,[143] or if there is a "pressing social need" to protect one of the permissible goals listed in Article 18 (3) of the ICCPR and Article 9 (2) of the ECHR.

130) The reason for dissolution of a RO indicated in item 2) is evidently inconsistent with international standards. ROs certainly must meet legal requirements. However, in this case the dissolution of a RO is disproportionate to the pursued goal, and there is absolutely no "pressing social need" in restricting the freedom of religion or the freedom of association of all members of this RO. A proportionate reaction of authorities would be administrative prosecution of persons who failed to timely submit the necessary information to be introduced into the state register of legal entities.

[138] See above, *United Communist Party of Turkey and Others v. Turkey*, para. 47.
[139] See above, Law on RAs, Article 16 (1) b).
[140] A similar requirement is contained in Article 64 (2) b), "Dissolution of a Legal Entity", of the Civil Code.
[141] See above, Law on RAs, Articles 8 (7) item 3 and 16 (1) c).
[142] See above, Jeremy McBride "International Law and Legal Practice in Support of the Civil Society", p. 58.
[143] See above, Council of Europe, Explanatory Memorandum to Recommendation CM/Rec(2007)14 of the Committee of Ministers, para. 89.

131) According to the Law on RAs, reasons for the dissolution of a religious organisation and for banning the activity of a religious organisation or a religious group by judicial procedure are:

"a) Violation of public security and public order;

b) Actions aimed at conducting extremist activity;

c) Coercion to destruction of family;

d) Encroachment on personality, rights and freedoms of citizens;

e) Causing damage to morals, health of citizens as prescribed by law, including by using narcotic drugs and psychotropic substances, hypnosis, performance of obscene and other illegal acts in connection with religious activities;

f) Inducement of persons in a situation at risk for life and health to suicide or to refusal of medical care for religious reasons;

g) Obstruction of compulsory education;

h) Coercion of members and followers of religious associations and other persons to alienate their property in favour of a religious association;

i) Obstruction of a person's withdrawal from a religious association under threat of harm to life, health, property, if there is a real danger of its realisation or application of force and other unlawful actions;

j) Inciting citizens to refuse to fulfil their civic duties prescribed by law and commit other unlawful acts."[144]

132) A significant part of the above-listed reasons for the dissolution of ROs can be considered consistent with permissible restrictions of the freedom of religion. Thus, the dissolution of ROs for reasons provided in items a), b) and j) may be necessary for the protection of public order and public security; for reasons in items e) and f) – for the protection of health; for reasons in items d) and i) – for the protection of health and rights and freedoms of other persons; for reasons in items c) and g) – for the protection of rights and freedoms of other persons, particularly children; for reasons in item h) – for the protection of rights and freedoms of other persons.

133) However, even if these reasons for the dissolution of ROs are provided by law and are permissible, authorities in each particular case must show proportionality of their actions, i.e. that:

- Authorities used, for the protection of permissible goals, other measures, which did not restrict or in a lesser degree restricted the freedom of religion and the freedom of association, but these measures did not bring the desired result;
- Dissolution is an absolutely necessary and proportionate reaction for the protection of permissible goals.

[144] See above, Law on RAs, Article 16 (2).

134) It should also be noted that the phrasing of certain above-mentioned reasons for the dissolution of ROs can be questionable and lead to violation of the freedom of religion. For example, some religious teachings find military service, wearing of military uniform, and interaction with weapons unacceptable, which might result in their followers refusing to do compulsory military service. At the same time, such norms of ROs can be seen as "inciting citizens to refuse to fulfil their civic duties prescribed by law" and lead to the dissolution of this RO, which will surely be considered a violation of the freedom of religion.

135) Besides the above-mentioned cases, the legislation contains several other reasons for the dissolution of ROs.

136) First reason: upon request of the judicial authorities such ROs shall be subject to dissolution by judicial procedure whose constitutional documents are not brought in compliance with the Law on RAs by 31 December 2010.[145]

137) This reason is also evidently inconsistent with international standards. ROs must certainly bring their statutes in compliance with the requirements of the law. But again, RO dissolution for failure to fulfil this requirement shall be disproportionate to the pursued goal and there is also no "pressing social need" to restrict the freedom of religion and the freedom of association of all members of this RO. Thus, if a RO fails to introduce modifications in its statute before the established time, it loses the right to register modifications with exemption from the state tax, which is in itself a loss of the granted benefit and a certain financial sanction. In addition, Article 29 (2) item 2 of the Law on RAs indicates that "[t]he statutes of religious organisations, before they are brought in compliance with this Law, shall remain in force in the part that does not contradict this Law." This provision brings clarity and definiteness to what norms should be applied in case statutes are inconsistent with the law, and thus all issues of the lack of legal clarity become void. Moreover, neither the Law on the State Registration of Legal Entities nor the Civil Code provide for the possibility to dissolve commercial enterprises if their statutes are not brought in compliance with the modified legislation. This fact also raises the question of what brought in this case the need to dissolve ROs while there is no such requirement in a similar situation for commercial enterprises.

138) Second reason: judicial authorities must appeal to court with a motion on the dissolution of a RO if the authorised persons fail to take measures to implement the RO's resolution on its dissolution within the established time.[146]

139) This reason appears to be in compliance with international standards, since, first, the resolution on dissolution is adopted by the RO itself, and, second, authorities must take action to implement this resolution only after this RO's authorised persons proved their inability and failed to take measures to implement this RO's resolution on its dissolution within the established time.

140) Third reason: Article 16 (2) b) of the Law on RAs provides for the possibility to dissolve a RO for actions aimed at extremist activity, and Article 16 (3) of the Law on RAs contains a reference norm on the possibility to dissolve a RO according to the procedure and reasons prescribed by the Law on Countering Extremist Activity. The latter law itself contains such provisions in Articles 7 and 9.

[145] See above, Law on RAs, Article 29 (2) item 3.
[146] See above, the Law on the State Registration of Legal Entities, Article 45 (3).

141) The provisions of these articles can be summed up as follows. Article 7 mentions that if facts are found that are indicative of signs of extremism in a RO's operation, this RO is issued a written communication about the inadmissibility of such activities, indicating specific reasons for this communication, including the committed violations. Such a communication is issued by the General Prosecutor[147] or his deputy, and no more than a month is granted for the correction of irregularities. Next, if this communication is not challenged in court or implemented, or if within the next 12 months new signs of extremism are depicted in the operation of the RO, this RO shall be subject to dissolution by judicial procedure, and the activity performed by a RO that is not a legal entity shall be prohibited.

142) As for Article 9, it mentions that in case a RO or its structural subdivision perform extremist activity with a number of qualifying signs,[148] such a RO can be dissolved, and the operation of a RO that is not a legal entity can be prohibited by court decision upon a motion of the General Prosecutor or his deputy.

143) Fight against various forms of extremism is an urgent and necessary task in many countries, a fact that has been highlighted, for example, in Resolution 1754 (2010) adopted by the Parliamentary Assembly of the Council of Europe (PACE).[149] Such activity is necessary, since many forms of extremism contradict the values of democracy and human rights, and often even admit or directly contribute to violence.

144) Legislative measures for fight against extremism usually imply that certain norms can be included into constitutions, criminal legislation is supplemented and refined, and legislation concerning the fight against terrorism is adopted. Specific laws on the fight against extremism are adopted significantly less frequently. Thus, as far as it is known, as of May 2010 specific laws on fight against extremism existed in only two member countries of the Council of Europe: the Republic of Moldova and the Russian Federation. [150]

145) The problem of the examined Law on Countering Extremist Activity is the highly extensive definition of extremism, which entails the possibility of a broad interpretation of legal provisions and, therefore, the possibility of abuse and unacceptable restriction of the freedom of religion and the freedom of association.[151, 152] The European Court of Human Rights has already examined

[147] Such function, traditional for many jurisdictions, as "General Prosecutor" in the left-bank region is named "Prosecutor". Here and further, to name the function of this main Prosecutor we shall use the term "General Prosecutor", so as to differentiate this function from other prosecutors.

[148] Article 9 (2) of the Law on Countering Extremist Activity indicates the following qualifying signs: carrying out of extremist activity, which conducted to "violation of the rights and freedoms of the man and of the citizen, causing harm to the person, the health of citizens, the environment, public order, public safety, property, legitimate economic interests of individuals and (or) legal entities, society and the state or poses a real threat of such harm".

[149] PACE Resolution 1754 (2010) Fight against extremism: achievements, deficiencies and failures, 5 October 2010, para. 1, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1754.htm#1>.

[150] "Fight against extremism: achievements, deficiencies and failures", Report, PACE Political Affairs Committee, Doc. 12265, 19 May 2010, para. 34, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12265.htm#P56_850>.

[151] Amnesty International Report «Russian Federation: Freedom limited – the right to freedom of expression in Russia», 26 February 2008, Index: EUR 46/008/2008, pp. 17-26,

a case on similar problems, and it considered that there was a violation of the freedom of association in the light of the freedom of religion.[153]

146) Besides, the Law on Countering Extremist Activity contains another problem provision. Thus, Article 9 (2) of the law says that in case at least one structural subdivision of a RO carries out extremist activity, the entire RO is automatically subject to dissolution. This measure is inconsistent with international standards, for it is clearly not necessary or proportionate. If there is no connection between the activities of this subdivision and the organisation as a whole, the structural subdivision of the RO must be solely responsible for its own actions.

<http://www.amnesty.org/en/library/asset/EUR46/008/2008/en/c9539ec6-3848-4f5e-a07e-89bafac1152c/eur460082008eng.pdf>.

[152] Доклад Хьюман Райтс Вотч «Гражданское общество в антигражданских обстоятельствах: безосновательные ограничения независимой общественной активности», июнь 2009, стр. 48-53, <www.hrw.org/sites/default/files/reports/russia0609ruwebwcover.pdf>// Human Rights Watch report "An Uncivil Approach to Civil Society: Continuing State Curbs on Independent NGOs and Activists in Russia", June 2009, Russian edition, pp.48-53.

[153] *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, ECHR judgment of 5 October 2006, paras. 15, 90 – 92, and 98. In this case the European Court of Human Rights examined a case when Russian authorities refused re-registration to the religious organisation "Salvation Army" on the grounds that anti-extremist legislation prohibits establishment of paramilitary formations in Russia. One of the immediate reasons for refusal was the authorities' statement that "Salvation Army" is a "paramilitary organization", "since its members wore uniform and performed service, and because the use of the word "army" in its name was not legitimate". In this regard the Court noted that the freedom of religion includes the forms of manifesting religious beliefs. The Court added that "for the members of the applicant branch, using ranks similar to those used in the military and wearing uniforms were particular ways of organising the internal life of their religious community and manifesting The Salvation Army's religious beliefs. It could not seriously be maintained that the applicant branch advocated a violent change in the State's constitutional foundations or thereby undermined the State's integrity or security. No evidence to that effect had been produced before the domestic authorities or by the Government in the Convention proceedings. It follows that the domestic findings on this point were devoid of factual basis." Accordingly, the Court came to the conclusion that "the interference with the applicant's right to freedom of religion and association was not justified" and there has been a violation of Article 11 of the ECHR read in the light of Article 9.

3. Conclusions

3.1. General Conclusions and Recommendations

147) The Constitution of the left-bank region contains general norms related to the freedom of religion and the freedom of association. Also, the region has developed specialised legislation in the form of the Law on the Freedom of Conscience and Religious Associations and other normative acts. These documents among other issues regularise the issues of establishment, registration, re-registration and dissolution of religious associations.

148) The analysis of this general and special legislation, done within this study, showed that many of its provisions combine both norms consistent with international standards and norms inconsistent with them. The norms that are inconsistent with international standards hinder the practical realisation of the collective freedom of religion. Authorities should confirm their commitment to the obligation of *ensuring* this freedom and eliminate the obstacles contained in the legislation. It would considerably increase the possibility of a full and efficient exercise of the freedom of religion and the freedom of association. For this, it would be necessary to bring the legislation in compliance with international standards, taking into consideration the conclusions of this study. It especially relates to the need to eliminate the 10-year restriction on the possibility to transform an unregistered religious group into a registered religious organisation (RO), as this restriction is unjustified and violates international standards of the freedom of religion.

149) Furthermore, when refining the legislation, ***differentiation*** should be made between commercial enterprises and religious organisations, considering that the latter are in essence non-profit associations. It is especially the case with the need to establish a special reduced state tax for various registration-related actions, and remove the restriction on the possibility of individuals and legal entities to be founders of public associations depending on fulfilment of tax obligations or financial standing.

150) It should also be noted that the ***legislation*** on the freedom of religion and registration of ROs ***should be to the maximum accessible and understandable*** to a wide range of people: it is being used as a guidance by a lot of people who have no special knowledge in the field of law, who intend to establish, are establishing or have already established registered or unregistered religious associations, and who are their members and followers. However, several factors prevent the legislation from being accessible and understandable.

151) First, the analysed documents contain a ***large number of reference norms*** to other documents. This circumstance considerably hinders understanding and performance of registration procedures by persons lacking knowledge in the field of law. This problem can be overcome for example by reducing reference norms to the maximum and transferring into the Law on the Freedom of Conscience and Religious Associations the necessary provisions from other normative acts.

152) Second, a ***systematic problem is the general difficulty to access the texts of the normative acts*** currently in force in the region. Normative acts are published in printed "Compilations of Legislative Acts" (CLA), but the region has no publicly accessible reliable electronic database of normative acts, amendments and additions to them, placed in the Internet. We live in an era of information technologies, and life requires a fast access to information, including socially significant information – the legislation. This problem can be solved by developing and placing in the Internet a publicly accessible website with a permanently updated, systematised database of all normative acts of the region's central authorities.

3.2. Summary of the Main Conclusions of the Study

153) Article 30 of the Constitution guarantees the freedom of religion "to everyone." At the same time, Article 33 of the Constitution protects the possibility to establish associations for various goals, but restricts the freedom of association to a certain range of people (only for the citizens of the left-bank region) in violation of international standards.

154) The Law on the Freedom of Conscience and Religious Associations (Law on RAs) rightly provides for the possibility to establish both ***informal*** (unregistered) religious groups and ***formal*** ROs (registered, with legal personality). The process of establishment of unregistered religious groups complies with international standards.

155) ***Founders, members and participants*** of ROs can be individuals and specialised legal entities – religious organisations. All other legal entities are deprived of the possibility to exercise the freedom of association, which complies with international standards, since the freedom of religion encompasses only those legal entities that are created by believers with the purpose of collective exercise of the freedom of religion.

156) ***Foreigners and stateless persons*** cannot be founders, which is inconsistent with international standards. However, they can be members and participants of ROs only if they "permanently and legally" reside on the territory on the left-bank region (Article 8 (1) of the Law on RAs). It appears that this restriction is inappropriate and impracticable.

157) The **number of persons** required to create a religious group and to register a RO does not contradict international standards. Individuals cannot be founders of centralised ROs, which can be inconsistent with international standards.

158) ROs pursue the goal of collectively practicing and spreading faith; it is forbidden to create ROs whose goals or actions are aimed at extremist activity (Article 9 (1) of the Law on Countering Extremist Activity). However, the ***concept of extremism is quite voluminous*** (Article 1 of the Law on Countering Extremist Activity), which leads to the possibility of its broad interpretation and, therefore, abuse.

159) The ***information about the RO registration procedure*** (Article 11 of the Law on RAs) appears not fully accessible, since it is concentrated in several laws and persons without special knowledge in the field of law might find it difficult to understand all the subtleties of this information. This

circumstance is aggravated by the fact that the left-bank region has no authentic and publicly accessible reliable electronic database of normative acts, amendments and additions to them.

160) The registration procedure (Article 11 of the Law on RAs) is understandable with the exception of the time when the document confirming the state registration of a RO as a legal entity and the document on refusal to register are issued. Also, the question appears about why the registration of ROs takes three times longer than the registration of commercial legal entities.

161) It is contrary to international standards that a ***religious group can be transformed into a registered RO only 10 years after its creation***. This limitation in the registration of ROs is unjustified; it contradicts the criteria of permissible restriction of the freedom of religion and violates the freedom of religion itself.

162) The ***list of documents*** required for the registration of a ***local RO*** (Article 11 (2) of the Law on RAs) is exhaustive (closed), which corresponds to the criteria of foreseeability of formal requirements and their clarity, and the requirement of submitting these very documents is not excessive. Similar requirements are set for the registration of a ***centralised RO***, which can also be regarded as clear and justified.

163) The requirements set for the registration of ***local ROs with central offices outside the left-bank region*** are similar to the requirements for the registration of local ROs. The difference is only in the need to additionally submit a number of documents of foreign ROs confirming their legal personality. Although the list of these additional documents is open, it can be considered acceptable and consistent with international standards, since different jurisdictions can issue different documents confirming legal personality than the ones that might be required by a closed list according to the Law on RAs. The same requirements and conclusions are applicable for the registration of ***representative offices of foreign ROs***. However, legal authorities are entitled to request "additional information" on a number of issues for registration, which provides authorities with excessively broad discretional powers. This situation is also inconsistent with the criteria of foreseeability and clarity of formal requirements.

164) The legislation does not regularise the registration of ***subsidiaries of foreign ROs***, which practically makes their registration impossible. At the same time, public associations have the right to register subsidiaries of foreign public associations. This situation raises the question of why it is necessary to restrict foreign ROs in the possibility to register their subsidiaries, while foreign public associations in similar circumstances have this possibility.

165) As for the requirements for the registration of ***subsidiaries and branches of local ROs***, their list is exhaustive and they correspond to the criteria of foreseeability and clarity, but problems may appear with estimation and payment of the state tax.

166) Various types of registration activities in the left-bank region are charged with a ***state tax***, which is allowed by international standards. However, it is inconsistent with international standards that the information about the state tax is not accessible, since the information about the state tax and its size is contained in several normative acts, and a person without special knowledge in the field of law or finances is unlikely to be able to independently determine the size of the tax. The

state tax payment procedure is unclear: whether it should be paid at the judicial authorities' offices, through the bank or in some other manner. The state tax for the registration of ROs in 2011 amounted to 370 roubles (about EUR 25 or USD 36). The amount of the state tax for RO registration is considerable for the left-bank region. However, it should not be burdensome when distributed among all the founders, whose number must be at least ten individuals for the registration of a local RO. Also, the state tax for registration activities is the same for all legal entities, i.e. it was set without taking into consideration that ROs are non-profit organisations.

167) The procedure of ***refusal to register a RO*** (Article 12 of the Law on RAs) is consistent with international standards, since the legislation requires the refusal to be written and motivated. Refusal to register is not an obstacle for submission and examination of a repeated application for RO registration, which is also in compliance with international standards. However, the procedure of refusal in registration records of representative offices of foreign ROs is inconsistent with international standards, as it does not require refusal to be motivated. The procedure of refusal in registration records of subsidiaries of foreign ROs is not stipulated in the legislation altogether.

168) However, the main question regards the degree of consistency with permissible restrictions of the freedom of association of the ***reasons*** for which ROs can be refused registration, and, therefore, acquisition of legal personality.

169) First, RO registration can be refused if "the goals and activity of a religious organisation are in conflict with the Constitution of the Transdniestrian Moldovan Republic and with the legislative acts of the Transdniestrian Moldovan Republic" (Article 12 (1) a) of the Law on RAs). When deciding on the legality of the goals and activity of a RO, authorities should proceed from conclusive and sound reasons, and not from "mere suspicion about the true intentions of the founders of the association."

170) Second, according to Article 12 (1) b), RO registration can be refused if "the created organisation has not been recognised religious." This reason for refusal is appropriate, as an organisation must be religious if it is to exercise the freedom of religion. However, authorities must make such a decision on the basis of conclusive reasons, including on the basis of an opinion of a specialised expert body.

171) Third, according to Article 12 (1) c), the registration of ROs and registration records of subsidiaries and representative offices can be refused if "the statute and other submitted documents are inconsistent with the requirements of the current legislation of the Transdniestrian Moldovan Republic or if the information in them is not authentic." The law does not specify whether it means the conflict of the statute and other documents with the substantive aspects of the requirements set in legislation or textual inconsistency of the organisation's documents with other legislative acts. Consequently, this requirement is not clear (foreseeable) from the point of view of comprehension by applicants; it can enable authorities to adopt arbitrary decisions on refusal to register, and therefore this provision is potentially inconsistent with international standards.

172) Fourth, according to Article 12 (1) d) and e), the registration of ROs and registration records of subsidiaries and representative offices can be refused if "another organisation with the same name had previously been registered in the state register of legal entities," and if "the decision on

establishment of a religious organisation was adopted by persons who are not accordingly authorised." These restrictions can be considered complying with international standards, as they can be necessary in a democratic society, for example for the protection of public order.

173) In addition to the above, there are restrictions for RO registration that are related to the range of persons (Article 62 (1) letters e) and f) of the Law on the State Registration of Legal Entities). Thus, there are ***restrictions on the possibility*** of an individual or legal entity to ***be founder of a RO depending on fulfilment of their financial obligations*** (in case of debt to the budget and extrabudgetary funds exceeding 5,000 PMW) or on their ***general financial standing*** (in case of bankruptcy of an individual entrepreneur). However, the goal of tax collection can be efficiently achieved by means that do not restrict the freedom of religion and of association in any way (penalties, legal action, etc.). Moreover, international standards do not make the persons' exercise of their rights conditional on these persons' fulfilment of their obligations. Therefore the above-mentioned restrictions and the provisions of Article 47 of the Constitution are unacceptable and inconsistent with international standards.

174) The same conclusions are applicable for the provisions of Article 18 of the Law on the Republican Budget for 2011. These provisions allow the tax authority to not assign a ***fiscal code*** to a newly established RO on the grounds of financial indebtedness of its founders (participants) or the legal entities established by them. The lack of the fiscal code entails actual impossibility of normal operation of the established legal entity, which makes the use of legal personality inefficient and in our case the freedom of religion and the freedom of association – "theoretical or illusory".

175) The Law on RAs prescribes the need for actual ***re-registration*** in several cases (Article 11 (8), Article 15, Article 29 (2)), and it occurs in the same manner and within the same time limits as the registration of ROs. Therefore, the comments and conclusions made above for the procedure of RO registration apply for re-registration as well. At that, judicial authorities must not require ROs to repeatedly submit information or documents which the judicial authorities obtained as a result of initial registration of the RO, since it can be potentially inconsistent with international standards.

176) Actual re-registration also includes the requirement of bringing RO statutes into compliance with the new provisions of the Law on RAs (Article 29 (2) of the Law on RAs) within set time limits. For this purpose authorities provided exemption from the payment of the state tax and several times extended the initially established time, which on the one hand potentially complies with international standards, while on the other hand the time limits set for re-registration with tax exemption were too short, and further extension of these time limits failed to relieve this problem.

177) ***Decisions on refusal*** of the registration, re-registration and dissolution of RAs can be ***challenged*** in a judicial procedure, which is in compliance with international standards. As it takes place, it is necessary to ensure that such complaints are examined within a reasonable time so as to respect the right to fair trial and effective remedy.

178) The Law on RAs indicates a number of reasons for the ***dissolution*** of ROs (Article 8 (7) item 2, Article 16 (1) c) and Article 16 (2)). So, the demand to dissolve a RO for repeated or gross violation of the norms set in the Constitution and in the legislation partially complies with international

standards. Thus, leading researchers have noted that it would be in compliance with international standards to dissolve a RO in such cases as anti-constitutional activity and continued illegal activity after receipt of a corresponding warning with the possibility to correct irregularities (Article 16 (1) b) of the Law on RAs).

179) However, it would be inconsistent with international standards to request dissolution of a RO in connection with its activity being systematically conducted contrary to its statutory goals (Article 16 (1) b) of the Law on RAs). The interference of authorities with a demand to dissolve a RO can be considered permissible if this RO conscientiously conducts activities that are inconsistent with the goals of establishment of religious associations.

180) Also, it is contrary to international standards to demand dissolution of a RO by judicial procedure on the grounds of repeated failure to submit within an established time the information that is needed to introduce modifications into the state register of legal entities (Article 8 (7) item 3 and Article 16 (1) c) of the Law on RAs), since this measure is disproportionate to the pursued goal.

181) A considerable number of the above reasons for the dissolution of ROs, listed in Article 16 (2) of the Law on RAs, can be seen as consistent with permissible restrictions of the freedom of religion. However, in each particular case authorities must show that dissolution is an absolutely necessary and proportionate reaction aimed at protection of permissible goals.

182) The phrasing of such a reason for RO dissolution as “inciting citizens to refuse to fulfil their civic duties prescribed by law” can be questionable. Thus, some religious teachings consider military service, wearing of military uniform, and interaction with weapons unacceptable, which might result in their followers refusing to do compulsory military service, i.e. refuse to perform a statutory civil duty. Such a position of a RO can be regarded as “incitement” and can lead to dissolution of the RO, a fact that will definitely be considered a violation of the freedom of religion.

183) Upon request of the judicial authorities those ROs are subject to dissolution by judicial procedure whose statutes are not brought in compliance with the new Law on RAs before 31 December 2010 (Article 29 (2) item 3 of the Law on RAs). This requirement is inconsistent with international standards because dissolution is disproportionate to the pursued goal. In addition, the legislation does not provide for the possibility to dissolve commercial enterprises if their statutes are not brought in compliance with the modified legislation. Thence the question about the reasons behind such different attitude towards ROs and commercial enterprises in a similar situation.

184) Judicial authorities must appeal to court with a motion on the dissolution of a RO if the authorised persons do not take steps to implement this RO’s decision on its dissolution within the established time (Article 45 (3) of the Law on the State Registration of Legal Entities), which is in compliance with international standards, for the authorities implement the decision of the RO if its authorised persons prove their inability to implement this decision.

185) A RA can also be dissolved according to the procedure and reasons prescribed by the Law on Countering Extremist Activity (Article 7 and 9). Fight against various forms of extremism is relevant and necessary, for they are in contradiction with the values of democracy and human

rights, and often even admit or directly contribute to violence. However, the problem with the Law on Countering Extremist Activity is the highly extensive definition of extremism, which entails the possibility of a broad interpretation of legal provisions and, therefore, the possibility of abuse and unacceptable restriction of the freedom of religion and freedom of association.

186) Also, the legislation contains a provision that in case at least one of the structural subdivisions of a RO carries out extremist activity, the entire RO is automatically subject to dissolution (Article 9 (2) of the Law on Countering Extremist Activity). This measure is inconsistent with international standards, since it evidently is not necessary or proportionate. If there is no connection between the activities of this subdivision and the organisation as a whole, the structural subdivision of the RO must be solely responsible for its own actions.