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Foreword

On 13 February 2001, the Dutch Minister of Foreign Affairs, acting on behalf of the Government, requested the Advisory Council on International Affairs (AIV) to submit an advisory report on the following questions:

1. What types of problems do communities based on religion or belief experience as a result of legislation that imposes wide-ranging restrictions on registration and re-registration?
2. What rights and freedoms can as yet unregistered communities based on religion or belief claim on the grounds of international human rights standards?
3. What minimum requirements, based on international human rights standards, must legislation on registration or re-registration of communities based on religion or belief meet, taking account of the legitimate restrictions on freedom of religion or belief?

In his letter, the Minister emphasised freedom of religion or belief as a fundamental and intrinsic element of Dutch human rights policy. Restrictions on freedom of religion or belief may only be imposed under strict conditions. He further pointed out that, since the fall of the communist regimes in Central and Eastern Europe in 1989, a great number of small religious and belief communities have emerged, some of which are considered a threat to the government and to more traditional, longer established churches. This has led in some countries to the imposition of restrictive requirements on religious and belief communities, sometimes based on a discriminatory attitude on the part of the government, as for instance in Azerbaijan, Macedonia, Uzbekistan, the Russian Federation, and Turkmenistan. Criticism of such new, restrictive laws has been made by the Netherlands and the European Union in the context of the Organisation for Security and Cooperation in Europe. Furthermore, small religious communities have themselves expressed criticism of the restrictive attitudes of some Western countries and measures they have taken as a result. The Minister pointed in particular to the obligation of communities based on religion or belief to register. Any requirement concerning registration or re-registration should be unequivocal, transparent, and non-discriminatory, as well as conforming to international human rights standards. (See Annexe I for the request for advice).

In view of the limited time available for the preparation of this report, the AIV decided to limit its advisory report strictly to those items that are of direct relevance to the problem of registration and re-registration. This means that it does not deal with other interesting and important aspects relating to freedom of religion or belief.

This report was prepared by a subcommittee of the Human Rights Committee (CMR) of the AIV. The Committee consists of the following persons: Professor P.R. Baehr* (chair of the subcommittee), Professor C.E. von Benda-Beckmann-Droogleever Fortuijn (vice-chair), Professor T.C. Van Boven, Dr M.C. Castermans-Holleman, Professor C.P.M. Cleiren, Professor P.B. Cliteur, T. Ety, Professor C. Flinterman* (chair), Professor W.J.M. van Genugten*, L.Y. Goncalves-Ho Kang You, C. Hak, M. Koers-van der Linden, F. Kuitenbrouwer, A.L.E.C. van der Stoel*, J.G. van der Tas and H.M. Verrijn Stuart. Members whose names is marked with an asterisk (*) were in the subcommittee responsible for drafting the report.

Professor B. de Gaay Fortman of the Development Cooperation Committee (COS) was also a member. Professor T.C. van Boven (Human Rights Committee) and Professor J.W. de Zwaan of the European Integration Committee also took part, primarily by correspondence.

The preparation of the advisory report benefited from the assistance of H.J. Hazewinkel (DMV) and Dr. B.G. Tahzib-Lie (DMV/MR) of the Ministry of Foreign Affairs. The AIV further expresses its sincere gratitude to the external experts Dr. S.C. van Bijsterveld and Dr. C.D. de Jong who were instrumental in producing this report.

The executive secretary of the committee was T.D.J. Oostenbrink, who was assisted by M.M.T. Keyte and A.R. Walrecht, interns.

The AIV adopted this report on 1 June 2001.

I Introduction

Throughout history, communities based on religion or belief have been obliged to be registered. The problems deriving from registration have, over the years, remained essentially unchanged. The issue of registering such communities must be seen in connection with freedom of religion or belief as an individual right, and more particularly to the collective and corporate dimensions of this freedom. It relates to the intrinsic meaning of this freedom as well as to the organisation of relations between the state and religion at national level.

Registration of religious and belief communities and its significance in the light of freedom of religion or belief must further be seen in the context of the function of registration in a legal system; that is the requirements for registration must be assessed with reference to its legal consequences.

It is not registration as such, but its legal consequences that may make registration a problem. These consequences differ from country to country. In some countries, registration is a precondition for being tolerated or accepted as a 'religion' or 'belief', while in other states it functions as a precondition for obtaining legal personality, or other legal consequences, such as the enjoyment of fiscal benefits. States differ considerably in the way they relate to these communities, and how they take religion and belief into account in the general infrastructure of the law. Where communities based on religion or belief are accepted within the framework of the law, criteria may be introduced and may even be necessary. Different legal techniques are available, registration being one of them. Legislation differs considerably from one country to another.

Depending on the precise criteria for and the consequences attached to registration, refusal to register a community may either be a relatively neutral administrative act or may have severe negative consequences.

An assessment in the light of international law of requirements for registration of communities based on religion or belief must take these elements into account. The assessment of registration, in other words, must always be related to the legal consequences attached to it.

Registration or re-registration sometimes takes place under circumstances of profound social change. Under such circumstances, refusal to register religious and belief communities may easily lead to conflict. Registration may therefore sometimes be resorted to or justified by public authorities with a view to containing unrest in society. However, under such circumstances, registration may also bring about the opposite consequences and feed unrest. In such situations, the positive as well as negative aspects of registration call for extra attention, since it can both promote and hamper tolerance between various groups.

This report is organised as follows. It will first give a brief survey of international human rights guarantees pertinent to freedom of religion or belief (Chapter II). This will provide an insight into the basic guarantees to which unregistered religious and belief communities are entitled. In addition, it will provide a basis for a further analysis of the standards to which registration itself must comply under international human rights law (Chapter III). The final chapter contains the AIV's conclusions and recommendations (Chapter IV).

II International law and freedom of religion or belief

Scope

Prevailing international views embrace a broad interpretation of the expression 'freedom of religion or belief'. This expression is commonly used to include freedom of theistic, non-theistic, and atheistic beliefs as well as freedom not to profess any of these beliefs.¹ This report also adopts such a broad and inclusive interpretation.

Freedom of religion or belief is explicitly guaranteed as a human right in many international human rights instruments, such as the Universal Declaration of Human Rights (Art. 18), the International Covenant on Civil and Political Rights (Art. 18), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 9), the American Convention on Human Rights (Art. 12), the African Charter of Human and Peoples' Rights (Art. 8), and the EU Charter of Fundamental Rights (Art. 10) (see Annexe 2).

Whereas these instruments contain general provisions relating to the freedom of religion or belief, more detailed provisions can be found in the various instruments of the Organisation for Security and Cooperation in Europe (OSCE) and in the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (see below).²

For a proper understanding of freedom of religion or belief, it should be borne in mind that this freedom does not stand on its own: it is closely related to a number of other rights, such as freedom of education, minority rights, the right to freedom of expression, the right of association and peaceful assembly and the right to non-discrimination. However, for the purpose of this report, the AIV focuses on specific guarantees of freedom of religion or belief.

Dimensions

Generally, a basic distinction is made between what is known as the internal forum (*forum internum*) and the external forum (*forum externum*). The former refers to the private, inner sphere of religion or belief; it amounts to the right to subscribe to or to change one's religion or belief. The latter refers to publicly manifested, outwardly recognisable expressions of religion or belief. It is commonly accepted that the internal forum cannot be subject to any restriction whatsoever. In this report, the AIV is mainly concerned with the external forum, more specifically with the exercise of religion or belief in its social dimensions.

1 'The terms belief and religion are to be broadly constructed. (...) The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established or represent religious minorities that may be the subject of hostility by a predominant religious community.' Human Rights Committee, *General Comment* No. 22, par. 2, UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Human Rights Law Journal* 233 (1994). See also: Bahia Tahzib-Lie, '*Freedom of Religion or Belief, Ensuring Effective International Legal Protection*', Martinus Nijhoff Publishers, The Hague/Boston/London (1996), pp. 2 and 3.

2 See also: Bahia Tahzib-Lie, 'The European definition of freedom of religion or belief', *Helsinki Monitor*, vol. 9, no. 3 (1998), pp. 17-24.

Article 6 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief states that the freedom to express one's religion or belief (the external forum) includes the following freedoms:

- To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- to establish and maintain appropriate charitable or humanitarian institutions;
- to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- to write, issue and disseminate relevant publications in these areas;
- to teach a religion or belief in places suitable for these purposes;
- to solicit and receive voluntary financial and other contributions from individuals and institutions;
- to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- to establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.³

This list shows that, although freedom of religion or belief is generally stated as an individual right, it has important collective dimensions. This also follows from the more general formulation of the freedom to manifest one's religion or belief alone or in community with others.

Restrictions

Under the International Covenant on Civil and Political Rights (Art. 4, par. 2), the American Convention on Human Rights (Art. 27, par. 2) and the (Fourth) Geneva Convention relative to the Protection of Civilian Persons in Time of War (Art. 27), no derogation from the right to freedom of thought, conscience or belief is permitted, even in times of war or a public emergency that threatens the life of the nation. Although freedom of religion or belief is not explicitly mentioned among the non-derogable rights in the European Convention of Human Rights and Fundamental Freedoms (Art. 15, par. 2), prevailing scholarly opinion doubts whether any derogations from the right to freedom of thought, conscience, religion or belief can be legally justified.⁴

This non-derogable character does not preclude the possibility of restrictions. However, restrictions may be imposed only on the freedom to manifest one's religion or belief

3 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief*, Art. 6, United Nations General Assembly res. 36/55 of November 25, 1981. See for example also Principle 16 of the Concluding Documents of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Nov. 4, 1986-Jan. 17, 1989. See further Human Rights Committee, *General Comment No. 22, par. 4*.

4 Francis G. Jacobs and Robin C.A. White, *The European Convention on Human Rights*, 2nd ed. 1996, Oxford: Clarendon Press; Pieter van Dijk and Fried van Hoof, *Theory and Practice of the European Convention on Human Rights*, The Hague/London/Boston: Kluwer Law International, 3rd ed., 1998, p. 578. For a detailed discussion of derogation clauses, see: 'Syracusa Principles on Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights,' *Human Rights Quarterly* vol. 7 (1985), pp. 1-14, 23-34, 89-131.

(*external forum*). The freedom to subscribe to or to change one's religion or belief (*internal forum*) cannot be subjected to any restrictions whatsoever.⁵

Although the freedom to manifest one's religion or belief (*external forum*) is not an absolute right, limitations must conform to a number of explicit criteria, as formulated in the main international Conventions. Such limitations must be:

- 'prescribed by law and [be] necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others' (International Covenant on Civil and Political Rights, Art. 18, par. 3);
- 'prescribed by law and (...) 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' (European Convention of Human Rights and Fundamental Freedoms, Art. 9, par. 2). The case law of the European Court of Human Rights later added a 'pressing social need' as a further element;
- 'limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others' (American Convention on Human Rights, Art. 12, par. 3);
- 'prescribed by law and (...) consistent with international standards' (CSCE: Document of the Copenhagen Meeting of the Conference on the Human Dimension, 1990).

In these clauses, three recurring elements can be discerned. Restrictions should be:

- prescribed by law⁶, so that they are recognisable as well as foreseeable;
- allowed to serve specific goals;
- necessary to protect or serve these goals.

In a widely respected report, Arcot Krishnaswami refers to manifestations that are so obviously contrary to morality, public order, or general welfare, that public authorities are always entitled to prohibit them altogether. Into this category fall such practices as the sacrifice of human beings, self-immolation, mutilation of the self or others, and slavery or prostitution, if carried out in the service of, or under the pretext of promoting, a religion or belief.⁷ Obviously, such restrictions may be subject to abuse.

The case law on the European Convention on the Protection of Human Rights and Fundamental Freedoms stresses these elements very clearly. In this case law the criterion 'prescribed by law' has been further interpreted and specified in terms of transparency and foreseeability. The criterion 'necessary in a society' is regarded as embracing the notion of proportionality.

5 This includes the right to *change* one's religion or belief, as mentioned in article 18 of the Universal Declaration of Human Rights, Art. 9 of the European Convention of Human Rights, Art. 12, par. 1 of the American Convention on Human Rights, the 1990 Copenhagen document of the Conference on the Human Dimension of the CSCE, and the Charter of Fundamental Rights of the European Union. Implementation of this right, which as such has been affirmed time and again, is often problematic. See also CHR resolutions on religious intolerance of 1999, 2000 and 2001, in which the freedom to change was explicitly reaffirmed.

6 The AIV interprets the term 'law' in this context as laws laid down in national legislation.

7 Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, UN. Doc. E/CN4/Sub2/200 (1960), p. 25.

The UN Human Rights Committee has observed that restrictions are not allowed on grounds which are not specified in the International Covenant on Civil and Political Rights, '...even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security'. Restrictions may be applied only for purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.⁸

In the context of the OSCE, the above-mentioned criteria for restriction are also legally binding, since the participating states are parties to the European Convention of Human Rights and Fundamental Freedoms and/or to the International Covenant on Civil and Political Rights. Furthermore, the OSCE instruments state that 'any restriction must be in conformity with international law'. For these reasons, remedies should be available at national and international level to communities based on religion or belief, so that they can have restrictions on these freedoms scrutinised by independent national or international courts or bodies such as the UN Human Rights Committee and the European Court of Human Rights.

Positive obligations

International human rights standards with respect to freedom of religion or belief guarantee a sphere of non-intervention by public authorities; they also implicitly and sometimes explicitly assume an active attitude on the part of public authorities.

The need for a positive attitude towards freedom of religion or belief in general is reflected in various articles of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. In the CSCE Vienna Document positive action is expressly encouraged:

'In order to ensure the freedom of the individual to profess and practice religion or belief the participating States will *inter alia*:

16a. take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and ensure the effective equality between believers and non-believers; (...)

16c. grant upon their request to communities of believers, practising or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries; (...)

16e. engage in consultations with religious faiths, institutions and organisations in order to achieve a better understanding of the requirements of religious freedom; (...)

⁸ See: UN Doc. ICCPR/C21/Rev.1/Add.4 (1993), General Comment on Article 18 of the ICCPR (1993), M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, Kehl am Rhein: N.P. Engel Verlag, p. 317 and P. van Dijk & F. van Hoof, *Theory and Practice of the European Convention on Human Rights*, The Hague, Kluwer Law International (1998, 3rd ed.), p. 555 and cited therein.

They will ensure in their laws and regulations and in their application the full and effective implementation of freedom of thought, conscience, religion or belief'.⁹

In the context of this advisory report, the elements formulated in paragraph 16c above are of particular relevance. It should be further noted that in Articles 18 and 19 of the Vienna Document, special attention is given to minorities and to the active role states should adopt in order to secure their rights effectively.¹⁰

The now defunct European Commission on Human Rights, and the UN Human Rights Committee have recognised the positive obligation resting on states to secure freedom of religion or belief. The effective exercise of religion should be safeguarded within the framework of the law. In its legislation the state should therefore adopt provisions that take freedom of religion or belief into account. Such provisions may be formulated in a general way, or specific arrangements may be created. Inasmuch as different religions or beliefs may make different demands on their followers, such arrangements may differ in their effect on the various religions and beliefs as well as in their purpose (for instance, legislation on listed church buildings, ritual slaughtering).

Apart from this positive obligation on states to facilitate the freedom to manifest one's religion or belief, there is another important dimension of state responsibility, namely the promotion of tolerance in matters relating to religion or belief. This follows from the general state responsibility under international human rights law to make it possible for all citizens to subscribe to and to manifest their own religion or belief, but also to protect them from being coerced into adherence to religious beliefs or into conversion. Only in a climate of tolerance can these rights be fully achieved. Certain groups of believers may have the tendency to interfere with the freedom of religion or belief of others. A typical example of this tendency is the Greek policy of favouring the Orthodox Church by discriminating against other religious and belief communities, including Muslims, Roman Catholics, and Jehovah's Witnesses, as is amply illustrated by the case law of the European Court of Human Rights.¹¹ If intolerance in respect of fellow citizens reaches a degree that hinders others in the practice of their religion or belief, state inaction may lead to a treaty violation. Public authorities have a positive duty to ensure freedom of religion or belief as widely as possible. As Krishnaswami put it:

'[T]hey have the responsibility to cut at the very roots of intolerance and prejudice by all possible means, such as educational measures and cooperation with groups willing to assist in counteracting prejudice and discrimination.'¹²

Discrimination and intolerance based on religion or belief is prohibited under all

9 *Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, held on the Basis of the Provisions of the Final Act Relating to the follow-up to the Conference*, 19 January 1989, 28 I.L.M. 527 (1989). See further: Jeremy T. Gunn, 'The Organisation for Security and Cooperation in Europe and the Rights of Religion or Belief,' in: Peter Danchin (ed.), *The Protection of Religious Minorities in Europe – Human Rights Law, Theory & Practice*, Columbia University Press, New York, 2001 (in print).

10 *Ibid.*

11 Cf. footnote 7.

12 Krishnaswami, footnote 6, p. 20.

circumstances.¹³ It constitutes 'an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.'¹⁴

State abstention should therefore be supplemented by state action. In order to ensure the free exercise of religion or belief by all persons, states must take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.¹⁵

Formal relations between the state and specific religions or beliefs

International human rights law does not mention formal relations between a specific religion or belief and the state. The existence of systems recognising a religion as an official religion or of systems of established churches is not in itself a violation of international law, provided that the state does not discriminate against other religions or beliefs. In the OSCE region and worldwide, a great variety of arrangements exist. These include the following categories: systems of established communities based on religion or belief, concordat systems¹⁶ or systems of cooperation between communities based on religion or belief and the state, including systems based on separation of the two. Although this classification does not capture the full scope of these relationships, it does give an indication of their main constitutional elements. In fact, a diverse range of legal relations between such communities and the state exists in practice, since these are dynamic arrangements reflecting the social, historical, and constitutional circumstances of states and communities.¹⁷

International standards concerning freedom of religion or belief presuppose the existence of national arrangements concerning religion and law. They do not mention a particular relationship. However, they fulfil a critical function with respect to such existing national law. International law provides minimum safeguards with respect to those systems, especially in the sense that it emphasises the principle of non-discrimination among various religions or beliefs.

The General Comment of the Human Rights Committee on Article 18 (1993) takes the existence of a variety of church and state relationships for granted. At the same time, it poses minimum requirements with respect to the way they function:

13 'The expression 'intolerance and discrimination based on religion or belief 'means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.' *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief* (1981), Art. 2.

14 *Ibid.* Art. 3.

15 *Ibid.* Art. 4.

16 For example with the Holy See.

17 See for a more detailed reflection: Cole Durham, *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*, OSCE/ODHIR Background Paper, September 1999.

'The fact that a religion is *recognised as a state religion* or that it is *established as official or traditional* or that its followers comprise the *majority of the population* shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27 [guaranteeing freedom of religion and minority protection], nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter (...), are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under Article 26. (...) The Committee wishes to be informed of measures taken by States Parties concerned *to protect the practices of all religions or beliefs* from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under Article 27 is necessary for the Committee to assess the extent to which the freedom of thought, conscience, religion or belief has been *implemented* by States Parties. States Parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.'¹⁸

From this it follows clearly that the practice of any religion, in particular in situations of established churches or majority religions, is protected under the Covenant. The protection of minority religions or beliefs is emphasised by the Human Rights Committee:

'If a set of beliefs is *treated as official ideology* in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any *impairment of the freedoms* under Article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.'¹⁹

In the discussions of the Committee with representatives of states parties, the issue of the position of non-established religious and belief communities in systems of established churches has been addressed from this perspective. The requirements for registration of religions, in the light of its function, criteria, and the legal consequences for non-registered communities were also addressed from the same perspective.

Preliminary conclusions

The following preliminary conclusions can be drawn from the above:

- International law as such does not mention specific formal relations between states and religions or beliefs. This implies that it neither encourages nor precludes registration of communities based on religion or belief.
- International guarantees of freedom of religion or belief are all inclusive inasmuch as they apply to 'everyone'. The enjoyment of the right to freedom of religion or belief has its basis in international law.
- Requiring communities based on religion or belief to register may constitute a non-permissible restriction on freedom of religion or belief, if such a requirement does not meet the precise criteria for restrictions formulated in the various international human rights law instruments.
- If registration is required, it should be minimal, and prescribed and implemented in a transparent, unambiguous and non-discriminatory way.

¹⁸ Human Rights Committee, *General Comment, no. 22, par. 9*; italics added.

¹⁹ Human Rights Committee, *General Comment no. 22, par. 10*; italics added.

III Registration in context

The previous section has provided a general framework based on international human rights law. In this section, each of the preliminary conclusions will be further refined, taking into account national registration practices.

The first question that arises concerns the reasons for registration of a community based on religion or belief. A distinction has to be made between 'registration of an association', and 'registration as a religion or belief'.

Registration of an 'association'

This type of registration does not seem problematic: it implies that in most states the possession of legal personality is required in order to be able to exercise community rights. In this regard, no fundamental difference appears to exist between registration of an association based on religion or belief and registration of other types of associations.

Registration of a belief community as an association must be performed in a way that reflects the rule of law: registration systems must be transparent and unambiguous, i.e. they need to be based on clearly identifiable criteria that are laid down in law and are thus in conformity with international legal standards. They need to be of a non-discriminatory nature: religions or beliefs should not be subject to direct or indirect discrimination. Decisions taken in the context of these registration systems should be impartial and consistent. The rejection of a registration application should be objective, well reasoned, and subject to judicial review.

Criteria for registration should reflect the aim of registration, i.e. to obtain legal personality. Communities wishing to be registered as associations have to show that more than one person is involved, that the association has a clear and legitimate object, and that there are rules or regulations for the management of the association and the settlement of disputes. It should furthermore be clear who is financially and otherwise responsible for agreements with third parties.

For some religious and belief communities the general rules governing associations may not be practical. This may be the case with the rules regarding decision-making within the organisation. In that case, another legal form may be chosen. National law may also provide for a legal entity *sui generis* for organisations based on religion or belief. This, however, does not change the main argument: registration for the sole purpose of obtaining legal personality is legitimate, if the general principles of the rule of law are respected.

Registration as a 'religion or belief'

This type of registration may target those communities based on religion or belief that qualify for specific rights or privileges, such as:

- subsidies or taxes;
- the levying of church contributions;
- the establishment and maintenance of institutions based on religion or belief, for worshipping, charitable, humanitarian, educational or other purposes;
- the organisation of marriage ceremonies and the recognition of such marriages by law;

- permission to engage in ritual slaughter;
- exemption from military service.

The objective of registration in these instances is not simply to grant legal personality to a particular community, but to establish the fact that it is a community based on religion or belief in order to make it eligible for certain specific rights or privileges. Legal personality may be a requirement for obtaining these rights, but a number of other specific requirements may also be applicable. For example, in the case of rights relating to scarce goods, it may be reasonable to require a minimum number of members; in the case of the establishment of educational institutions based on religion or belief, it is considered reasonable to require them to meet minimum educational standards, provided this does not lead to discrimination against certain religions or beliefs. It may be necessary for a community to be registered to obtain access to the mass media (Internet, radio, TV) or to receive state subsidies. In such cases, registration as such is presented as a method for deciding (1) that the communities concerned are communities based on religion or belief and (2) that they meet the criteria for obtaining specific rights or privileges.

Although this type of registration is in principle acceptable, it may in practice be used as a restriction of the right to manifest one's religion or belief. It is therefore important to recall what has been stated above with regard to the criteria governing such restrictions. They should be prescribed by law, serve a specific purpose, and be necessary to protect that purpose. They should not discriminate against certain religions or beliefs. Registration as a religion or belief can never be made compulsory: a national registration requirement cannot deprive non-registered religious and belief communities of their rights and freedoms under international law.

The newly proposed bill on 'Freedom of Religion and Religious Organisations' in *Kyrgyzstan* would appear to be clearly in violation of these principles. Under its rules, registration would be made compulsory and unregistered religious activity explicitly banned, as would be 'propaganda encouraging people to join unregistered religious organisations, as well as the teaching of their beliefs in public places, flats, the private homes of citizens or on the streets'. The recent adoption by the *French Parliament* of controversial anti-sect legislation also raises serious concerns. The legislation is considered to be extremely vague in its definitions, and even leaders of the traditional churches feel that it is liable to encourage and even enable discrimination on the basis of religion or belief. Similarly grave concerns have been expressed about the proposed amendments to the Republic of *Kazakhstan's* Law on Freedom of Religion and Religious Associations. The amendments would make registration of organisations based on religion or belief compulsory and registration requirements more restrictive. Registration of foreign organisations based on religion or belief and the appointment of foreign religious organisations' leaders requires state consent, although the Law contains no provisions to prevent *détournement de pouvoir* in cases where approval is withheld.²⁰

Finally, states have argued that they need to register religious and belief communities in order to prevent conflict among different communities. In practice, it is not always easy to establish a clear dividing line: what may be presented as a system aimed at

²⁰ *Analysis of Proposed Amendments to the Republic of Kazakhstan's Law on Freedom of Religion and Religious Associations*, prepared by the Advisory Panel of Experts on Freedom of Religion or Belief of the Organisation of Security and Cooperation in Europe's Office of Democratic Institutions and Human Rights, March 2, 2001.

avoiding conflict among communities may in reality be an instrument of repression. The communist countries, to take one example, used registration systems as a means of limiting and controlling such communities. The European Court of Human Rights (and previously, the European Commission) dealt with cases against *Greece* and *Bulgaria* where the government had effectively restricted the rights of certain religions or beliefs in a way that was not necessary for the prevention of conflict.²¹ The Court ruled, *inter alia*, that unification of a religious movement is not a proper objective for registering one religious community and refusing to register another.

Governments should not use registration systems in order to control communities based on religion or belief: for the promotion of tolerance educational measures are available, including the promotion and facilitation of dialogue among religious and belief communities. Such communities should have the opportunity to develop, grow, and fade away. Governments should not take a stand in these matters.

States are not obliged to provide subsidies or tax privileges to communities based on religion or belief. However, if such facilities exist, then no community should be excluded from them by means of selective registration.

Governments have a positive duty to make freedom of thought, conscience and religion or belief possible. They must not interfere with the development of new communities centred around a new belief or adhering to a different interpretation of an existing belief. If such new communities do not wish to be part of an existing community, they should not be denied registration on the grounds that either the number of institutions based on religion or belief must be kept within reasonable limits or that such institutions must remain unified. In this regard, it should also be noted that although the idea of an established or official religion or belief is not in itself a violation of international law, such a system should be non-discriminatory: this means that the state may not withhold registration from religious and belief communities because it wants to protect an established or official religion or belief. Nor may a state withhold registration because it does not approve of the religion or belief concerned. Such communities should be able to obtain legal status according to the same criteria as other associations. The only exception in this regard would be if the religion or belief concerned espouses or practices objectives which in themselves are not permissible under international law (see Chapter I).

Although legal personality may be an important factor for the realisation of external rights relating to the manifestation of freedom of religion or belief, this does not hold for all such manifestations. For example, a community based on religion or belief may wish to hold regular prayer meetings in the home of one of its members. This right has been explicitly recognised as one of the manifestations of freedom of religion or belief and it may not be subjected to a registration requirement, since having legal personality is not a prerequisite for this type of activity. The community derives the right from international law; any restriction on the exercise of this right must be in line with the grounds mentioned in the relevant treaty provisions. The community may even claim the right to hold prayer meetings in public, although in that case, the government may feel the need to restrict this right. Nevertheless, even if a meeting were to be restricted for the purpose of maintaining public safety, registration would still not appear to be required, because legal personality is not seen to be a legitimate prerequisite for such a meeting.

21 Cf. *Canea Catholic Church v. Greece*, App. No. 25528/94, 27 Eur. H.R. Rep. 521 (1997) and *Hasan and Chaush v. Bulgaria*, App. No. 30985/96.

IV Conclusions and recommendations

In this report, the AIV has reviewed a number of issues related to freedom of religion or belief. In view of the limited time available for the preparation of the report, the AIV decided to limit it strictly to those items that are of direct relevance to the problem of registration and re-registration. This means that it does not deal with other interesting and important aspects of freedom of religion or belief.

The issue of registration of communities based on religion or belief relates to the intrinsic meaning of freedom of religion or belief as well as to the organisation of national church and state relationships. The registration of communities based on religion or belief and its significance in the light of freedom of religion or belief must be seen in the context of its function in a particular legal system; that is, the requirements for registration must be assessed in relation to the legal consequences that flow from registration. It is not registration as such, but the nature of its legal consequences that can make registration a problem for communities based on religion or belief. These consequences differ from country to country.

In this respect the AIV has reached the following conclusions.

- Freedom of religion or belief is a deeply-rooted human right. It is generally protected as an individual right, but it applies equally to communities in jointly exercising their right to freedom of religion or belief, for example in places of worship. Even in times of war or a public emergency that threatens the life of the nation, no derogation from this right is permissible.
- While the internal right to subscribe to or change one's religion or belief or to subscribe to no belief cannot be subjected to any restriction, the right to manifest one's religion or belief may be subjected to limitations. These limitations must conform to strict criteria, i.e. they must be prescribed by law, be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- In the context of the OSCE, the above-mentioned criteria for restriction are also legally binding, since the participating states are parties to the European Convention of Human Rights and Fundamental Freedoms and/or to the International Covenant on Civil and Political Rights. In particular, the OSCE instruments state that 'any restriction must be in conformity with international law'.
- International guarantees of freedom of religion or belief are all inclusive inasmuch as they apply to 'everyone'.
- International law as such neither encourages nor precludes registration of communities based on religion or belief.
- A registration requirement for communities based on religion or belief (the external forum) can be a positive obligation if in practice the right to freedom of religion or belief can only effectively be exercised after registration.
- The registration requirement must be in conformity with international law and can be considered a positive obligation on the part of the state if rights and privileges depend on registration.
- Registration as religion or belief can never be made compulsory: a national registration requirement cannot deprive non-registered communities of their rights and freedoms under international law.

- If registration is required, it should be prescribed and implemented in a transparent, unambiguous, and non-discriminatory way.

To recapitulate, the answers to the three questions put to the AIV are as follows.

- Legislation regarding registration or re-registration that imposes restrictions is unacceptable, if its consequence is that it limits the right to freedom of religion or belief. Such restrictions may only affect the right to manifest one's religion or belief and must conform to the strict criteria set out above.
- According to the rules of international human rights law, registered as well as unregistered religious and religious and belief communities should have the full right to exercise their religion or belief, even in times of public emergency.
- As minimum registration requirements, strict criteria should be observed, i.e. prescribed by law, necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

Taking these conclusions and answers into consideration the AIV recommends the following.

- Decisions taken in the context of registration systems should be impartial, non-discriminatory, consistent, and in conformity with international law.
- Communities based on religion or belief should not be required to register for the purpose of the enjoyment of internationally recognised religious rights and practices. Such an obligation should exist only for the purposes of obtaining legal personality, which may lead to obtaining additional rights, privileges, and responsibilities.
- In order to effectively guarantee freedom of religion or belief for all, states should not use registration systems that have the purpose or effect of discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. Furthermore, remedies should be available, at national and international level, to religious and belief communities whose rights have been restricted.
- Registration should not be used to grant special status to certain communities based on religion or belief while denying it to others, on the basis of the content or nature of the religion or belief. This would amount to discrimination, and thus a violation of a core obligation of international human rights law.
- Governments should not use registration systems in order to control communities based on religion or belief. For the promotion of tolerance educational measures are available. Such communities should have the opportunity to develop, grow and fade away. Governments should not take a stand in these matters.

Annexe I

Advisory Council on International Affairs
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Re			
Cc	Request for advice on freedom of religion or belief		

Protection of the freedom of religion or belief is a fundamental and intrinsic element of Dutch human rights policy. It is a freedom enshrined in various global and regional instruments relating to human rights, whose provisions on freedom of religion or belief explicitly emphasise that states may impose restrictions on manifestation of religion or belief only under strict conditions. However, no restrictions whatsoever may be imposed on the freedom to subscribe to or change a religion or belief. Various supervisory treaty bodies, such as the United Nations Human Rights Committee and the European Court of Human Rights, have contributed to the development of the normative content of the evolving series of provisions on freedom of religion or belief. According to their interpretation, the concept of 'religion or belief' covers all theistic, atheistic and non-theistic beliefs, whether traditional, new, well-known or unfamiliar.

Since 1989, there has been a growing interest in freedom of religion or belief in Central and Eastern Europe, where the freedom to manifest religious or other beliefs was restored or enhanced after the fall of communist regimes. This has led to a proliferation of small religious and belief communities, some of which were already in existence and some that are completely new. Both authorities and traditional, established religious and belief communities may consider these developments a threat. The fear of religious extremism, whether real or supposed, plays often a role here. In several countries in Central and Eastern Europe, such anxieties have resulted in the preparation or enactment of laws designed to, inter alia, impose restrictive requirements on religious and belief communities. Authorities often take a discriminatory attitude towards small existing or new religious and belief communities in the imposing and enforcing highly restrictive registration and re-registration requirements. This is true, for instance, of legislation in Azerbaijan, Macedonia, Uzbekistan, the Russian Federation and Turkmenistan. The Netherlands and the European Union have raised criticism of these new, restrictive laws within the Organisation for

Security and Cooperation in Europe. Furthermore, over the past few years, small religious communities have themselves expressed criticism of the restrictive attitudes of some Western countries and of measures they have taken as a result.

Religious and belief communities must be able to register and gain official recognition in order to flourish. In the first place, registered religious and belief communities may become legal entities, which has significant legal implications relating to the practice of a religion or belief, such as the hiring of premises where services can be held, the publication and dissemination of religious literature, the appointment of religious leaders, and, where applicable, eligibility for subsidies. It is therefore extremely important that any requirements concerning registration or re-registration are unequivocal, transparent and non-discriminatory, and that they conform to international standards relating to human rights.

In the light of these considerations, I would appreciate your advice on the following:

- 1) What types of problems do religious and belief communities experience as a result of legislation that imposes wide-ranging restrictions on registration or re-registration?
- 2) What rights and freedoms can (still) unregistered religious and belief communities claim on the grounds of international standards relating to human rights?
- 3) What minimum requirements, based on international standards relating to human rights, must legislation on the registration or re-registration of religious and belief communities meet, taking account of the permitted restrictions on freedom of religion or belief?

Your advice is of particular importance in view of the international seminar on this subject which the Netherlands is organising within the framework of the OSCE. The aim of the seminar, which will be held in The Hague on 26 June 2001, is to draw up guidelines and have them adopted by the OSCE in the future.

I very much look forward to your advisory report.

J.J. van Aartsen
(signed)

Minister of Foreign Affairs

Freedom of religion or belief and international human rights instruments

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. (Universal Declaration of Human Rights, Art. 18).

- (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 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.*
- (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. (International Covenant on Civil and Political Rights, Art. 18).*

- (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 in 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 right and freedoms of others. (European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 9).*

- (1) *Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.*
- (2) *No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.*
- (3) *Freedom to manifest one's religion or beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights, or freedoms of others.*
- (4) *Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children, or wards, that is in accordance with their own convictions. (American Convention of Human Rights, Art. 12).*

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms. (African Charter of Human and Peoples' Rights, Art. 8).

The participating States reaffirm that (...) everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance.

(Conference on Security and Cooperation in Europe: Document of the Copenhagen Meeting on the Human Dimension).

(1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. (Charter of Fundamental Rights of the European Union, Art. 10).

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