

20 January 2011

ARMENIA: "Why does the government keep pushing laws that get negative reviews?"

By Felix Corley, Forum 18 (<https://www.forum18.org/>), and John Kinahan, Forum 18 (<https://www.forum18.org/>)

Nora Sargsyan of Armenia's Justice Ministry has stated that draft Amendments restricting freedom of religion or belief will be changed to reflect the recommendations of a Council of Europe / Organisation for Security and Co-operation in Europe (OSCE) legal review. This found that the Amendments do not comply with international human rights law. However, Vardan Astsatryan of the Ethnic Minorities and Religious Affairs Department claimed "the draft Amendments were in accordance with international human rights standards". Many human rights defenders and religious communities are concerned at what Pastor Ren  Leonian described as "limitations on freedom of conscience, freedom of expression of our faith and limitation on human rights generally". Stepan Danielyan of the Collaboration for Democracy Centre thinks the Amendments "had the strong backing of Prime Minister Tigran Sarkisyan". But, "why does the government keep pushing laws in this area that get negative reviews?" Maria Aghajanyan of the Open Society Foundations asked. Danielyan and Aghajanyan are organising a civil society-government round table "to get the government talking – this is a question of transparency", Aghajanyan told Forum 18.

Nora Sargsyan, advisor to Armenia's Justice Minister Hrair Tovmasyan, has pledged that the Ministry will bring the text of proposed Amendments to the Religion Law, the Criminal Code, the Code of Administrative Offences and the Charity Law into line with the recommendations of a joint Council of Europe / Organisation for Security and Co-operation in Europe (OSCE) legal review. "We recognise that the review was negative and we are taking into account its views," Sargsyan told Forum 18 News Service from the capital Yerevan on 20 January. "A Justice Ministry working group is now revising the proposed Amendments to bring them into line with the recommendations." She said the Justice Ministry aims to present revised texts to the Venice Commission for discussion at its next plenary meeting on 25 and 26 March.

However, government religious affairs official Vardan Astsatryan of the Department for Ethnic Minorities and Religious Affairs – who said he was involved in drafting the 2010 Amendments - disagrees. "The draft Amendments were in accordance with international human rights standards," he claimed to Forum 18 from Yerevan the same day. "We didn't have very sharp differences with the Venice Commission. Only a few points need reconsideration."

The published review - an Interim Joint Opinion - clearly states that parts of the latest proposed Amendments do not comply with international law and so with Armenia's international human rights commitments.

"They said some things in favour and some against"

Religious affairs official Astsatryan reluctantly told Forum 18 that representatives of the Evangelical Church (one of Armenia's evangelical Protestant churches) and the Church of Jesus Christ of Latter-day Saints (commonly known as the Mormons) had separately come to him about the 2010 Amendments. He refused to say if these communities were in favour or against the proposed Amendments. "They said some things in favour and some against."

Pastor Ren  Leonian, head of the Evangelical Church, which has 45 congregations across Armenia, told Forum 18 in December 2010 that they feared "the limitations on freedom of conscience, freedom of expression of our faith and limitation on human rights generally" in the proposed Amendments. These concerns have been echoed, sometimes in private, by a wide range of human rights defenders and religious communities (see F18News 8 December 2010 http://www.forum18.org/Archive.php?article_id=1519).

A number of religious communities have also approached the OSCE Office in Yerevan, as its Human Rights Officer Vladimir Tchountoulov told Forum 18 on 20 January. "We are keeping a close eye on developments – it's part of our mandate."

Amendments prepared in secret

The current draft Amendments were prepared in secret by the Justice Ministry and sent for review – in English only – to the Council of Europe's Venice Commission. They only became known when the Venice Commission published them on its website on 30 November 2010. The draft Amendments to the Religion Law are available at

<http://www.venice.coe.int/webforms/documents/?pdf=CDL%282010%29130-e>, and those to the Criminal Code, the Code of Administrative Offences and the Charity Law are at <http://www.venice.coe.int/webforms/documents/?pdf=CDL%282010%29133-e>.

The Armenian government has refused to make the original Armenian text public (see F18News 8 December 2010 http://www.forum18.org/Archive.php?article_id=1519).

The Venice Commission Opinion – produced jointly with the OSCE Advisory Council on Freedom of Religion or Belief – was approved at the Venice Commission plenary meeting in Venice on 16 and 17 December 2010. They were made public on 22 December 2010 on the Venice Commission website <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29054-e>, as well as on the OSCE Legislation Online website.

Armenian government representatives at the plenary meeting in Venice insisted to the Venice Commission that Amendments would be made to the draft and a new text would be presented again. In response, the Opinion was renamed an Interim Opinion;

2009 critical review ignored?

The December 2010 Opinion came one and a half years after the similarly critical Venice Commission / OSCE review of restrictive proposed Amendments to Armenia's Religion Law and Criminal Code was made public in June 2009. The 2009 proposed Amendments were fiercely criticised by many human rights defenders and religious communities in Armenia at the time (see F18News 2 July 2009 http://www.forum18.org/Archive.php?article_id=1321).

The latest Opinion notes that "a good deal of the [2009] specific comment also remains relevant since the drafters in many instances do not appear to have taken into account the recommendations in the 2009 Joint Opinion".

Unclear wording affects wide range of human rights

The latest Opinion by international legal experts notes that the latest Amendments are "often difficult to understand and vague so that the public will not be in a position to be certain of their rights and obligations". It calls for the Amendments "to make more precise and clear the scope of application of the law", and to "clarify which provisions of the Current and Draft Laws apply to all religious organisations and which apply only to those which are registered".

The Opinion also notes that the Amendments affect "the linked rights of freedom of thought, conscience and religion as well as the right to freedom of expression and opinion and freedom of association and the right to non-discrimination which are protected in the Armenian Constitution as well as in the international treaties by which the Republic of Armenia is bound". These include the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).

Ongoing serious problems

Serious problems are common to both of Armenia's recent sets of proposed Amendments. As was the case with the previous Amendments, the latest Opinion bluntly indicates that parts of the latest proposed Amendments do not comply with international law and so with Armenia's international human rights commitments. Issues identified by the latest Opinion include:

- that human rights are for everyone, whatever their citizenship. As the 2010 Opinion puts it, the proposals should be amended "so as to guarantee freedom of conscience, religion or belief to everyone regardless of citizenship";
- that the Amendments' defining of the scope of freedom of conscience, religion or belief is much narrower than international law requires of Armenia. For example the latest Opinion calls among other things for the Amendments "to recognize the freedom to change religion or belief", as well as "to expressly guarantee the freedom to manifest religion or belief in public or private, and to act according to one's religion or belief in daily life";
- that the right to legal status must not be restricted. The latest Opinion calls for the Amendments "to clarify that any religious organisation is entitled to legal personality and has access to it if it wishes to avail of such status";
- that the Amendments' defining of what a religious organisation is, what it can do, and how it can be registered is too unclear and restrictive. As the latest Opinion states, Armenia should:
 - * "reconsider the definition of 'religious organisation' and ensure its compliance with international law";
 - * "specify with greater precision which particular laws should a religious organization's statute comply with in order to satisfy registration requirements";

* "ensure that the administrative requirements set by the Law are appropriate and consistent with international standards";

* and "clarify that the prescribed list of rights of religious organisations is not an exclusive list whereby any activities not specified therein are automatically prohibited";

- that registration is not a pre-condition for being able to exercise the right to freedom of religion or belief. As the Opinion states, "it is not clear whether individual groups are free to practise their religion without registration and this should be expressly permitted";

- that the Amendments should narrow the scope for the authorities to stop the activities of religious organisations. As the Opinion states, there should be "a range of sanctions of varying severity, with liquidation being a measure of last resort applicable only in cases of repeated and/or grave breaches of the law committed by religious community as a whole or by a substantial number of its adherents";

- that the possibility to share beliefs should not be narrowed in ways that violate international law. The Opinion calls for the Amendments to "reconsider the blanket prohibition on religious advocacy and preaching in all 'learning' and 'social institutions'", as well as "to ensure that the Law (and the Criminal Code) allow for some forms of proselytism and only prohibit 'improper' proselytism, in line with international law". The Opinion notes that "the right to discuss one's belief is protected" by both the freedom of religion or belief and freedom of expression articles of the ECHR and ICCPR, and that "the terms defining proselytism are too broad and vague".

* The Opinion also states that "the wording 'distortion of religious convictions' appears to be aimed more at protecting 'the exclusive mission' of the Armenian Church than at protecting the forum internum and other rights of those harassed by improper proselytism". As the Opinion notes, "a general notion of respect for religious feelings is not itself a right found within the freedom of thought, conscience and religion. On the contrary, it is inconsistent with the 'pluralism indissociable from a democratic society' entrenched in Article 9" of the ECHR;

- that discrimination should not be permitted against followers of any religion or belief. The Opinion calls for the Amendments "to ensure that the expressly recognized privileged position of the Holy Apostolic Armenian Church is consistent with the principles regarding equality of treatment between religions";

- and that Armenia should "consider allowing for charitable financial support for religious advocacy" The Amendments define "religious advocacy" as "the dissemination (irrespective of the form – a book, brochure, electronic carrier, etc.) of certain religious ideas and knowledge (doctrines) by a follower believing in them".

February round table "to get the government talking"

Civil society activists complain that no official government statement has yet been made in Armenia, responding to the critical Opinion. The government has also not announced how it intends to proceed.

The Opinion has been welcomed by civil society activists. "It was a serious review which will prove very helpful here in Armenia", Stepan Danielyan, head of the Yerevan-based Collaboration for Democracy Centre, told Forum 18 from Yerevan on 20 January.

Collaboration for Democracy and the Open Society Foundations - Armenia are planning a joint round table conference on the proposed Amendments in Yerevan in early February, with participants from the government and civil society, including religious communities. They hope the Yerevan offices of the OSCE and Council of Europe will also be involved.

"The whole idea is to get the government talking – this is a question of transparency," Maria Aghajanyan of the Open Society Foundations told Forum 18 on 20 January. "Why does the government keep pushing laws in this area that get negative reviews? It happened in 2009 and again in 2010." To help public discussion, Open Society Foundation has sponsored a translation into Armenian of the Venice Commission / OSCE Opinion, which has been published on the Religions in Armenia website at <http://religions.am>.

The Venice Commission with the OSCE has in recent years published a number of other critical legal reviews of various proposed Armenian laws <http://www.venice.coe.int/webforms/documents/?country=42&year=all>.

What will government do now?

Sargsyan of the Justice Ministry told Forum 18 that the Ministry will rework the current Amendments in the light of the Venice Commission / OSCE recommendations. "They will work from the draft text in hand, but it may become a new text," she said. Only after the Venice Commission and OSCE have completed a further review and given its comments will it be presented to other relevant Armenian government agencies and the government itself for comment and approval. After that the Amendments will be presented to Armenia's parliament, the National Assembly, she said.

However, Astsatryan of the Department for Ethnic Minorities and Religious Affairs denied this. "I believe the Justice Ministry will send the text to us – and to other parts of the government – before it goes back to the Venice Commission," he told Forum 18.

Sargsyan pledged that the text of any new proposed Amendments would be published in Armenian on the Justice Ministry website "in line with usual procedures". She said she has been working at the Ministry only for one month, so could not explain why the 2010 Amendments were not made public in Armenian.

The 2010 Amendments had been prepared by the then Justice Minister Gevorg Danielyan and Ministry officials, but Danielyan was sacked in December 2010. So both the Justice Minister Tovmasyan and his advisor Sargsyan have been in their jobs for only one month.

Amendments to the 2003 Law on Alternative Service are also with the Justice Ministry for review. As of 1 December 2010, 73 Jehovah's Witness young men were prisoners of conscience for refusing to do compulsory military service, or military-controlled alternative service (see F18News 7 December 2010 http://www.forum18.org/Archive.php?article_id=1518).

Armenia's Council of Europe commitments

Armenia formally committed itself on joining the Council of Europe to, among other commitments, "adopt, within three years of accession [i.e. by 25 January 2004], a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service".

In 2000 Armenia also formally committed itself to, on its accession to the Council of Europe, "ensure that all churches or religious communities, in particular those referred to as 'non-traditional', may practise their religion without discrimination" (see the Council of Europe Information Office in Armenia website http://www.coe.am/index.php?cat_id=35&out_lang=eng).

But does Prime Minister support restrictions?

Given the apparent difference of opinion within the government, Danielyan of Collaboration for Democracy remains wary. "I believe the 2010 Amendments had the strong backing of Prime Minister Tigran Sarkisyan," he told Forum 18 from Yerevan on 20 February. "A year ago he spoke in public that the idea that the Church and the State should be separate is an outdated concept. He has special contacts with the Armenian Apostolic Church, and there'll be lobbying from him and the Church to make the Amendments harsher."

Prime Minister Sarkisyan is the current head of the board of the Armenian Apostolic Church's Ararat Diocese, which includes the capital Yerevan, the Chancellery of the Armenian Apostolic Church's headquarters in Echmiadzin told Forum 18 on 20 January.

Astsatryan of the Ethnic Minorities and Religious Affairs Department told Forum 18 on 20 January that Prime Minister Sarkisyan has made no comment on the proposed Amendments, and plays no role. An aide to the Prime Minister told Forum 18 the same day that the government has "one position", not several, and that this issue is being handled by the Justice Ministry.

2009 proposed Amendments not dead?

Aghajanyan of the Open Society Foundations points out that the 2009 proposed Amendments restricting freedom of religion or belief remain on the National Assembly agenda (see F18News 24 March 2009 http://www.forum18.org/Archive.php?article_id=1272). They were approved by the National Assembly before being criticised by the Venice Commission and OSCE (see F18News 2 July 2009 http://www.forum18.org/Archive.php?article_id=1321). "Since these Amendments are also on the agenda, they will have to be discussed," she told Forum 18. (END)

More coverage of freedom of thought, conscience and belief in Armenia and the unrecognised entity of Nagorno-Karabakh is at <http://www.forum18.org/Archive.php?query=&religion=all&country=21>

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Armenia is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=armeni>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603

Rodeløkka
N-0502 Oslo
NORWAY