



Intervention of
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Thank you, Mr. Chairman.

Ladies and Gentlemen:

This has been the summer of discontent for religious liberty in the OSCE region. From Brussels to Budapest, Astana to Austria, the OSCE region has been the source of considerable legislative undermining of the fundamental right of freedom of religion and belief.

Freedom of religion is arguably the right most intimately connected to human dignity. Human beings are characterized by the capacity to reason, by a conscience formed through intellect and experience, and by the power to act on reason and conscience. As such, every person is “hard wired” with a thirst to know the truth about the origin, nature, purpose and destiny of mankind.

Accordingly, to protect religious freedom is to protect the right to seek that truth, and the right peacefully to live and worship in accord with it, both individually and in community with others.

Religious freedom also protects those who believe the search for truth, and the moral imperatives that ensue, involves not only rights but also binding obligations. Religious freedom goes to the core of what it means to be human and what it means to say, as does, for example, the Universal Declaration of Human Rights, that human beings possess an intrinsic and inviolable dignity.

A guarantee of religious freedom supports other fundamental rights necessary to all human persons; because it is grounded in the universal dignity of the human person, religious freedom encourages other related rights.

Without freedom of conscience, there is no freedom of speech, as believers cannot communicate among themselves about their most fundamental beliefs; there is no freedom of assembly, as like-minded believers cannot meet to share their beliefs and worship their Creator; and there is no freedom of the press, as believers cannot print and share their beliefs with others. Religious

individuals and groups need and deserve freedom of speech, freedom of assembly, and the right to be secure in their homes from unwarranted government intrusion.

A government that denies the right to freedom of religion and belief is far more likely to deny other rights central to human dignity, such as freedom from torture or murder. The reverse is also true. Freedom of religion and belief is also closely connected to other civil and political rights necessary to democracy.

To discriminate against religious beliefs, or to discredit religious practice, is exclusion contrary to respect for fundamental human dignity that will eventually destabilize society by creating a climate of tension, intolerance, opposition, and suspicion not conducive to social peace.

The political commitment of OSCE participating state to the fundamental right of freedom of religion cannot be underemphasized. From the Declaration on Principles Guiding Relations between Participating States in 1975 to statements in Madrid in 1983, Vienna in 1989, Copenhagen in 1990, Budapest in 1994, Istanbul in 1999, Maastricht in 2003, OSCE participating states have clearly, concisely, concretely and consistently reaffirmed the importance of this most basic right.

Unfortunately, in the course of just the past several months, OSCE participating states have become the models of intolerance and arbitrary legislative restrictions on freedom of religion and belief.

The 1998 Austrian Law on the Status of Religious Confessional Communities (1998 Law) treated minority faiths and their parishioners as second class citizens not entitled to the rights, privileges and protections afforded favored faiths.

These glaring defects in the law continue to be strongly criticized by human rights groups and religious communities because they establish impermissible, tiered religious recognition status and impose onerous criteria to achieve that status.

In addition, the European Human Rights Court and the Constitutional Court of Austria have rendered considered opinions that key provisions of the law fail to meet fundamental human rights standards, necessitating amendments that conform to internationally accepted principles of religious freedom and non-discrimination.

Rather than remedy the defects in the law as mandated by the Human Rights Court and the Constitutional Court, new legislation passed by the Austrian parliament will perpetuate the inherent human rights inequities in the law and, for some religions, make it worse. This regressive, rather than progressive, nature of the new law is extremely disappointing.

Instead of facilitating equal treatment of all religions, no matter their size or whether they are newly established in Austria, the proposed changes to the 1998 Law act to cut off recognition for some recognized religions and continue the moratorium for other religions not currently recognized as “religious societies” by maintaining onerous duration and population criteria in

defiance of judicial decisions by the Human Rights Court regarding these provisions as well as OSCE and UN standards.

Currently, there are 14 recognized religious communities in Austria. According to reports published by FOREF, five religions currently recognized under the 1998 Law – Old Catholics, Methodists, Buddhists, Mormons, and the Apostolic Church – lost that status with the enactment of the law.

In the opinion of THE INSTITUTE, this represents a major step backwards for religious freedom and pluralism in Austria. It is surprising and distressing that a country that is the seat of major human rights institutions and the Organization for Security and Cooperation in Europe (OSCE) is choosing to turn its back on human rights commitments it is obliged to follow.

Proposed legislation in Belgium contains provisions designed to discriminate against targeted religions derogatorily designated as “sectarian movements”. The proposed provisions are designed to “fight” against religious minorities through the creation of a new penal offence based not on the criminal activities of such groups, but on the character of their beliefs and religious doctrines.

An individual’s choice to convert to one of these faiths is characterized as “abuse of weakness”. The draft law would amend the penal code and criminalize the manifestation of religious beliefs by labeling religious practices of targeted faiths as “psychological subjection” or “techniques susceptible to alter one’s capacity of discernment”.

The new offense would necessitate an assessment by law enforcement authorities and Courts of the validity of religious practices and beliefs in order to determine whether they constitute an “abuse” or not. Such a determination would allow discrimination of minority faiths considered as “sectarian” as opposed to religions with traditional beliefs.

This would represent an impermissible violation of the international human rights commitments signed by Belgium, which mandate non-discrimination on religious grounds and freedom of religion and belief for all religions.

The new penal provisions are worded in such an extremely vague manner that they open the door to arbitrary and discriminatory application of the criminal law by officials as a weapon to repress minority faiths.

Indeed, the targeting of these faiths was expressly stated during the Justice Commission of the Belgian Chamber of Representatives debates on 9 June 2011. Passage of such legislation would represent a serious impairment of the principle of religious freedom and the principle that the law has to be precise and foreseeable, guaranteed under Belgian law and international legal norms, as the Belgian Council of State noted in its opinion on similar draft laws in 2006 and 2009.

The proposed legislation is inspired by the much-criticized French law of 12 June 2001, known as the “About-Picard Law”, which allows for the imposition of restrictions on religious groups

based on a new offense of “abuse of a state of ignorance or weakness”, an offense unprecedented in Europe in modern times.

The French legislation aroused international condemnation from religious, human rights and inter-faith organizations as well as a recommendation by the Council of Europe that France reconsider the law.

International legal standards mandate that new religions or religious minorities that may be viewed with hostility by the majority or by predominant religions be treated the same as other religions.

It is very important to emphasize that freedom of religion must not be confused with freedom from religion. A policy of secularism should not be promoted in any way as a cover for unintentional intolerance as a state policy.

These standards also mandate a spirit of tolerance toward minority movements. Yet, based on discriminatory theories that have been discredited by authorities and scholars around the world, the draft legislation adopts a distinctly unequal and intolerant approach towards religious minorities that would lead Belgium further down a path of intolerance.

The provisions of the draft law intended to criminalize religious practice and inject the authorities into the manifestation of religion process regarding faiths which beliefs and practices are considered as “psychological subjection” contradict the rule of law, violate fundamental rights to freedom of religion and conscience, including the right to manifest religion, and contravene the doctrine of neutrality.

THE INSTITUTE on Religion and Public Policy accordingly urges Belgium to request the assistance of the OSCE Panel of Religious Experts to review the draft Religion Law so that the panel may advise the government of Belgium regarding the compatibility of the provisions of the proposed legislation with OSCE standards and international human rights law.

On September 16, 2011, a law went into effect in France outlawing public prayer for Muslims. French Interior Minister, Claude Gueant, warned that force would be used to enforce the ban. In April, a ban on wearing the full Islamic veil came into force.

For the first time since the passage of a law banning the wearing of full veils in public, a French court on September 22 fined two women for wearing the niqab, an Islamic facial covering that leaves only the eyes uncovered. The court in Meaux, a city northeast of Paris, ordered Hind Ahmas, 32, to pay 120 euros, while Najate Nait Ali, 36, was fined 80 euros, a court official said. Yann Gré, one of their lawyers, told Agence France Presse that the two women would appeal their case to France’s highest court and to the European Court of Human Rights.

Holland has now become the third European country to ban the burka, after Belgium, despite the fact fewer than 100 Dutch women are thought to wear the face-covering Islamic dress.

OSCE participating states must uphold what is right rather than what is popular. Democracy is defined as majority rule with protection of minority rights; without that secondary element, a state is not a democracy, but a majoritarian and populist institution.

The worst religion laws introduced in the OSCE region in the past year come from states that, frankly, should have known better.

On 10 June 2011, four members of the Hungarian Parliament submitted a proposed draft law regarding “The Right to Freedom of Conscience and Religion and on the Status of Churches, Religions and Religious Communities” (Religion Law or Law).

On 14 June 2011, only four days after the Bill was introduced in Parliament, the Committee on Human Rights, Minority, Civil and Religious Affairs approved the proposed religious legislation and voted to send the draft law to the Parliamentary Assembly for discussion and passage.

On 12 July 2011, at 1 a.m., the Religion Law was rushed through the Parliament with 254 in favor (consisting of members of the ruling coalition Fidesz and Christian Democrat parties) and 43 opposed.

The legislation, when introduced, proposed to recognize three levels of legal status. At the apex would have been thirteen "recognized" Churches with full rights and privileges and then two other categories of religious groups were proposed with substantially lesser rights.

THE INSTITUTE published detailed legal analysis noting that the thinking behind the bill – that "de-registered" religious organizations could continue to operate as "civil associations performing religious activities"— does not pass human rights scrutiny and ignores precedent from the European Court of Human Rights ruling that "a tiered system offering an inferior religious status to minority faiths violates the right to religious freedom and the right to be free from religious discrimination."

NGOs within Hungary and around the world, scholars, religious leaders, and human rights advocates expressed agreement with this analysis and joined together to criticize the glaring human rights defects in the legislation.

Shockingly, rather than working to correct and remedy the defects in the legislation, the ruling Fidesz and Christian Democrat delegations ignored the avalanche of international criticism that the legislation contravened human rights standards. Worse, about two hours before the final vote, without any prior notice, the Fidesz delegation completely changed key provisions in the bill.

Fidesz objected to listing Churches in three different categories and to the closed nature of the list. An amendment to the final bill listed fourteen accepted religious organizations as Churches.

All other religious groups, including, for example, Buddhists, Methodists and Islamic groups, were retroactively stripped of their status as registered religions. There are currently 362 religions that have been officially recognized by the State. As of 1 January 2012, 348 of these

groups will be stripped of such status and only 14 Churches will be recognized, a status that comes with certain tax benefits and subsidy entitlements

In the original bill, a Church had to function in Hungary for at least twenty years and needed a minimum membership of 1,000. Although the Parliament was advised in the final debates that the population requirement was withdrawn, it remains in the final legislation, exemplifying the lack of thought that occurred in rushing to judgment and finalizing the law. The twenty-year limit also remains in the final bill. Both of these requirements violate accepted human rights norms.

The most surprising and objectionable amendment to the bill introduced without adequate debate or reflection two hours before the bill was passed was the decision to remove a provision providing for judicial proceedings for “re-registration” of religious groups and to substitute a new provision stating that “the competent authority to recognize a religious organization is ... the Parliament, with a two-thirds vote, rather than the courts or a ministry.”

As a journalist at the newspaper *Népszava*, noted in an opinion piece about the Law, “Gods are sitting in Parliament” who can decide what a Church is and what is not.

This provision flouts clearly delineated human rights standards in religious registration cases developed by the European Court of Human Rights in a series of decisions over the last two decades. These standards mandate government neutrality, non-discrimination, religious pluralism and non-evaluation of religious belief.

Passage of this repressive legislation represents a serious setback for religious freedom in Hungary. The Religion Law contravenes OSCE, European Union, Council of Europe, European Court of Human Rights and United Nations standards because it flagrantly discriminates against minority religious groups. It is the most flagrant example of the disturbing trend in Hungary to undermine human rights as reflected in a January 2011 Resolution by twenty-four members of the Council of Europe Parliamentary Assembly Committee expressing “serious concern with respect to recent developments related to the rule of law, human rights and the functioning of democratic institutions in Hungary.”

In the INSTITUTE’S opinion, the Religion Law creates the most burdensome registration system in the entire OSCE region while codifying systematic discrimination of religious minorities. The Religion Law is completely inconsistent with fundamental human rights as it contravenes the principles of equality and non-discrimination.

To date, sixteen religious organizations have filed a joint application to challenge the legality of the law in the Constitutional Court. Further challenges to the law by other religious groups “de-registered” under the law and NGOs, including the Hungarian Civil Liberties Union, are expected to follow. Many religious organizations are prepared to challenge the law in Strasbourg before the European Human Rights Court if they do not obtain a remedy under domestic law.

In January 2011, twenty-four members of the Council of Europe Parliamentary Assembly Committee on the Honouring of Obligations and Commitments by Member States (Monitoring

Committee) signed a Motion for a Resolution entitled “Serious Setbacks in the Fields of the Rule of Law and Human Rights in Hungary.” The Resolution expressed the Parliamentary Assembly members “serious concern with respect to recent developments related to the rule of law, human rights and the functioning of democratic institutions in Hungary.”

On 5 July 2011, two Co-Rapporteurs from the Council of Europe traveled to Hungary to investigate these serious setbacks in human rights in Hungary and to report to the Monitoring Committee as to whether a formal human rights monitoring procedure should be initiated. The provisions in the Religion Law are so oppressive and discriminatory that the Monitoring Committee should take action to initiate a human rights monitoring procedure to ensure compliance by Hungary with the Human Rights Convention and other Council international instruments that it has signed and ratified.

The passage of this draconian Religion Law is the latest and most disturbing example of this serious setback of human rights and the rule of law in Hungary. The legislation contravenes OSCE, European Union, Council of Europe, European Court of Human Rights and United Nations standards because it clearly discriminates against minority religious groups.

As a former Chair of the Organization for Security and Cooperation in Europe, Kazakhstan should have significantly higher standards for OSCE commitments and fundamental rights. However, both the content and timing of a new draft religion law demonstrates that Kazakhstan gives little thought or concern to either fundamental rights or the OSCE and its commitments.

On 5 September 2011, Kazakhstan's proposed new Religion Law entitled "The Law on Religious Activity and Religious Associations" (Religion Law) was sent to Parliament for review and passage.

As reported by Forum 18, Prime Minister Masimov endorsed the new Religion Law in his letter to Parliament, asserting that changes in the Religion Law were needed "in view of the contemporary religious situation with the aims of firm regulation of the sphere of activity of religious associations and the establishment of legal responsibility for violating the norms of legislation in the sphere of religious relations, as well as for the organization of systematic work of state organs in the sphere of perfecting state-confessional relations".

A second proposed Law imposing changes in the area of religion in nine other Laws would also amend the controversial Administrative Code Article 375, widening the range of "violations of the Religion Law" it punishes.

Forum 18 News Service reports that this law entitled "The Law on introducing Amendments and Additions to several legal acts questions of Religious Activity and Religious Associations" (Administrative Code Law), which it was able to review, has been approved by Kazakhstan's Prime Minister Karim Masimov, but has not yet been published.

On 21 September 2011, the Lower House of Parliament, the Majilis, approved both the Religion Law and the Administrative Code Law. Only minor changes were made to the law in the Majilis and there was no debate on fundamental issues.

The two laws were then given their initial presentation to the Social and Cultural Development Committee of the Senate. The legislation is moving forward with great speed in a rush to judgment, not allowing time for serious debate or review of the controversial and problematic provisions in the draft Laws.

Forum 18 News Service reports that “privately many Majilis deputies were angry at provisions of the laws and the speed which the government is pushing the laws through Parliament, but no one voted against either law”.

The INSTITUTE has obtained a copy of the Religion Law draft for analysis. Review of the draft law by the INSTITUTE’S Expert Committee on Legislation and Implementation leads to the conclusion that passage of this legislation would represent a serious setback for religious freedom in Kazakhstan.

In the INSTITUTE’S opinion, the legislation contravenes Organization for Security and Cooperation in Europe (OSCE) and United Nations (UN) standards because it clearly discriminates against minority religious groups.

The draft Religion Law includes the following egregious provisions that violate human rights standards that Kazakhstan has agreed to follow. The Religion Law, if adopted, would:

- Require compulsory registration as a religious organization;
- “De-register” all religious organizations currently registered and force these organizations to “re-register”;
- Require all religious organizations to submit to a “religious study examination” where religious Scriptures and other documents are reviewed and impermissibly evaluated by the State;
- Ban all religious activity by unregistered religious organizations;
- Prohibit an unregistered religious organization to obtain any other legal entity status;
- Impose compulsory government censorship of religious literature by requiring evaluation and approval of religious literature before it could be shipped into the country for non-personal use or placed in a library;
- Restrict distribution of religious literature to religious buildings, religious educational institutions and “specifically identified stationary facilities identified by local executive bodies”;
- Require government approval to build or open new places of worship;
- Require registration of persons carrying out missionary activity -- no person may carry out missionary activity until so registered and no person will be registered unless they have been invited to perform missionary work by a registered religious organization;

- Require a minority religious community to meet onerous membership levels in order to register (minimum of 50 adult citizens) in complete contravention of United Nations and OSCE standards; and
- Impose restrictions and sanctions on religious leaders if children participate in activities of the religious organization when one parent or legal guardian objects.

The draft Religion Law and the Administrative Code Law are completely inconsistent with fundamental human rights. The recurring theme of the draft amendments is that they are structured in ways that would completely ban religious organizations or severely restrict religious activities; censor importation and restrict dissemination of religious literature; restrict foreign missionary activity; restrict the construction of new places of worship; and impose sanctions on religious leaders and organizations, including the banning of religious organizations, in a manner impermissible under international standards.

These harsh provisions appear to be fueled by discriminatory motives. On 20 September, Forum 18 reported that:

Officials of Kazakhstan's state Agency of Religious Affairs (ARA), the state-backed Muslim Board, and local administrations held public meetings in August and September in West Kazakhstan, Karaganda [Qaraghandy] and Aktobe [Aqtöbe] regions, praising the advantages of so-called "traditional religions" and warning of the alleged dangers of so-called "non-traditional religions". The ruling Nur Otan political party has also held similar meetings in West Kazakhstan. ARA regional departments and local administrations across Kazakhstan have distributed written questionnaires or verbally demanded that members of religious minorities provide detailed information on their activity - sometimes on a weekly basis.

Passage of this repressive legislation would represent a serious setback for religious freedom in Kazakhstan. The Religion Law contravenes OSCE and United Nations standards that Kazakhstan is bound to follow because it flagrantly discriminates against minority religious groups.

In the INSTITUTE'S opinion, the draft Religion Law is completely inconsistent with fundamental human rights as it contravenes the principles of equality and non-discrimination.

The INSTITUTE urges Kazakhstan to request the assistance of the OSCE Panel of Religious Experts to review the draft Religion Law so that the panel may advise the government of Kazakhstan regarding the compatibility of the provisions of the proposed legislation with OSCE standards and international human rights law.

We must be aware and vigilant that freedom of religion not be used as a tool of religious or ideological protectionism. Religious liberty is not a means by which to advance a particular ideological worldview. It is a basic and fundamental human right that transcends right or left; that transcends liberal or conservative; that transcends political boundaries. Religious liberty is

the most basic right of all peoples and cannot be linked in one way or another with a particular political or religious ideology for fear of undermining that right.

THE INSTITUTE calls on all OSCE participating states to give greater importance to the issue of religious liberty in their internal deliberations, and calls on the OSCE institutions to consider methods by which to strengthen monitoring and response mechanisms to institutional violations of freedom of religion and belief by participating states.