



## Working Session 15: Fundamental freedoms II

*As delivered by Robert Clarke<sup>1</sup>*  
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ADF International welcomes the guidelines produced by ODIHR in conjunction with the Venice Commission on the *Legal Personality of Religious or Belief Communities*. ADF International commends the detailed consultation process which afforded large sections of civil society opportunity to speak into the process.

The European Court of Human Rights (ECtHR) has ruled repeatedly on the importance of state neutrality when it comes to the recognition of churches and the principle of church autonomy when it comes to the organization and leadership of religious communities. These principles have now been clearly articulated by the OSCE in these *Guidelines*.

However, notwithstanding the clear international framework in this area, and the fact that the *Guidelines* consider these “minimum international standards”,<sup>2</sup> a number of Participating States continue to “play favourites” when it comes to churches.

The three principal areas of ongoing concern are:

1. Favours one or more religious groups over others.
2. An overly long registration process.
3. Disproportionately onerous registration requirements.

Two recent examples demonstrate that these issues remain.

An example of the first category can be seen as recently as one month ago. A new case against Russia was communicated by the ECtHR in which it is alleged that a Christian children’s club was closed down for want of an “educational license” despite this license not being required by similar clubs run by other denominations.<sup>3</sup>

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<sup>1</sup> Legal Counsel, ADF International (Registered as ‘Alliance Defending Freedom’).

<sup>2</sup> ODIHR, “Guidelines on Legal Personality of Religious or Belief Communities”, p. 5.

<sup>3</sup> App. No. 70090/10.

Not only are the *Guidelines* clear that the State should deal fairly with different communities but they also make clear that the “enjoyment of the right to freedom of religion or belief [including its collective element] must not depend on whether a group has sought and acquired legal personality status.”<sup>4</sup>

Secondly, an example of disproportionate registration requirements can be seen in a recent German case ADF International has advised on. In order to obtain the highest tier registration, the process involves approval by the Federal legislature. In a recent case, it expressed objections after carrying out an in-depth review of the teaching of the applicant community. The *Guidelines* are clear that the “substantive content of its beliefs” are a matter for the community in question and that “the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization.”<sup>5</sup>

All of these things hurt the individual believers and the communities to which they belong. But society suffers too when churches are unable to provide hospitals, orphanages, schools or just a place for broken people to meet.

In accordance with the principle of subsidiarity, this is not an area in which a one size fits all approach would be beneficial and ADF International welcomes the adoption of a document containing *principles*. Transparent systems which respect national constitutional orders should be the norm in which the aim is to best facilitate the activities of religious communities rather than to restrict and monitor them.

In closing, ADF International notes the contribution to the drafting process of the advisory panel on freedom of religion or belief yet notes a dearth of publicly available information on the membership of this panel, its remit, the term, or selection criteria. To afford the panel maximum legitimacy, **ADF International calls on ODIHR to publish these details as a priority so civil society can better understand this work.**

**ADF International further calls on Participating States to respect these obligations and ensure any registration systems are “quick, transparent, fair, inclusive and non-discriminatory.”<sup>6</sup>**

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<sup>4</sup> *Guidelines*, p. 23.

<sup>5</sup> *Guidelines*, p. 29.

<sup>6</sup> *Guidelines*, p. 26.