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### ***Church & Society Commission***

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### ***Minimum Standards (Minimal Rights) for Churches and Communities of Faith and Conviction***

#### **Introduction**

From 6 to 10 November 2002 the Working Group on Human Rights and Religious Freedom of the Church and Society Commission of the Conference of the European Churches (CEC) organized a consultation in Vienna under the theme: “Religious Freedom – Majority and Minority Communities in their Relation to the State”. In taking up the results of this conference, the Working Group on Human Rights and Religious Freedom of CEC discussed and adopted the following “minimal standards” (minimal rights) for communities of faith and conviction, which are presented to the member churches of the Conference of European Churches for further discussion. These minimal standards are based on the following considerations:

The basis for these minimal rights (minimal standards) for churches and religious communities (including communities of conviction) are laid down in the “Convention for the Protection of Human Rights and Fundamental Freedoms” (European Human Rights Convention, EHRC) and its additional protocols, especially in articles 9, 10, 11, 13, 14 and article 2 of the additional protocol No. 1. According to the mainstream juridical teaching and the interpretation of the (former) European Commission for Human Rights and the European Human Rights Court, it is not only individuals (natural persons) but also churches and religious communities which can draw on article 9 of the EHRC. Besides the individual component of the freedom of religion, article 9 also includes the right of religious communities and churches to freely constitute themselves. Besides the individual component of religious freedom there is a corporate component. Following the interpretation of the (former) European Human Rights Commission, a limited right of self-determination (limited right of self-administration) for churches and religious

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committees can also be derived – an understanding which is shared by a majority of the juridical teaching.

The CEC consultation on “Religious Freedom: Majority and Minority Churches in their relation to the state” revealed very clearly that in Europe many different church-state systems exist side by side, which regulate on the one hand the relation between the respective state and the churches and religious communities, and on the hand between the churches and religious communities. There are, for instance, church-state systems, according to which the majority church as a state church plays a particular role in relation to the other religious communities. According to other systems, the majority church (majority community) finds itself on an equal footing with the minority church (minority community). These different church-state systems in Europe, which reflect the different historical and cultural developments of a respective state, may and should continue according to their main principles, if they comply with the EHRC and its additional protocols. However, also in those states in which majority churches (minority communities) or particular churches and religious communities have a special juridical status, an at least (limited) neutrality of the state vis-à-vis the (other) churches and religious communities should be maintained. According to this paper, presented by the Working Group on Human Rights and Religious Freedom of the Conference of European Churches for further discussion, every state must guarantee certain minimal rights (minimal standards) to every church and religious community, in particular to minority churches (minority communities). In states in which there is no privileged status for particular churches or religious communities, these must be applied for all churches and religious communities. It has to be mentioned, that the following minimal rights are meant for churches and religious communities, they are not to be seen as rights of individuals (natural persons) exercising their religion.

### **The right to constitute themselves as a legal entity**

1. Every Communities with an own religious or faith teaching must have the right to constitute itself as a legal entity. This might be either under a status created specifically for communities of faith and conviction or a under a status of a more general nature, which is also available for other purposes. In any case (an under any legal status), the following criteria must be applied.
2. The constitution as a legal entity must take place exclusively as a procedure of registration and is not subject to permission by the respective government authorities or courts. A registration procedure is to be understood as a procedure whereby a community of faith and conviction is granted the status of a legal entity upon application, if the respective governmental authorities or courts do not refuse the legal status within a period which is not to extend six month after application. The state authorities or courts must provide certification that the status of a legal entity has been granted.
3. The status of a legal entity may be refused to a community of faith and conviction only on the basis of EHRC Article 9, Paragraph 2, in conjunction with EHRC Article 17, and by presenting reasons restricted to those named in EHRC Article 9, Paragraph 2, and in EHRC Article 17. The burden of proof

that reasons in EHRC Article 9, Paragraph 2, and in EHRC Article 17 apply rests with the state authorities (court).

4. The community of faith and convictions, respectively their founders (adherents of a Christian community), must be entitled to establish for themselves, autonomously and without interference from the state, their structures, that is their decision-making bodies, responsibilities and procedures within the community.

5. After its establishment as a legal entity, its dissolution or the withdrawal of the legal status may only be possible upon a decision of the responsible state authority (or court) and in accordance with the reasons in Art. 9 (2) an Art 17 of the EHRC, or in cases in which the community has no more any members, or for at least a year, due to the communities own fault, has no established body, which could represent it vis-à-vis the state. The burden of proof for the existence of any of these reasons rests with the state authorities (court).

6. In the registration procedures as well as in procedures to withdraw the status of a legal entity, other communities of faith and conviction (including majority churches) may not have any say, other than an involvement limited exclusively for the protection of their own name. These procedures are to be conducted in a fair manner.

7. Decisions regarding the refusal of a legal status as well as decisions to withdraw the legal status (dissolution) must always be subject to legal remedies and to examination by independent courts, especially constitutional courts.

8. Communities of faith and conviction, however, may not be obliged to constitute themselves as a legal entity. If a community of faith and conviction decides not to apply for a status as a legal entity, its members can only claim the rights to exercise one's religion according to Art 9 of the EHRC as individuals.

### **Rights (Standards) of a community of faith and conviction to exercise its religion freely**

9. A community of faith and conviction constituted as a legal entity must, as such on the basis of state regulations, be able to exercise and fulfil all its tasks according to its self-understanding (according to its own faith and conviction).

10. The community of faith and conviction must have the possibility to practice its faith publicly and freely, within its own self-designated houses of worship, but also in such other places, rooms and the like as are accessible to the general public, according to its own rites, customs and the like. The community must also be able to seek to attract persons to its religious events, worship services etc., and to its beliefs (religious teachings, confessions); however, it must do so in an appropriate manner, without using moral or physical pressure or material incentives. If the members of a community

belong predominantly to a minority language group, the use of this language is to be permitted in the practice of its religion, including its public practice.

11. A community of faith and conviction constituted as a legal entity must in a non-discriminatory way, but in compliance with generally applicable state regulations, also be able to operate diaconal institutions - such as hospitals, working facilities for persons with disabilities, homes for the elderly, nursery schools, etc. - and schools (places of instruction). A community of faith and conviction constituted as a legal entity must also be granted the possibility by the state to work through mission, development aid (cooperation for development), and to cooperate with churches and religious communities in their own country as well as abroad, especially with ecumenical organisations.

12. The right of a community of faith and conviction to acquire land and buildings and to hold the titles to such land and buildings must be guaranteed.

13. A community of faith and conviction constituted as a legal entity must have the right, in accordance with generally applied and non-discriminating state regulations, to make its views known in public, in particular through editing, publishing and distributing newspapers, through magazines, films, radio and television programmes.

14. Any discrimination in this regard represents an unjustifiable disadvantage of communities of faith and conviction compared with other institutions, organisations and legal entities in society.

#### **Freedom from control by the state and other religious societies**

15. All worship services and other events held in the premises of a community of faith and conviction must not be subject to any kind of control, including any official control by the state authorities. Public religious events held outside their own premises (houses of worship and the like) in places accessible to the general public also must not be subject to control over the content of such events, by the state or by another church or religious society. However, public assemblies (including public events) held outside their own premises may be subject to non-discriminatory restrictions, such as apply to everyone and every non-religious organisation, in accordance with EHRC Article 11(2). (Limitations to freedom of assembly).

16. Attempts of making their views known in public through, for instance, the publication of newspapers, magazines, films as well as through radio and television broadcasts, must not be subject to censorship.

17. If a community of faith and conviction established as a legal entity operates diaconal institutions and schools (places of instruction) and the like, these may only be subject to such state supervision as also applies to other, non-religious legal entities, but this may not extend to the religious content of such activities. State supervision of the training of their own personnel (priests, pastors, parish educators, youth leaders, lay readers and the like) within their own educational institutions must not be permitted.

#### **No discrimination in the areas of taxation and building permits**

18. A community of faith and conviction constituted as a legal entity may not be discriminated against in the area of taxation, especially with regard to taxes on its assets, inheritance taxes (*death duties*) and gift taxes, as well as property taxes on lands and buildings. Discrimination in this regard means being taxed at different rates (not based on objective reasons) from those applicable to other institutions and bodies in the society. Financial audits of communities of faith and conviction established as a legal entity, by the tax authorities, should only be carried out to the same degree as audits of other, non-religious organisations, and should only deal with matters actually subject to the tax laws, without infringing on the corporate and individual religious freedom of the community and its members.

19. For the construction of places of worship (such as churches or alike), communities of faith and conviction constituted as a legal entity must not be subject to any special and additional building permit requirements. In addition, states must provide for the communities to have the possibility of constructing their houses of worship and buildings according to their own particular self-understanding (for example, a church must not be prohibited, in principle, from building a church or bell tower).

**Rights (standards) affecting employees and members of a community of faith and conviction**

20. With regard to professional and voluntary employees whose duties include the public proclamation of faith (such as priests, pastors, parish educators, youth leaders, teachers of religion) and who are authorised representatives of the respective faith (“Tendenzträger”) – a community of faith and conviction must be protected under the labour laws. This means in practice that the hiring and the termination of employment of professional and voluntary employees (including dismissal before completion of a contract), or their transfer to another position, are not under the control of the state and its judicial system.

21. Stipulations of the labour law – with regard to, for instance, days of rest, Sundays and holidays, and limitations on night work - must not interfere with holding of worship services and other rites of the community by professional or voluntary employees (such as priests, pastors, parish educators, youth leaders, teachers of religion).

22. The confidentiality of pastoral conversations and the confessional, according to the self-understanding of each community, must be protected. In particular, professional and voluntary employees involved in pastoral care and hearing confessions must have the right to refuse to reveal confidential information, in any judicial or other procedure of the state authorities.

23. At the request of members of the community, the employees of the community must have the possibility to provide pastoral care to members who are confined in institutions such as hospitals, homes for the elderly, prisons and army installations (in case of general compulsory military service). Such limitations as arise from the nature of the institution are acceptable in these particular cases.

24. The children of members of a community of faith and conviction constituted as a legal entity may not be obliged by the state to undergo religious instruction from another community of faith and conviction, in particular not of the majority community, nor can they be obliged to attend worship services of another community while they are in school. The same applies where compulsory military service exists.

25. Members of a community of faith and conviction constituted as a legal entity (including minority communities) must have the possibility, when giving personal details to state authorities and courts, as in residence registration or a census, to mention their membership in a community of faith and conviction (but cannot be obliged to do so). It is discriminatory, if the only choice for a member of a minority community is to indicate, that she or he is not member of the majority community (religious society). Members of one community (for instance a minority community) must not be forced to register birth, marriages, death and alike at offices run by another community (for instance a majority church or majority religious society), which are charged by the state with registering.

26. Every community of faith and conviction must be guaranteed by the state the right to receive as new member persons who formerly belonged to another community or religious society, especially the majority community, and who have resigned this former membership by their own free will. The state must also guarantee to the members of any religious community or society the right to resign their membership therein without any obstacles

### **Protection of rights**

27. The minimum basic rights of any community of faith and conviction constituted as a legal entity, especially a minority community, and its members in the context of individual and corporate freedom of religion, must be protected by the right to appeal to an independent court for review and enforcement.

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