

**Mariam Gvartadze**

**Tolerance and Diversity Institute (TDI) – Georgia**

**Impermissible Restrictions of FoRB in the Member States**

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Freedom of religion or belief is a fundamental right, safeguarding of which defines democracy, rule of law and human rights protection level in the countries. All major international human rights instruments guarantee that everyone has the right to freedom of thought, conscience and religion including the right to have, also to exercise and manifest the religion and belief.

Contemporary world faces various challenges, including the ones related to religion, exercising freedom of religion, security issues, etc. Apart from the global processes, countries' internal political and legal environment also has significant influence on the status of freedom of religion or belief. The current speech overviews the root causes and general examples of violations of freedom of religion or belief in OSCE member states and to what extent do the states meet their international commitments. I would also like to overview the issues of security protection and FoRB – do the governments manage to draw lines between security and FoRB? Is in some cases religion used as an excuse to protect state security and fight extremism?

The member States guarantee and declare freedom of religion and belief, however some of them set various impermissible restrictions thus neglecting their international obligations and human rights principles.

It is obvious that the degree of rule of law and human rights protection differs in the member states however some of them face similar challenges related to FoRB. In some countries dominant religious organizations have special status and privileges, while minority religious groups often face impediments created by the state, their rights are repeatedly violated and the communities and individuals are persecuted.

Even there where separation of religion and state is declared in the constitutions, in practice there are examples of close interrelation between state and dominant religious organizations - the governments often seek support from these religious institutions for their political purposes and legitimacy. In return, these religious institutions exclusively enjoy special status and privileges, including the tax exemption and state funding.

In certain cases, where rule of law, principles of tolerance and acceptance of diversity is low, hierarchisation of religious groups, their division as traditional and non-traditional or other forms of classification might further deepen discrimination towards non-dominant religious groups. According to the UN Human Rights Committee, *the fact that a religion is recognized 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 [ICCPR], nor in any discrimination against adherents to other religions or non-believers.*<sup>1</sup>

In addition, a form of exercising freedom of religion, also freedom of association, is obtaining legal personality status by religious communities. Under the international law, communities have freedom to choose whether to register or not, however, due to diverse rights

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<sup>1</sup> UN Human Rights Committee, General Comment 22, para. 9

and responsibilities granted to the organized, registered groups by the States, it often becomes impossible or hard to enjoy numerous rights and act as an organized community without having a legal personality. Sadly, in order to restrict or marginalize some 'undesirable' religious communities, denial to grant legal personality by establishing complicated criteria for registration of religious organizations is often applied by some OSCE member States. Such approach gives the governments opportunity to consider these religious groups as illegal, to ban, prosecute and oppress its members. According to the European Court of Human Rights, when the organizational life of the community is not protected by the freedom of religion or belief, all other aspects of the individual's freedom of religion become vulnerable.<sup>2</sup>

OSCE and the Venice Commission underline the importance of legal personality and offer to the participating States very precise guidelines on legal personality of religious organizations and overview international standards for recognition of religious or belief communities.<sup>3</sup>

Another common instrument used by some governments against minority religious groups is denial to issue building permits for the construction of new houses of worship, thus restricting to number of believers to assemble, worship, conduct rituals and express their freedom of religion and belief. Such practice goes beyond the scope of permissible limitation and constitutes an arbitrary interference by the state with human rights and fundamental freedoms.

One of the challenges in some participating states is violation of religious neutrality in public schools, also, in certain cases the negative influence of dominant religious institutions in the education system. It is often revealed in religious indoctrination, proselytism and spreading narratives of religious nationalism. In some countries public school textbooks are written from the standpoint of religious and ethnic majority, do not reflect cultural and religious diversity sufficiently, rarely or negatively represent minority religious and ethnic groups, thus encourage hostile sentiments towards them. According to the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, knowledge about religions and beliefs has the valuable potential of reducing conflicts that are based on lack of understanding for others' beliefs and of encouraging respect for their rights, however teaching about religions and beliefs must be provided in ways that are fair, accurate and based on sound scholarship.

Another important issue that could be underlined is response of the states on hate crimes. Besides the obligation of the state to protect and not to violate freedom of religion and belief, it is also important how the state responds to the crimes committed on the grounds of religious hatred. Based on the experience of some participating states, the state's adequate and timely reaction to the crimes committed on the grounds of religious hatred decreases the statistics of such crimes, whilst state's failure to investigate and prosecute the perpetrators promotes and encourages religious intolerance and accordingly, the number of hate-crimes increases.

Protection of national security has become one of the main challenges for the number of countries, however it is crucial that while fighting against extremism and terrorism, one shall not relate blatantly religion to crime, hence, security measures should not be used as mechanisms for restriction of freedom of religion or belief. Regrettably there are such examples among the member states - by adopting special legislation or applying various impermissible instruments in practice, the governments persecute and/or ban various religious communities and individuals.

The OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief underlines that the laws against terrorism should not be used as a pretext to limit legitimate religious activity. In some states there have been attempts to set 'national/state security' as a legitimate

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<sup>2</sup> ECtHR 26 October 2000, Hasan and Chaush v Bulgaria, Application no. 30985/96, para. 62

<sup>3</sup> Guidelines on the Legal Personality of Religious or Belief Communities, OSCE/ODIHR, 2014

aim for the restriction of FoRB that is absolutely against the international human rights commitments. Freedom of religion or belief is among those exceptional rights, which cannot be subject of derogation on the basis of national security. The ECtHR defines that *far from this being an accidental omission, its absence [of national security as a legitimate aim for the restriction of FoRB] reflected the prime importance of religious pluralism as one of the foundations of a democratic society, as well as the fact that a State may not dictate to anyone his or her beliefs or take coercive action to make him or her change those beliefs. The interests of national security could not therefore be used to justify measures taken in this respect by the authorities.*<sup>4</sup>

To conclude, I want to emphasize that unconditional protection and promotion of freedom of religion or belief by the member states is crucial, however it cannot be achieved without unequivocal respect for all fundamental rights and freedoms. Civil society is a stronghold of safeguarding these rights. As FoRB is closely interrelated with other rights, especially with freedom of expression, speech and association, in countries where the civil society manages to mobilize itself and, exercises freedom of expression despite restriction and challenges, FoRB and minority rights are more protected.

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<sup>4</sup> Nolan and K. v. Russia