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THE FREEDOM OF RELIGIOUS EXPRESSION OF RELIGIOUS MINORITIES IN PANDEMIC GEORGIA

Introduction

Georgia along with the rest of the world is currently facing one of its most severe public health crises. In addition to the health crisis, Covid has contributed to the emergence of authoritarian tendencies around the world. Naturally, Georgia could not be an exception to the general trend. Moreover, its Soviet authoritarian and totalitarian past is not far from this country.

The Georgian government has taken a number of measures in connection with the Covid pandemic restricting not only the freedom of religion but also the freedom of religious expression of religious minorities. Such restrictive measures include: curfew, restriction of assembly, restriction of public transport, the prohibition of travel by car. Travelling by car was prohibited from 17 April to 27 April in 2020. Violation of the religious expression of religious minorities is related to the ban on travelling by car and restricting assembly.¹ As a basis for this restriction, as mentioned in the report of the Ombudsman of Georgia, the Government of Georgia named the risk of high mobility of the population in connection with the Easter holiday. On April 17, the Patriarchate of the Orthodox Church said it had found out by telephone communication with the government that church clergy, chanters and altar boys were allowed to travel by car. Representatives of non-dominant religious associations even took several days of effort to obtain a special pass for travelling by car.²

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¹ See https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT__ENG.pdf [accessed: 01.06.2021], p. 22.

² On the state of protection of human rights and freedoms in Georgia. 2020. Report of the Public Defender of Georgia (in Georgian), p. 223.

1. Restrictions on freedom of religion and freedom of religious expression in pandemic Georgia

Freedom of expression for religious minorities is clearly part of freedom of expression in general. In addition, the latter is organically linked to freedom of religion. Therefore, when it comes to restricting the freedom of expression of religious minorities in Georgia, it is necessary to consider the extent to which freedom of religion is restricted in this country. This issue is also related to the restriction of human rights and freedoms in general in pandemic Georgia. In the debates that are taking place in Georgia on these issues, different and often contradictory positions are emerging. Some civil society organizations claim that restrictions on the right of assembly and movement are insufficient and require restrictions on religious freedom.³

Such a restriction naturally implies that at the same time the freedom of expression of religious minorities will be restricted. It endangers the right to personal development. On the other hand, it is without a doubt that the right to receive information plays a key role in shaping a person's views [Noorlander 2020, 7]. That is why the latter prohibits any government from restricting human access to public information. Illegal restrictions on the right of religious minorities to express themselves in pandemic Georgia are manifested in the fact that the government has failed to provide adequate information to religious minorities. This situation was even reflected in the 2020 report of the Public Defender of Georgia, which states that the dominant religious group, the Orthodox community, found itself in a privileged position. The pandemic-induced state of emergency in Georgia and subsequent steps by the state put the dominant religious group in a privileged position.⁴

It should be noted that when introducing restrictions related to the state of emergency, the authorities did not have proper communication with non-dominant religious associations. They did not explain how to act during the state of emergency. Representatives of religious minorities believed that restrictions on freedom of assembly in the country extended to religious assemblies and suspended the service, while the Orthodox Church continued to co-

³ Georgian Democratic Initiative, the scope of religious freedom during a pandemic, <https://gdi.ge/ge/news/reliigiis-tavisuflebis-farglebi-pandemiis-dros> [accessed: 01.06.2021].

⁴ On the state of protection of human rights and freedoms in Georgia, p. 224.

nduct religious services in temples. To avoid such uncertainties, it is important that the restrictions imposed by the State be accompanied by appropriate explanations for those affected.⁵ On the other hand, attention is drawn to the terminology used by the Public Defender. In relation to the Georgian Orthodox community, the ombudsman of Georgia uses the terms “dominant” and “privileged” on the one hand. On the other hand, the public Defender refers to the current situation as “uncertainty.” The latter is a vague term and it is possible to interpret it differently. As for the terms “dominant” and “privileged,” these can characterize the constitutional status given to the Georgian Apostolic Orthodox Church.⁶ But that’s its legal status. Of course, this does not relieve anyone of the responsibilities imposed on all parties, and above all the authorities are in need to adhere to the rule of law and the principle of justice.⁷ On the other hand, the term “expression” does not mean merely expressing one’s views or opinions in written or oral form. Participation in a religious ritual is also a right of expression.

As is well-known, Article 9 of the European Convention on Human Rights distinguishes between two aspects: internal and external [Hill 2020, 2]. The first aspect determines the content of freedom of thought, conscience and religion. According to this aspect this right is absolute freedom and as such should not be subject to restriction. As for the exercise of this freedom in worship or in religious rites, it is considered to be an external aspect of the same Article 9 which is subject to restrictions [ibid., 3]. As a rule, there is the relevant article or articles of a Constitution define circumstances in which a given right or freedom is restricted. In Georgia, such restrictions on human rights or freedoms are very often perceived as abolishment of such rights and freedoms. But on the other hand, there must be a legitimate public purpose for introducing such restrictions. In the case of the Covid pandemic, everyone understands this. Nevertheless, conspiracy theories are given free reign. In this case, some individuals or groups of individuals begin to reinterpret health care as a legitimate public goal.

⁵ Ibid., p. 223–25.

⁶ Ibid., p. 224.

⁷ Constitution of Georgia, <https://matsne.gov.ge/en/document/view/30346?publication=36> [accessed: 01.06.2021], Article 8.

Usually there is a lack of legality and the need for ethics comes to the fore [Bellazzi and Boyneburgk 2020, 1]. Thus the problems associated with the constraints caused by Covid can be characterized as ethical-legal ones. This type of problem is related to the freedom of expression of religious minorities. On the other hand, observation shows that dissatisfaction of religious minorities is caused either by the disproportionate use of restrictions or by their being not informed about restrictions introduced, about their abolition or mitigation by way of exception. An attempt to systematically analyze these problems is given in the 2020 report of the Public Defender of Georgia. The ombudsman's report is almost the only source in which the legal status of religious minorities in Georgia, including in terms of freedom of expression, is presented not only on a factual but also to a certain extent on a conceptual level.⁸

2. Religious minorities and their legal status in terms of religious freedom in Georgia

One of the difficulties in addressing this issue is the fact that, as is well-known, the universally accepted definition of the term “minority” has not yet been developed [Capotorti 1979, 7]. The reason for this is the many different aspects associated with it. First of all, the concept of “minority” has a quantitative aspect, which implies a quantitative ratio of the population to a certain group or groups of people. But there is a difference of opinion as to whether this is the main aspect. Some experts believe that the quantitative aspect is not important. On the other hand, it is thought that the introduction of an objective criterion overshadows the “subjective” factors. Considering such moments, such characteristics as ethnic, religious and linguistic traditions came to the fore. The latter is different from the traditions of the rest of society. It is therefore essential to protect them both nationally and internationally.

The general definition of “minority” can be taken as follows: A minority is any ethnic, religious or linguistic group which is different from the majority of a given community [ibid.]. Nevertheless, some experts believe that

⁸ Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia. 2020. <https://www.ombudsman.ge/res/docs/2021040110573948397.pdf> [accessed: 01.06.2021], p. 217-28.

“minority” is very general and vague concept. One thing is clear, one of the key elements in all minority definitions is religious beliefs, religious worship, and religious rituals. It is important to take into account the definitions contained in the constitutions of the states. Here comes the no less vague term “recognition.” This refers to which groups are recognized as a minority in a constitution. This agreement, due to its format, does not define at the conceptual level what is meant by ethnic, religious or linguistic minority. It only defines the obligation of states to protect the rights of minorities if they have such groups. This issue is also related to the problem of recognition of such groups by the state. Protecting minorities means protecting their rights. Protection of minority rights is possible only if the existence of minorities is recognized by a state. But there is a view that their formal recognition by law is not necessary to protect them.

Does the Georgian state have a special policy towards persons belonging to religious minorities? The official position on this issue is that religious minorities in Georgia are not discriminated and their rights are protected. But it is known that no-discrimination is only a precondition for special measures to protect religious minorities [ibid., 8]. It is also clear that this is about conceptual issues such as minority, protection of minorities, equality, non-discrimination, sense of identity of religious minorities, recognition, legal status [ibid., 10]. It is obvious that religious minorities have legal status in Georgia. But it is known that in many cases this is only a formal side of the issue, in essence, it may be a matter of discussing religion only as a private matter and being used as a state policy. The division of state and religion seems to imply that religion in general, and religious minorities among them, must take care of themselves. Nor is such a division in itself a precondition for no-discrimination. Discrimination often arises from such an approach [ibid., 42]. Experts point out that even the state’s adherence to strict neutrality towards various beliefs does not rule out inequality of views [ibid., 77].

3. Secularism and freedom of religious expression in pandemic Georgia

What is needed for freedom of religious expression? This question often arises when it comes to what is freedom of religion and freedom of religious expression during a global pandemic. Naturally, the religious world protests

against this situation, and such protests often have legal implications. These cases are known as “lock order” cases. It is an order that forced the authorities to impose restrictions on assemblies, including gatherings for the purpose of religious worship, even the places of worship of the cult, in order to restrict the spread of Covid-19 [DeLoach 2020, 2].

Nevada’s case could be paradigmatic in this regard. The Nevada Governor’s order limits houses of worship-regardless of size-to services of no more than fifty persons, but casinos and several other facilities are permitted to admit fifty percent of their maximum occupancy. Half occupancy of a Las Vegas casino is considerably more than many churches, and certainly more than fifty percent. Render to Caesar, indeed [ibid.]. Hence the terms: privileged and despised. Civil institutions, food and entertainment facilities are privileged; Places of religious worship are neglected.⁹

It should be noted that Lockdown in Georgia very strongly affected the restaurant business. Talking about their privilege would not be justified. However, the media often exposes government officials to their privileged use of some restaurant services. Nevertheless, the threat to freedom of religion and the freedom of religion in modern conditions, especially in a pandemic environment, is perceived with no less intensity. There is no evidence of a difference in positions in the perception of this threat between dominant and non-dominant religious groups. Religion is under threat both internally and externally, and naturally freedom of religious expression is at stake [DeLoach 2020, 2].

During the Corona Pandemic, priorities were reconsidered and reorganized. It turned out that freedom of religion in general, and freedom of religious expression in particular, is a more controversial issue than it seems at first glance [ibid.]. On the other hand, it is very important to note that religious minorities face serious difficulties again and again under conditions when the health crisis has provided new opportunities for government repression of religion in authoritarian and non-authoritarian states alike [Hill 2020, 1]. It is known that 70% of the world’s population lives in countries with restrictions on religion. It is true that religious freedom is recognized in

⁹ Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

UN declarations, but it is often not respected within the country. On the contrary, hatred of religion is often exacerbated, as evidenced by the hate speech used against it. The truth is that freedom of religion is always in danger. The greatest threat to religious freedom is the widespread belief that it is not in danger [DeLoach 2020, 4].

The vast majority of the population of Georgia belongs to the Georgian Apostolic Orthodox Church. There are also agnostics and atheists in Georgia. This is their constitutional right. But Georgia has the experience of ill-fated “militant atheism.” Some groups are concerned about the so-called militant secularism. The emergence of militant secularism is associated with “militant atheism” in the consciousness of these groups.

The establishment of “Biblical Freedom” by the political organization “Girchi” in March 2017 caused a kind of confusion in the Georgian society. It is a civil religion organization. Civil religion has been perceived differently in Georgia. This can be a kind of model for the supporters of secular civil religion in there. They declare that Georgia is a secular state, therefore, it is not only obliged to treat all religions equally, but it must be created an environment in which everyone will have an equal opportunity for practicing their faith.¹⁰

On the other hand, the French “laïcité” takes a neutral position towards religion and offers a proper way to answer the question of the place of religion in a postmodern pluralistic society [DeLoach 2020, 6]. Some think that the ubiquity of religion in a society hides the fact that the mood of a significant portion of the society is “absolutely secular” [ibid., 7].

According to this position, it is without a doubt that the relevant constitutional articles are understood in such a way that secularism is not merely a division of state and church, but it expresses a democratic position towards diversity. Some authors argue that true secularism is dealt with only when religion is recognized as an individual’s personal affair. This means that religion is moving from the public sphere to the private one. Religion should not seek to occupy a place reserved for politics in policies [ibid., 8]. On the other

¹⁰ See <https://www.girchi.com/ge/media/news/1061-bibliuri-tavisupleba-saertashoriso-organizatsiebs-mimartavs> [accessed: 01.06.2021].

hand, a multicultural society requires strict neutrality on the part of the state. According to this view, religion and secularism are synonymous.

Secularism is a strict separation and neutral attitude between state and religion. This position may resemble the freedom of the American religion. This may refer to the “public reason,” which excludes comprehensive moral, metaphysical, and religious doctrines [Rawls 1997, 93-131]. As is well-known, Rawls introduced by the “public reason” as a comprehensive doctrine that ensures collaboration between different groups in pluralistic societies.

Religious consciousness is no longer more important than secular consciousness. Religious beliefs should be protected in the same way as non-religious beliefs. Thus, secularism emerged as an ideology according to which religious freedom is not necessary [DeLoach 2020, 9]. Some scholars argue that freedom of religion is an unnecessary right, since everything that is worthy of protection is protected by another right or group of rights. An alternative to freedom of religion is freedom of assembly and freedom of expression. The motto of this ideology is “equality for all,” which is the only alternative to a discriminatory approach [ibid., 8].

Many people in Georgia believe that a phenomenon such as militant secularism has emerged. This phenomenon is also seen as a trend in law when the equality paradigm pursues discrimination. This situation is perceived as religious freedom, when the neutrality of religion by the state only means that the government simply equates religion and secularism [ibid.]. Neutrality means locking religion in a purely private sphere. In such an understanding, the dividing wall between the state and religion is maintained. During the pandemic, however, religious organizations were given priority over secular ones. “Biblical Freedom” is protesting this situation in Georgia.

The emergence and spread of secular religions is characterized as strict egalitarian secularism. Some believe that this position can neutralize religious fanaticism [ibid., 9]. This situation is perceived as the introduction of secularism as the state religion. The following observation is interesting: Secularism is not interested in common good. For it, the only thing that matters is common identities and their interests. Secularism is opposed to communal unity. Religious freedom even supports communal identities in favor of pluralism [ibid.]. Secularism is based on the phenomenon of extreme individualism and dehumanization. The human person is reduced to a private religious

customer. This is a consumer attitude towards religion. Religious freedom was primarily committed to protecting religion. Secularism was committed, first and foremost, to defend the state.

Conclusion

While the right to freedom of expression is fundamental, it is not absolute. States may restrict the right in order to protect legitimate interests, including public health. The freedom of expression and opinion is a complex right that includes the freedom to seek, receive and impart information and ideas of all kinds through any media. This freedom in Georgia is threatened by the government allowing exceptions. It is necessary to pay attention to the category of exceptions in the discourse on freedom of expression of religious minorities in addition to naming religious groups as dominant and non-dominant.

As an exception or admitting something as an exception does not only mean that one group is given a privilege over another one and the principle of equality is violated. Making an exception to the restrictions imposed by the pandemic in general and in particular means creating a situation in which the government goes beyond the law. In a such situation the equality principle is in danger of being destroyed.

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The Freedom of Religious Expression of Religious Minorities in Pandemic Georgia

Abstract

This article presents an attempt to focus on the category of exception in the discourse on freedom of expression of religious minorities in addition to naming religious groups as dominant and non-dominant ones. It is noteworthy that the ombudsman of Georgia mentions the word “exception” several times in her 2020 report. Assuming something as an exception does not only mean that one group is given a privilege over another one and the principle of equality is violated. Making an exception to the restrictions imposed by the pandemic in general and in particular means creating a situation in which the government goes beyond the legal order endangering the sovereignty of law. On the other hand, it is without a doubt that even in a sanitary-epidemiological state, the rule of law must act and it is necessary to protect it.

Keywords: religious minorities, exception, human rights, pandemic, Georgia, secular religion

Wolność wyrażania przekonań religijnych przez mniejszości religijne w czasie pandemii w Gruzji

Streszczenie

W niniejszym artykule podjęto próbę określenia kategorii wyjątku w dyskursie na temat wolności wyrażania przekonań przez mniejszości religijne, a także nazwanie grup wyznaniowych jako dominujące i niedominujące. Warto zauważyć, że rzecznik praw obywatelskich Gruzji kilkakrotnie wymienia słowo „wyjątek” w swoim raporcie z 2020 r. Zakładanie czegoś jako wyjątku nie oznacza tylko, że jedna grupa otrzymuje przywilej nad inną i naruszona jest zasada równości. Dokonanie wyjątku od ograniczeń nałożonych przez pandemię w ogóle, w szczególności oznacza stworzenie sytuacji, w której rząd wykracza poza porządek prawny zagrażając suwerenności prawa. Z drugiej strony nie ulega wątpliwości, że nawet w stanie sanitarno-epidemiologicznym praworządność powinna być przestrzegana i trzeba jej chronić.

Słowa kluczowe: mniejszości religijne, wyjątek, prawa człowieka, pandemia, Gruzja, religia państwowa

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