

REFLECTIONS ON RELIGIOUS FREEDOM AND SECURITY IN EUROPE – – 2019 OSCE GUIDELINES

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Abstract. Freedom of thought, conscience and religion as one of the fundamental freedoms and human rights, the source of which is inherent, inalienable and inviolable human dignity, is guaranteed in addition to the provisions of international law also in documents issued by the Conference/Organization for Security and Cooperation in Europe (CSCE/OSCE). They emphasize a clear link between religious freedom and the need to ensure security. Of special importance to this issue are the political guidelines: Freedom of Religion or Belief and Security: Policy Guidance, which are entirely devoted to this subject in accordance with the concept of comprehensive security. The document formulates guiding principles, practical tips and recommendations on many important issues related to freedom of religion or belief and security in the OSCE region. In the study, the content of the indicated document was analyzed and an attempt was made to evaluate it. This allows for the conclusion that ensuring religious freedom is an important element in ensuring security.

Keywords: freedom of religion or belief; security; Conference/Organization for Security and Co-operation in Europe; the concept of comprehensive security; Freedom of Religion or Belief and Security: Policy Guidance

INTRODUCTION

Freedom of thought, conscience and religion is one of the fundamental freedoms and human rights which have their source in the inherent, inalienable, and inviolable human dignity. It is safeguarded by both the provisions of European international legal acts and those of universal application [Krukowski 1999, 178-99]. It should be noted that the importance of religious freedom is also emphasized in documents issued by the Conference (CSCE) and then by the Organization for Security and Cooperation in Europe (OSCE). As early as in the Final Act of the CSCE of 1 August 1975,¹ guarantees of religious freedom were included [Jach 2017, 163-64]. In accordance

¹ *Conference on Security and Co-operation in Europe. Final Act*, Helsinki 1975, <https://www.osce.org/files/f/documents/5/c/39501.pdf> [accessed: 05.11.2021].

with the content of Rule No. VII, all states undertook to respect human rights and fundamental freedoms, including religious freedom, regardless of race, sex, language, and religion [Matysiuk 2008, 36; Kącka 2013, 165; Sobczak 2013, 317]. Subsequent documents issued under the CSCE/OSCE confirmed religious freedom and specified its guarantees of protection [Jach 2017, 178]. However, the content of the political guidelines titled “Freedom of Religion or Belief and Security: Policy Guidance”,² a document which is entirely devoted to this subject, is of particular importance for the issue of the relationship between religious freedom and security. The aim of this study is to analyze the content of the indicated document and to attempt to evaluate the considerations presented in it regarding the relationship between the basic human freedom, which is freedom of thought, conscience and religion, and security.

1. THE CONCEPT OF COMPREHENSIVE SECURITY AND THE OSCE GUIDELINES OF 2019

The FRBS political guidelines were published on 9 September 2019 by the OSCE Office for Democratic Institutions and Human Rights³ to clarify the interrelationships and links between religious freedom and security. This document was issued as part of the Human Dimension Implementation Meeting in 2019 in Warsaw.⁴ The rationale behind the issue of this document was to emphasize the clear relationship between freedom of thought, conscience and religion and the need to ensure security in the light of the challenges related to the diversity of religions and beliefs throughout the OSCE region and the emerging threats in this regard. The document notes that, in line with contemporary debate on freedom of religion or belief and security, a balance between these values is necessary or it is suggested that at least some aspects of religious freedom must be sacrificed to ensure security. It was stressed that such positions contradict the OSCE’s comprehensive approach to security, which considers that freedom of religion or belief and security are not competing rights, but are regarded as complementary, interdependent and mutually reinforcing values that can and should be pursued jointly. Therefore, as with other human rights, an all-embracing security system is needed for freedom of religion or belief to be fully respected, protected and exercised.⁵

² Hereinafter: FRBS. See <https://www.osce.org/odihr/429389> [accessed: 05.11.2021].

³ Hereinafter: ODIHR.

⁴ See <https://www.osce.org/odihr/430463> [accessed: 05.11.2021].

⁵ FRBS, p. 5-6.

As noted in the doctrine, the OSCE (formerly the CSCE) is the first organization to put forward the concept of comprehensive security. It understands that security consists of three dimensions: political and military, economic and environmental, and the human dimension, which is protection of basic human rights, including religious freedom. All these three dimensions are equally important for lasting peace and security and must be realized and assured simultaneously [Ferrari 2020a, 104]. This was already evident in the Final Act of the CSCE of 1 August 1975, the overall content of which was divided into four baskets associated with: European security, cooperation in the economic, scientific and technical fields and the environment, cooperation in the humanitarian and related fields, and issues related to the continuation of the process of the Conference. The highlight of this document is undoubtedly so-called basket linking, meaning that progress in one area should go hand in hand with progress in others.

The issue of comprehensive security was also discussed in the documents issued after successive OSCE conferences.⁶ As already noted in the doctrine, growing religious diversity and the role of religion in individual countries are no doubt significant issues. It should be emphasized that ensuring religious freedom is an important element contributing to assurance of security [Ferrari 2020a, 103-104; Ferrari 2020b, 5; Bieńkowska 2019, 97-108].

2. THE CONCEPT OF COMPREHENSIVE SECURITY VERSUS STANDARDS OF PROTECTION OF FREEDOM OF RELIGION OR BELIEF

The first of the four chapters of the FRBS concerns the issue of human rights and the concept of comprehensive security of the OSCE. Referring to the concepts underlying the previously adopted documents, it was determined that security means comprehensive cooperation based on equality, indivisibility, and the protection of human rights. Each of the three complementary dimensions of OSCE operation (political-military, economic and environmental, and human) is seen as equally important, which underscores the OSCE's comprehensive approach to security. It was emphasized

⁶ CSCE Helsinki Document 1992 The Challenges of Change, see: <https://www.osce.org/files/f/documents/7/c/39530.pdf> [accessed: 05.11.2021]; CSCE Budapest Document 1994 Towards a Genuine Partnership in a New Era. Corrected version 21 December 1994, see <https://www.osce.org/files/f/documents/5/1/39554.pdf> [accessed: 05.11.2021]; Lisbon Document 1996, see <https://www.osce.org/files/f/documents/1/0/39539.pdf> [accessed: 05.11.2021]; Istanbul Document 1999, see <https://www.osce.org/files/f/documents/6/5/39569.pdf> [accessed: 05.11.2021]; Access to justice as a key element of the rule of law 16-17 November 2017, Hofburg, Vienna, Final Report, see: <https://www.osce.org/files/f/documents/d/e/383745.pdf> [accessed: 05.11.2021].

that freedom of religion or belief is recognized as one of the basic principles governing mutual relations between OSCE participating States and as an integral aspect of the OSCE security concept.⁷ Such a combination of these two human rights, that is, freedom of religion or belief and security, aimed at protecting human dignity, provides a better opportunity to deal with their possible conflict of rights [Ferrari 2020a, 104].

The second chapter of the FRBS guidelines deals with the issue of OSCE obligations and international standards for the protection of freedom of religion or belief. It is, as it were, a recapitulation of the OSCE's achievements to date and the effects of actions taken to protect the freedom in question. It was stressed that freedom of religion or belief is a multi-faceted human right, encompassing an individual, collective, institutional, educational and communication dimension, and is explicitly recognized in OSCE commitments and in universal and regional norms.⁸

The latter part of the second chapter of the guidelines in question draws our attention to the distinction between the internal and external aspects of religious freedom, well-established in doctrine and international law [Stanisz 2020, 44-46; Sobczak 2013, 287-88; Hucal 2012, 19-25]. *Forum internum* refers to the internal dimension of this freedom, namely the freedom to have or accept religion or beliefs of one's choice and to change them. It was indicated that the internal aspect of religious freedom, in line with international standards of human protection, is under absolute protection.⁹ On the other hand, the freedom to manifest religion or belief is the external aspect of freedom of religion or belief, i.e. *forum externum*. This dimension of religious freedom includes the freedom to profess and teach, to practice and uphold one's religion or beliefs.¹⁰ Certain restrictions are permissible in this respect, but they must be strictly justified. Such a restriction must be provided for by law and is to protect public security, public order, public health or morals, or the fundamental rights and freedoms of others; it must be necessary for the attainment of one of these aims and proportionate

⁷ See: Decision No. 3/13 Freedom of Thought, Conscience, Religion or Belief, see <https://www.osce.org/files/f/documents/e/6/109339.pdf> [accessed: 05.11.2021].

⁸ FRBS, p. 12-13.

⁹ See Article 18 of International Covenant on Civil and Political Rights, 19 December 1966 (Journal of Laws of 1997, No. 38, item 167) and Article 9 of the European Convention for the Protection of Fundamental Rights and Freedoms of 4 November 1950 (Journal of Laws of 1993, No. 61, item. 284 as amended); FRBS, p. 15.

¹⁰ See Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference, see: <https://www.osce.org/files/f/documents/a/7/40881.pdf> [accessed: 05.11.2021].

to the aim pursued; it should interfere with this freedom as little as possible and should only be used as a last resort.¹¹

3. GUIDING PRINCIPLES

An important element of the content of the FRBS are the guiding principles that are to help OSCE states in formulating and implementing measures, policies and legal provisions to ensure both freedom of religion or belief and security. They were formulated in the third chapter of this document.

The first principle emphasizes the crucial importance of education that fosters respect for religious or denominational diversity. According to this principle, schools and other institutions should teach about different religions and beliefs.¹² While formulating the second principle, attention was drawn to the necessity to establish cooperation between the state and religious communities, as well as other entities and the media in order to inform the public about religious communities.¹³ The third principle emphasizes the importance of dialogue and cooperation between religious communities that support understanding and mutual respect for the different religions or beliefs of each human being.¹⁴ The fourth principle, on the other hand, concerns initiating dialogue and fostering commitment of states and religious communities with respect to issues relating to guarantees of freedom of religion or belief and security.¹⁵ When formulating the fifth principle, it was emphasized that it is of fundamental importance for the security and peaceful development of society to promote respect for religious diversity and to speak out resolutely and immediately against all forms of hatred, discrimination, hostility or religious violence.¹⁶ The sixth principle, on the other hand, indicates the need to guarantee freedom of religion or belief to every human being under the law, as it is an integral part of ensuring security.¹⁷ The seventh principle sets out the requirements that should be met by states when introducing legal measures limiting freedom of religion or belief, which are deemed necessary for ensuring security.¹⁸

¹¹ FRBS, p. 16-19.

¹² *Ibid.*, p. 20-21.

¹³ *Ibid.*, p. 21.

¹⁴ *Ibid.*, p. 22.

¹⁵ *Ibid.*, p. 22-23.

¹⁶ *Ibid.*, p. 23-24.

¹⁷ *Ibid.*, p. 24-25.

¹⁸ *Ibid.*, p. 25-26.

4. DETAILED PROBLEMS AND RECOMMENDATIONS REGARDING THE FREEDOM OF RELIGION OR BELIEF IN RELATION TO SECURITY

The most extensive, fourth chapter of the FRBS, focuses on specific issues and recommendations related to freedom of religion or belief and security. It should be emphasized that the analysis of the identified problems and recommendations presented in chapter four should be read in the light of the seven guiding principles that were formulated in chapter three [Ferrari 2020a, 105].

The first section deals with the registration and de-registration of religious communities in the light of security. Obtaining legal personality is considered an element of the right to freedom of religion or belief in the collective and institutional aspect [Ferrari 2020a, 105; Ożóg 2015, 23-40; Mezglewski 2015, 123-34]. According to the recommendations, the OSCE states should refrain from using such terms as “extremism” or “religious extremism” in their legislation or other activities, because their meaning is unclear and they are likely to cause discrimination [Ferrari 2020b, 5-8]. State authorities should clearly define the rules for obtaining legal personality by religious communities, in line with the criteria set out in Article 18(3) of the ICCPR. Religious communities are encouraged to engage in dialogue with state authorities and other stakeholders.¹⁹

The second section refers to extremist statements and publications.²⁰ As recommended, participating countries should consider formulating educational programs that increase knowledge of religious communities in collaboration with various religious actors and communities. Knowledge about different religions and beliefs and respect for human rights should be taught in schools. Participating states are encouraged to promote interreligious dialogue and cooperation, respecting the autonomy of religious communities. States are encouraged not to follow the practice of relying solely on the opinion of designated experts to interpret and evaluate sacred texts for “extremism”. Religious community leaders are also encouraged to make a firm and swift statement against the promotion of hatred, discrimination, hostility, or violence.²¹

On the other hand, social organizations and the media are encouraged to support the said activities promoting knowledge about religious communities. Therefore, the media are encouraged to develop guidelines

¹⁹ Ibid., p. 29-36.

²⁰ Ibid., p. 37-47.

²¹ Ibid., p. 48-50.

and standards, such as journalists' ethical codes for impartial and appropriate reporting on matters related to religion and belief.²²

The third section deals with inspection, monitoring and searches in places of worship and those for meetings.²³ The doctrine emphasizes that such actions, which also apply to non-violent believers, despite their validity for security reasons, are perceived as a restriction of religious freedom [Ferrari 2020a, 103].

As recommended, participating countries should develop guidelines and procedures for checking, monitoring, and searching such sites. They should be in line with relevant international human rights standards and national legislation. It was emphasized that control or monitoring measures in such places should only be taken when absolutely necessary and in the least invasive manner and proportionate to the risk that arises. They should be conducted as far as possible with the consent and cooperation of the religious community. Information and data obtained from such actions should be processed in accordance with relevant international legal standards. It was also emphasized that the closure of a place of worship or a meeting place should be a last resort and taken if absolutely necessary in agreement with a given religious community.²⁴

Religious communities, on the other hand, should be vigilant against activities that pose a real threat to security by anyone present at the place of worship or meeting place. In addition, religious community leaders should strongly oppose such actions so that they are not identified with the entire religious community. Such activities should be supported by social organizations, and information on such activities should be disseminated by the media in an ethical manner, so as not to harm the religious community as a whole.²⁵

The last section deals with issues related to limiting the scope of conversion and restrictions on the activity of religious communities related to foreign cooperation.²⁶ The doctrine indicates that the right to convert may be subject to certain restrictions, especially when connected with the use of coercion, because in such a case both freedom of religion or belief and personal security may be at risk [Ferrari 2020a, 105; Rozner 2002, 121-22].²⁷

According to the recommendations, security concerns should not be used by states to restrict the right of individuals to convert (accept, leave,

²² *Ibid.*, p. 50-52.

²³ *Ibid.*, p. 52-59.

²⁴ *Ibid.*, p. 60-62.

²⁵ *Ibid.*, p. 62-63.

²⁶ *Ibid.*, p. 64-68.

²⁷ See Judgment of the European Court of Human Rights of 25 May 1993 *Kokkinakis v. Greece* (14307/88).

or change religion or belief), which is strictly protected by international law. Participating states should ensure that persons changing religious beliefs are protected against violence, harassment, intimidation, or discrimination. However, participating countries may restrict this right if they fulfil all the criteria set out in Article 18 (3) of the ICCPR, e.g., if there is evidence that such actions are taken using coercion or constitute incitement to discrimination, hostility or violence. Participating States are encouraged to support religious communities in order to eliminate fears or tensions about conversion through dialogue and cooperation. Moreover, participating states should not restrict the entry or stay of foreigners in the country (including clergy) on the basis of their religion or beliefs, unless it concerns the converting person who is promoting hatred, discrimination, hostility or violence.²⁸

As regards religious communities and including their leaders, they should consider that the right to conversion is an integral part of the freedom of religion or belief, which enjoys absolute protection. Religious or philosophical communities and interreligious organizations are encouraged to develop guiding principles for encouraging the exercise of their religion or belief without coercion. Civic organizations are also encouraged to support religious communities in addressing these challenges and activities. In contrast, the media are encouraged to provide unbiased and accurate information in this regard.²⁹

CONCLUSIONS

The content of the FRBS guidelines of 9 September 2019 proves that modern states recognize the need to ensure guarantees of religious freedom and security in the world. The presented analysis of the content of the document shows how important it is to maintain harmony between religious freedom and security. The guiding principles formulated in the document and the recommendations based on them were addressed to many entities. Individual states, as the addressees, are responsible for introducing appropriate legal provisions which guarantee that everyone enjoys the freedom of thought, conscience and religion while maintaining their safety. However, the recommendations spelled out in the document are also addressed to religious communities, social organizations, and the media. They emphasize the need for all these entities to engage in dialogue and cooperation in order to guarantee both religious freedom and security.

²⁸ FRBS, p. 69-70.

²⁹ *Ibid.*, p. 71.

The document at hand is part of the uniform line of documents issued by the OSCE in terms of understanding the concept of comprehensive security and emphasizing the importance of freedom of religion or belief. Disrupting the development of any of the three areas identified as key by the OSCE interferes with human security. It should also be emphasized that the abovementioned solutions and recommendations provided by the document conform to international standards for the protection of human rights and freedoms.

It should be emphasized that the document points out the significant role of education and teaching about religions. Providing information about different religions is to prevent misunderstanding that may lead to conflicts, unjustified restriction of the freedom to manifest religion and, consequently, to disturb the sense of security.

Significantly, the document indicates individual issues that are essential to guarantee religious freedom and security, such as the determination of the legal status of religious communities, which implies the possibility of registering and deregistering such entities. Properly formulated regulations specifying the registration procedure guarantee religious freedom, especially in the collective and institutional aspect, but also security. The document indicates that public statements and publications on religious matters may also affect security; therefore, in this context the important role of education and spreading knowledge about religions and beliefs as well as social dialogue is underscored in excluding all kinds of extremist activity.

However, it should be remembered that when achieving the objectives set out in the guidelines, particular care should be taken to ensure due respect for the autonomy of religious communities, which is generally respected in the document [Stanisz 2015, 159-85; Ferrari 2020b, 5]. This is especially important when it comes to interpreting and evaluating sacred texts in terms of “extremism”, because religious freedom, for its part, guarantees, above all, the right for religious communities to present their own interpretations of the sacred texts or doctrinal works of a given community.

The document also notes the threat to both religious freedom and security, namely, the extremist activity undertaken by some individuals and justified religiously. This necessitates special measures to secure places of worship and meetings in the form of control and monitoring, plus carrying out personal searches, including peaceful individuals.

The last point concerns the right to convert. In this respect, the great role of cooperation and dialogue between various entities functioning in society in order to ensure respect for religious and philosophical diversity was noticed.

The document has an advantage of attempting to formulate guiding principles and resultant recommendations in order to develop solutions guaranteeing both religious freedom and security. It should be emphasized that the guiding principles indicated in the document and the recommendations formulated are the result of joint discussions during the meeting, during which there was an exchange of experiences in the field of protection of religious freedom and ensuring the security of individual OSCE states. It should be appreciated that the document emphasizes the importance of religious freedom as the fundamental freedom of human beings as stemming from their dignity. It indicates that ensuring the possibility of exercising religious freedom builds and supports a sense of personal security, but also supports security in the institutional dimension.

The document emphasizes and recommends establishing cooperation and dialogue between the state and other entities. It seems that it can be concluded that the document is of the opinion that both religious freedom and security are not only the rights of every human being, but also constitute a common good, important for whole nations.

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