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FREEDOM OF RELIGION OR BELIEF AND COVID-19 RESTRICTIONS IN AZERBAIJAN

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KEYWORDS: FoRB, COVID-19 restrictions, proportionality, Azerbaijan, international standards

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INTRODUCTION

The aim of the thesis is to assess the proportionality and justifications of covid- 19 restrictions on freedom of religion or belief (FoRB). The thesis uses Azerbaijan as a case study that is going to be analyzed in the light of international human rights law, but also soft law and recommendations adopted at the international level since the start of the pandemic.

After the outbreak of coronavirus pandemic governments started to implement numerous public health interventions for controlling the spread of the virus. The interventions were related to restriction of different freedoms such as freedom of movement, freedom of assembly, freedom of religion or belief.

Since the religious activities are about gathering of large groups of people it has been a topical issue after application of Covid-19 restrictions. Restrictions have been implemented by most of the religious communities, however, still some communities refused to follow the guidelines, social distancing rules and insisted on continuing the gatherings in person which has made an enormous impact on spreading of the virus.¹

As a response to the virus certain states chose to apply high level restrictions depending on the spread of Covid-19 by banning public religious gatherings and side by side with it, private prayers in public places of worshipping. While other states imposed highly restrictive measures by just banning public gatherings but allowing private worshipping in public places of worship. Others applied more moderate approach by putting a limit up to 50 people by allowing public worships.

The governments have to take into account the right to freedom of religion or belief (as, for example, enshrined in Article 18 of the International Covenant on Civil and Political Rights) while imposing COVID-19 restrictions. But it is also important to protect people's lives and health. If we look at it from a legal, international human rights point of view the governments are required to protect all human rights while taking measures for protection of public health in the times of crisis. In that sense the governments need to draw a difficult balance between right to freedom of religion or belief and rights to life and health, for example as specified in International Covenant of Social, Economic and Cultural Rights Article 12.

¹ <https://www.bbc.com/news/world-europe-55098412>

Throughout the pandemic the approach to restrictions by States varied, ranging from quite severe restrictions to rather relaxed ones. In early weeks, the restrictions were mostly quite strict and prohibited a wide range of in person activities. However, some time later a mitigation was observed in restrictions on most spheres of daily activities. The activities like in-restaurant dining, personal services such as hair salons, barbershops were allowed to be used for certain time periods while the religious gatherings enjoyed restrictions. The question is what is the use of restrictions if the government restricts worships while allows the activities that present the same risks for health?

The notion of freedom of religion or belief is described in several international documents such as the Universal Declaration of Human Rights, the European Court of Human Rights and the International Covenant on Civil and Political Rights. They all illustrate the freedom with almost same language. Thus, the relevant articles of the documents describe the circumstances under which the states are allowed to impose limitation to freedom of religion and belief. The article 4 of ICCPR also lists the right to freedom of religion as a non-derogable right and states cannot derogate from their obligations under article 18 of ICCPR even in the state of emergency that was declared related to threat to the life.

The right to freedom of religion or belief as understood in the international human rights law has two dimensions. There is an absolute right to freedom of religion or belief (called *forum internum*). Manifestation of religion or belief (*forum externum*) can be subjected to restrictions. However, the restrictions need to comply with certain requirements. They have to be:

- prescribed by law;
- applied for protection of public safety, order, health, or morals or the fundamental rights and freedoms of others;
- necessary in a democratic society;
- non-discriminatory.

Differently from some other rights, FoRB cannot also be derogated by the states in the case of public emergency or war.²

The states should take measures for dealing with a serious threat to its population's health. The measures that are taken by the states specifically must be aimed at preventing illnesses and diseases by referring to the International Health Regulations of the World Health Organization.³

Especially regarding to COVID-19, WHO pointed out that all the countries should keep a reasonable balance between protection of health of population and respect to human rights.⁴ For coping with the wide spread of the virus WHO has offered different variety of guidelines and recommendations on public gatherings which are helpful for governments in fighting with public health risks.⁵ All in all, human rights and dignity should be a priority while combating the spread of COVID-19.

The main point of COVID-19 restrictions is to protect public health by fighting against the spread of the virus. However, many governments used them as an excuse to impose more restrictions on religious communities or some religious communities. In most of the places in the world governments' response to COVID-19 increases risk of violation of freedom of religion. For example, since 2017 Chinese government has imprisoned over 1 million Muslims, mostly Uighurs, in concentration camps in Xinjiang.⁶ The mentioned communities did not have any access to medical resources and were forced to work in the factories while the whole population was in quarantine.⁷

² Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984), <https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf>

³ https://www.who.int/health-topics/international-health-regulations#tab=tab_1

⁴ WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁵ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-mass-gatherings>

⁶ USCIRF ANNUAL REPORT 2019, https://www.uscifr.gov/sites/default/files/Tier1_CHINA_2019.pdf

⁷ <https://www.rfa.org/english/news/uyghur/work-02272020160853.html>

The method that is going to be used in this thesis is mostly analytical. Some comparative material from states is used when necessary, since the paper uses situation in Azerbaijan as a case study. The paper analyzes various international responses to the covid pandemic and the understanding of protection of freedom of religion or belief in international human rights law. To assess domestic effect of international law, also soft law the thesis uses Azerbaijan as a case study. It looks at legislation and its implementation by the state bodies while discussing legality and proportionality of COVID-19 restrictions that are imposed in Azerbaijan.

The following research questions will be analyzed to achieve the objective of the thesis and provide answers to the research problem:

- How is freedom of religion or belief protected according to international law during the covid pandemic?
- What kind of religion and belief-based violations did countries face with while imposing COVID-19 restrictions?
- What kind of norms at the international level are relevant in this situation?
- How did the restrictions affect implementation of FoRB and religious communities?
- What is the situation of implementation of freedom of religion in Azerbaijan?
- What is the constitutional position of international law and norms in Azerbaijan?
- Which international norms are not stated or fully implemented in Azerbaijani legislation?
- What are the implications of the absence or partial implementation of international norms on freedom of religion in Azerbaijani law in time of COVID restrictions?
- Are the COVID-19 restrictions imposed by Azerbaijani government proportional and legal according to international human rights law?

The first hypothesis of the thesis is that Azerbaijani legislation is not in compliance with international standards and norms. The second hypothesis is that even if the legislation complies with the international human rights law, the practice does not follow the international rules fully.

The thesis consists of three chapters. The first chapter elaborates on notion and situation of FoRB all over the world. In the chapter description of FoRB by international documents like the

Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights will be discussed. Side by side with it COVID-19 restrictions have made a big impact and led to difficulties in implementation of the mentioned freedom. So, the second part of the first chapter will illustrate the complications that governments went through while applying the restrictions and trying to balance them with human rights.

In the second chapter focus will be given to the situation of FoRB in Azerbaijan. In this chapter I will write about compatibility of Azerbaijani legislation on freedom of religion or belief with international human rights documents. Firstly, national law and domestic legislation will be overviewed which will be followed by examples on implementation and gaps in legislation while applying the domestic legislation. In the end a distinction between domestic legal documents and implementation of them will be deliberated.

The third chapter will focus mostly on the COVID-19 restrictions that are imposed in Azerbaijan and their effect on religious communities. I will start with legislation on emergency situations and its compatibility with COVID-19. Then legality and proportionality of the measures that are taken by Azerbaijani government will be analyzed. Gaps, ambiguities, and inconsistencies of the measures that affect religious freedom will be looked from lenses of international human rights.

CHAPTER I. INTERNATIONAL REGULATION OF FREEDOM OF RELIGION AND BELIEF

1.1. Freedom of Religion or Belief in International Law

Right to freedom of religion is a fundamental right and it is recognized universally in international documents, including Universal Declaration of Human Rights, European Convention on Human Rights and the United Nations Covenant on Civil and Political Rights.⁸ Freedom to manifest one's religion or belief privately or publicly with others through worship, teaching and practicing is included to right to freedom of religion. Freedom of religion is closely related to other fundamental human rights and freedoms as to its nature, such as, the freedom of expression, the freedom of assembly and association, right to non-discrimination. There are two elements of freedom of religion and belief.⁹ Thus, choosing and adopting religion or belief is one's choice and the right is absolute and unconditional. In addition to this, states cannot interfere one's choice of freedom or belief.

The freedom of religion and belief is not absolute, thus, manifestation of someone's religious belief may have an impact on other people and the freedom can only be limited in the following circumstances:

- if the limitation is prescribed by law;
- if the limitation is aimed to protect public safety, public order, health and moral, or fundamental rights and freedoms of others;
- if the limitation is not imposed for a discriminatory purpose.

All in all, limitations cannot be imposed if they violate the freedom of religion or belief. As states have positive obligations about protection of rights guaranteed under international documents, imposition of the abovementioned limitations should proceed from the states' positive obligation.¹⁰

⁸ The Universal Declaration of Human Rights (UDHR), Article 18; International Covenant on Civil and Political Rights (ICCPR), Article 18; the European Convention on Human Rights (ECHR), Article 9; the EU Charter of Fundamental Rights, Article 10

⁹ Ibid.

¹⁰ OSCE, ODIHR and Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities, 2014, para 6

The potential challenges associated with the diversity of religions and beliefs in the OSCE region, as well as the threat posed by violent extremism and radicalization leading to terrorism, have made the issue of the relationship between freedom of thought, conscience, religion or belief, on the one hand, and the need to ensure security, on the other hand, particularly relevant. OSCE participating States use various strategies to ensure that their security measures fully comply with their international obligations regarding freedom of religion or belief, however, some laws, as well as political and practical security measures, put serious pressure on freedom of religion or belief and other fundamental human rights. Such measures, especially if they are broad in nature or applied arbitrarily, are often used in the name of "national", "State" or "public" security, or in the interests of preserving or maintaining "peaceful coexistence", "social stability" or "social harmony". However, experience shows that such restrictions can weaken rather than strengthen security.

The participating States have an obligation to protect the human rights of all individuals, groups and communities living on their territory and all persons under their jurisdiction. Everyone has the right to personal inviolability¹¹, as well as the right to freedom of religion or belief. The participating States bear the primary responsibility for ensuring these rights and must guarantee their exercise on an equal basis for all persons under their jurisdiction. Protection, respect and promotion of the right to personal integrity means the obligation of States to protect individuals, groups and communities against threats such as crime, violence and terrorism.

States should consider all dimensions of security, and to use a comprehensive and collaborative approach that prevents skewed in favor of national security at the expense of other dimensions of security, including human rights.

At the same time, the modern discourse on freedom of religion or belief and security very often insists on the need to ensure a balance between these values or suggests that at least some aspects of this freedom should be sacrificed in order to achieve security. Such a discourse contradicts the comprehensive approach to security adopted by the OSCE, which does not consider freedom of religion or belief and security as competing rights, but recognizes them as complementary,

¹¹ UN General Assembly, Universal Declaration of Human Rights, December 10 1948, 217 A (III) article 3,
https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml

interdependent, and mutually reinforcing goals that can and should be achieved together. As with other human rights, a comprehensive security regime is necessary to ensure full respect, protection and exercise of freedom of religion or belief. At the same time, sustainable security is impossible without full respect for human rights, which is a necessary prerequisite for building trust between the State and the population. Such trust should be the basis of relations between the state and the people. Otherwise, the State is unlikely to be able to effectively fulfill its responsibilities to ensure security and protect and support a democratic society.

Human rights, including freedom of religion or belief, are fundamental to the prosperity of society and, therefore, must be fully taken into account in all responses to conflict and violence – regardless of whether these measures are aimed at eliminating the causes of conflict and violence, protecting their victims or reducing their consequences. Thus, human rights and security measures are aimed at achieving the same goal. Freedom of religion or belief promotes mutual respect, trust, understanding and equality between people of different religions and beliefs. In this regard, it can help make society more resilient to the challenges that threaten its security.

The full implementation of international norms in the field of freedom of religion or belief provides a number of advantages that contribute to comprehensive and sustainable security, in particular in the field of socio-economic development and peace. Freedom of religion or belief is a means of mobilizing for the benefit of society and developing positive resources of people professing various religious or other beliefs. Thus, unjustified restrictions on the right to freedom of religion or belief prevent the full realization of the potential of this right in the field of creating a social system that ensures both freedom and security.

Freedom of religion or belief is a multifaceted human right having individual, collective, institutional, educational and communicative dimensions; this right is explicitly recognized international and regional standards. These standards set out a number of basic principles concerning the enjoyment of freedom of religion or belief– including the status of this freedom as the rights enjoyed by all people, men and women, believers or non-believers,¹² as well as the freedom of every person to profess his religion and beliefs and act in accordance with them, both

¹² General Comment No. 22 (UN Human Rights Committee, UN Doc. CCPR/C21/Rev.1/Add.4), which explains that freedom of religion or belief covers theistic, non-theistic and atheistic beliefs, as well as freedom not to profess any religion or belief, paragraph 2

individually and jointly with others, in public or private, through worship, teaching and preaching, religious practice and observance of rituals.

The exercise of freedom of religion or belief (whether alone or in community with other people, in public or in private) is an inalienable human right. For this reason, it cannot require State authorization.¹³ The normative status of freedom of religion or belief is emphasized by the fact that, in accordance with article 4 (2) of the International Covenant on Civil and Political Rights (ICCPR), this freedom is an absolute, non-derogable right. This means that even a state of emergency declared in view of a threat to the existence of the State cannot be used by the State to derogate from its obligations under article 18 of the ICCPR.¹⁴

According to international human rights law, States are obliged, within their jurisdiction, to act as impartial guarantors of freedom of religion or belief in respect of all persons and religious communities or communities professing certain beliefs. This duty should be fulfilled not only in relation to citizens and residents, but equally in relation to asylum seekers, migrants, refugees and stateless persons.

The starting point for determining the scope of freedom of religion or belief should be the self-determination of religion or belief, although it should be noted that State bodies undoubtedly have some competence to use some objective, formal criteria to determine the applicability of these concepts in a particular case.¹⁵

There is a huge variety of religions and beliefs, and the terms "religion" and "beliefs" have a broad meaning. Freedom of religion or belief applies not only to traditional or major religions or beliefs; nor is this right limited to religions or belief systems that are similar in their institutional characteristics or practices to traditional religions. The right to freedom of religion or belief

¹³ Metropolitan Church of Bessarabia v. Moldova, European Court of Human Rights (Statement No. 45701/99, decision of December 13, 2001), paragraphs 128-130; Report of the Special Rapporteur on freedom of religion or belief Heiner Bielefeldt, UN General Assembly, UN Doc.A/HRC/19/60, December 22, 2011, paragraphs 25 and 41, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60_en.pdf

¹⁴ Recommendations on the analysis of legislation on religion or belief, Warsaw, OSCE/ODIHR, 2005, p. 22 <http://www.osce.org/odihr/13993>

¹⁵ The European Court of Human Rights has stated that in order for a person's views to be within the scope of the right to freedom of religion or belief, they must reach "a certain level of persuasiveness, seriousness, consistency and significance" (Campbell and Cosans v United Kingdom, European Court of Human Rights, Applications No. 75111/76 and No. 7743/76, Judgment of 25 February 1992).

protects adherents of theistic, non-theistic and atheistic beliefs, and also covers the right not to profess any religion or belief. This means that newly established religious communities or communities professing certain beliefs, as well as religious minorities, should enjoy the same protection as the prevailing religious community.

Freedom of religion or belief is part of a broader human rights system and is closely linked to other universal human rights and fundamental freedoms, such as freedom of expression, freedom of assembly and association, and the right to freedom from discrimination.

The concept of internal freedom in relation to religion or belief (*forum internum*) refers to the internal dimension of the right to freedom of religion or belief, namely the freedom to have or adopt a religion or belief of one's choice, which also includes the right to change one's religion or beliefs. The internal freedom to have, accept or change a religion is not subject to the restrictive clauses enshrined in article 18 of the ICCPR and article 9 of the European Convention on Human Rights (ECHR), and in this regard, this internal freedom enjoys absolute protection.

The freedom to profess a religion or belief, which constitutes an external manifestation of freedom of religion or belief (*forum externum*), has a broad scope. OSCE commitments and international and regional standards protect various manifestations of the profession of religion or beliefs of both individuals and communities. Freedom to profess a religion or belief implies, first of all (but not only) freedom of worship and freedom of teaching and preaching, religious practice and observance of the rites of a professed religion or belief system. There may be significant overlap between these different forms of professing religion or belief. The manifestations of freedom of religion or belief are described in detail in the OSCE Vienna Document of 1989, in particular with regard to the collective, communal dimension of this right.¹⁶

Certain restrictions are permissible only with respect to the freedom to profess a religion or belief, and they have clear parameters. Such restrictions must be strictly justified, and the burden of justifying any restrictions always rests with the State. Each restriction is a narrow exception to the rule stating that all people should be free to exercise their right to freedom of religion or belief in full. The OSCE commitments also provide that the right to freedom of religion or beliefs are not

¹⁶ The full list of manifestations of freedom of religion or belief is contained in paragraph 16.4 of the Vienna Document of 1989.

subject to any restrictions, except those established by law and compatible with the obligations of the participating States under international law and with their international obligations.

Freedom of religion or belief is an inalienable human right, it is very important that the criteria for possible restrictions are applied with maximum accuracy and precision. The restrictions imposed by the State should provide for the minimum possible interference with the exercise of this freedom and should be used only as the most extreme measure.

In order for a specific restriction to be "prescribed by law", the provision of the law providing for this restriction must be accessible and predictable. This implies that it must be formulated with sufficient precision to allow individuals or communities to regulate their actions. In addition, restrictions cannot be imposed retroactively or used arbitrarily in relation to specific individuals or groups; It is also unacceptable that restrictions are imposed by rules that should have the force of law but are so vague that they do not make it possible to understand the requirements of the law or allow arbitrary enforcement.

First requirement is legality. The criterion of "legitimate purpose" means that restrictions can be applied only for those purposes for which they were provided for in the provisions concerning freedom of religion or belief. Their application is not allowed on grounds not provided for by international treaties, even if restrictions on such grounds are permitted in relation to other human rights or fundamental freedoms. In this regard, it should be noted that international law does not recognize the provision of "security" or "national security" as an acceptable basis for restricting manifestations of freedom of religion or belief.

The next requirement is necessity. Restrictions must be "necessary" in accordance with the grounds for restrictions provided for in the provisions of legislation in the field of freedom of religion or belief. In order to a restriction to be necessary, it must be directly related to the specific need for which it is aimed and be proportionate to this goal,¹⁷ and the envisaged intervention must meet an

¹⁷ ICCPR, article 18(3); ACHR, article 12(3); ECHR, article 9(2).

urgent public need and be proportionate to the legitimate goal pursued.¹⁸ At the same time, the concept of "urgent social need" should be interpreted in a narrow sense.¹⁹

The third requirement is proportionality. Thus, in order for the intervention to be "proportionate", there must be a logical and meaningful connection between the legitimate goal and the means used to achieve it. Even in the context of security, measures taken to restrict human rights must be justified in terms of their protective function. The mere fact that a measure is sufficient to achieve a safety-related goal is not enough to meet the strict criteria of proportionality verification. The principle of proportionality requires that the restriction be strictly necessary to achieve the intended goal and that the means used provide for the minimum possible amount of intervention.

The OSCE points out that restrictions cannot be imposed for discriminatory purposes or applied in a discriminatory manner.²⁰ As a rule, differing treatment is considered indirectly discriminatory if it has no objective and reasonable justification or if it is disproportionate to the purpose it allegedly serves. In the context of freedom of religion or belief and security, States parties should ensure that measures that discriminate on the basis of religion or belief are not applied.

According to international human rights law, restrictions imposed by the State should provide for the minimum possible interference with the exercise of freedom of religion or belief. A search in a place of worship or assembly is an extraordinary measure that can seriously disrupt the life of an entire religious community or a community adhering to certain beliefs and undermine its trust in the State as a guarantor of justice and respect for such communities. In this regard, the search should be considered only as the most extreme measure.

Places of worship or meetings are not exempt from searches if there is sufficient evidence that a crime is being committed or being prepared in such a place. Nevertheless, the search must be conducted in such a way as to disrupt the activities carried out in the place of worship or meetings to the minimum extent possible. Moreover, the search should be carried out – if it can be done

¹⁸ *Wingrove v. The United Kingdom*, European Court of Human Rights (Application No. 17419/90, judgment of 25 November 1996), p. 53.

¹⁹ *Svyato-Mykhaylivska Parafiya v. Ukraine*, European Court of Human Rights (Application No. 77703/01, judgment of June 14, 2007), p. 116; *Gorzelik and Others v. Poland*, European Court of Human Rights (application No. 44157/98, judgment of February 17, 2004), pp. 94-95.

²⁰ OSCE Strategic Document on the Economic and Environmental Dimension, OSCE, December 2, 2003, <https://www.osce.org/e33/20705>

without prejudice to its purposes - with the consent and cooperation of the persons responsible for the maintenance of the place of worship or meetings, and in their presence. At the same time, the State authorities should conduct an open and transparent dialogue with the relevant religious communities or communities professing certain beliefs.²¹

Searches or checks of people visiting a particular place of worship or meetings may be necessary in certain circumstances in order to ensure security, but at the same time, they can lead to undesirable consequences. It is talked about the formation of stereotypes, stigmatization of entire religious communities or communities adhering to certain beliefs, as well as the emergence of a sense of mutual distrust between State authorities and people visiting the appropriate places of worship or meetings. As a result, members of religious communities or communities adhering to certain beliefs may feel resentment and unwillingness to cooperate with the authorities. In the medium and long term, such distrust may lead to a weakening of security.

Measures such as inspections, monitoring and searches create serious gender problems. For example, a description of people who should be checked and monitored when they visit a certain place of worship or meetings may be based on stereotypical gender assumptions that are discriminatory and have no relation to genuine security problems. In some situations, men are disproportionately the target of identity identification activities and security interviews. In other cases, women may be disproportionately affected by identity-related requirements regarding the need to remove items of clothing covering the face or head. Such cases can lead to the fact that men and women, for different reasons and in different situations, will refrain from visiting places of worship or meetings. As a result, their family members may also be deprived of the opportunity to visit such places (especially if these men and women are parents).

Thus, when considering the feasibility of inspections and monitoring or searches, States should take into account the risk of possible discrimination on the basis of gender and strive, through dialogue with religious communities or communities holding certain beliefs, to avoid these measures or reduce them to a minimum as far as possible. The general rule with regard to the requirement to remove any items of clothing for identification purposes, as well as with regard to security screening, is that such measures should be carried out only by security personnel of the

²¹ Decision No. 3/13 of the OSCE Council of Ministers "Freedom of Thought, Conscience, religion and Belief", Kyiv, December 6, 2013, item 6

same sex with the person being checked and in a separate closed room. The authorities should also ensure that persons conducting searches in premises intended only for believers of a particular gender and located in places of worship or meetings are of the same gender as the believers using these premises.

In recent years, the number of complaints about violations of Article 9 of the European Convention on Human Rights has increased, and their complexity has also increased. Indeed, until recently, the judicial practice of the Strasbourg Court on Article 9 was very limited. The practice tended to form around individual issues, such as freedom of religion in places of incarceration or conflicts between respect for religion and work responsibilities. In addition, there were not many cases when the focus was on the collective manifestation of faith. This situation probably testified to the high degree of respect that was usually shown for freedom of thought, conscience and religion in most member States of the Council of Europe at that time, since tolerance of religious and philosophical beliefs and respect for differences were long-rooted values, or at least values that were actively sought to achieve.

As a result, it was difficult for the interpreters of Article 9 to deduce the basic principles and values explaining the essence of this article. However, in recent years, the Strasbourg Court has often been asked to resolve issues related to the boundaries and meaning of Article 9, due to the increased number of key cases involving a wide and diverse range of issues. Subsequent decisions and resolutions made it possible to re-emphasize the role played by religious and philosophical beliefs in European society, as well as to emphasize the basic values of pluralism and tolerance.

Article 9 bears a close resemblance, both in its wording and in the values it encompasses, to the neighboring articles of the Convention. Article 9 guarantees not only freedom of thought, conscience and religion, but also their active manifestation. Thus, there is a clear link, both in terms of textual wording and the main content, between freedom of expression and freedom of assembly and association within the framework of Articles 10 and 11.

Indeed, complaints about violations of citizens' rights to participate in the public life of a democratic society may also contain references to Article 9, although the Strasbourg Court in many cases concluded that the issues raised in the complaints should rather have been considered through the prism of one of the other two articles, since they either affected freedom of expression under

Article 10,²² or fell within the limits of Article 11 of the Convention guaranteeing freedom of Association.²³ Article 9, at the same time, includes some values related to the requirement of respect for privacy provided for in Article 8. It also has a close connection with the right of parents to provide such education and training that correspond to their religious and philosophical beliefs according to article 2 of Protocol No. 1.

Both of these guarantees play an important role in promoting the protection and development of personal identity. Here it is more logical to consider the issues raised by the applicants within the framework of Article 9, taking into account one of these legal norms.²⁴ In addition, aspects of the enjoyment of the right to freedom of thought, conscience and religion may fall under other guarantees, for example, provided for in Article 6, when it comes to the right to access to justice to determine the civil rights of a religious community,²⁵ or when the property rights guaranteed by article 1 of Protocol No. 1²⁶ are at stake. Consequently, it is necessary to make sure that Article 9 is *lex specialis* for the resolution of a particular case.

The guarantee is not absolute. Paragraph 1 of Article 9 proclaims freedom of thought, conscience and religion, and paragraph 2 recognizes that reasonable restrictions are permissible in the exercise of these rights. Paragraph 1 is inspired by the text of the Universal Declaration of Human Rights, paragraph 2 largely reflects the formula used to establish a balance between individual rights and those guarantees contained in other articles of the European Convention for the Protection of Human Rights, primarily in Articles 8, 10 and 11. This approach can also be seen in article 18 of the International Covenant on Civil and Political Rights.

In other words, in view of paragraph 1, it should be determined whether Article 9 is applicable, and if so, whether there has been interference with the right guaranteed by the Convention; further, taking into account paragraph 2, it should be assessed to what extent the interference was justified, and, as a consequence, whether there was a violation of the article. It should be remembered that a complaint to the Strasbourg Court must be declared admissible, and if a citizen wishes to resort to the enforcement mechanism provided for by the European Convention, it is necessary that the

²² For example, *Feldek v. Slovakia*; *Van den Dungen v. Netherlands*.

²³ *Refah Partisi (the Welfare Party) and others v. Turkey*

²⁴ For example, the case of *Hoffman v. Austria*

²⁵ *Canea Catholic Church v. Greece*

²⁶ *Holy Monasteries v. Greece*

complaint meets a number of admissibility criteria, in particular, all judicial remedies at the national level must be exhausted.

The discussion of the eligibility criteria, by and large, falls outside the scope of this manual, although the following are brief provisions concerning in which cases and to what extent associations such as churches or religious organizations can be considered "victims" who are entitled to file a complaint.

The use of the terminology "thought, conscience and religion" suggests a potentially broad scope of application of Article 9, but in reality, judicial practice indicates a somewhat narrower approach. For example, the "awareness" of belonging to a minority (and, as a result, the desire to protect cultural identity)²⁷ does not serve as a basis for the application of Article 9. "Beliefs" are not equivalent to "opinion" in order to fall under Article 9.

Personal beliefs must meet two criteria: first, beliefs must "have a certain degree of persuasiveness, seriousness, consistency and importance", and, secondly, the beliefs themselves must not contradict respect for human dignity. In other words, beliefs should be "correlated with the importance and essential aspect of human life and behavior", and they should also be worth defending in a European democratic society.²⁸ Beliefs in matters such as euthanasia, language preferences, or the burial of human remains after death²⁹ do not belong to "beliefs" within the meaning of Article 9.

At its core, Article 9 is aimed at preventing the indoctrination of a person by the State, giving him the opportunity to adhere to, develop, improve and even completely change personal thoughts, beliefs and religion. All this concerns what is commonly called *forum internum*.³⁰ For example, the intention to vote for a certain party is, in fact, a thought limited by the voter's *forum internum*, and its existence cannot be proved or refuted until it manifests itself through the act of voting.³¹

The interpretation of Article 9 indicates that the right to have and change one's ideas is absolute, since paragraph 2 provides that "freedom to profess one's religion or beliefs" is subject to

²⁷ *Sidiropoulos and others v. Greece*

²⁸ *Campbell and Cosans v. the United Kingdom*

²⁹ *X v. Germany, 1981*

³⁰ *Van den Dungen v. the Netherlands*

³¹ *Georgian Labour Party v. Georgia*

restriction only in certain circumstances provided for by domestic law. The obvious conclusion following from the text of the Article boils down to the fact that freedom of thought, conscience and religion, which does not involve its manifestation, cannot be subjected to interference by the state. It should definitely be possible for an individual to leave a religious faith or community.³²

In any case, it is difficult to imagine the circumstances (even in the case of war or a state of emergency)³³, in which the State could try to prevent the very essence of the right to have and change personal beliefs. Nevertheless, such a situation is not so unimaginable, and although there is only one case in judicial practice concerning the unlawful deprivation of liberty of individuals in order to try to "program" the beliefs they received during their stay in the sect, the Strasbourg Court considered that the recognition of a violation of Article 5 abolished the need to consider this issue within the framework of Article 9.³⁴

Forcing a person to disclose his beliefs may thus undermine the aspect of the guarantee provided for in Article 9, since "no one should be subjected to coercion that impairs his freedom to have or adopt a religion or beliefs of his choice".³⁵ Thus, the requirement to voice their religious beliefs to people who are obliged to make an official statement, but who do not want to take an oath in court, contradicts Article 9.

The results of the population census aimed at identifying religious beliefs or belonging to a religion raise the question of what legitimate purposes the collection of these data can serve.³⁶ The requirement to indicate one's religion in identity documents contradicts a person's right to non-disclosure of one's religious beliefs.³⁷

However, there are two types of circumstances where such a requirement may be justified. First, the State may try to find out the values and beliefs held by candidates for public office, due to the

³² Darby v. Sweden

³³ Moreover, Article 15 of the European Convention for the Protection of Human Rights provides that any of the High Contracting Parties "in the event of war or other extraordinary circumstances threatening the life of a nation may take measures derogating from its obligations under this Convention only to the extent that this is due to the extraordinary circumstances, provided that such measures do not contradict its other obligations under international law".

³⁴ Riera Blume and others v. Spain

³⁵ UN Human Rights Committee, General Comment 22, article 18, CCPR/C/21/Rev. 1/Ad (1993), in paragraph 3 (in the part concerning article 18 of the International Covenant on Civil and Political Rights).

³⁶ Harris, D. J., M. O. Boyle, and S. Warbrick. *The law of the European Convention for the Protection of Human Rights*. 2nd ed., 2009, p. 429.

³⁷ Sinan Işık v. Turkey

fact that they may share views that contradict the office.³⁸ Despite the fact that such a requirement is legitimate in itself, the refusal to appoint a person to a position because of his beliefs may, in turn, constitute an interference with the right to freedom of expression in accordance with Article 10. For example, in the case of *Lombardi Vallauri v. Italy*, a university lecturer was refused an extension of a contract for a teaching position at a university with a certain religious orientation, because it was decided that his views contradicted the religious doctrine of the university where he had worked for more than 20 years. The Court found that there had been a violation of Article 10, since neither the University nor the national courts had been able to provide explanations as to how the applicant's views could affect the interests of the university.³⁹ Secondly, if a person wishes to take advantage of a special privilege on the basis of beliefs available in domestic law, he may be required to disclose and confirm his religious beliefs.

Since the text of Article 9 does not explicitly refer to the prohibition of coercion to profess or accept any religion or belief (as, for example, is the case in article 18 of the International Covenant on Civil and Political Rights), issues falling under Article 9 may arise when a person is required to act against his conscience or faith. For example, in *Buscarini and others v. San Marco*, two candidates elected to parliament were required to take a religious oath on the Bible as a condition of their appointment to the post. The respondent State tried to defend the opinion that the wording of the words used ("I swear on the holy Gospel that I will always be faithful and will observe the Constitution of the Republic ..."), in essence, was more historical and social than religious significance. Agreeing with the Commission's argument that "it would be contradictory to use a mandate aimed at representing different public views in Parliament, while obeying the oath given earlier to follow a certain system of religious beliefs," the Strasbourg Court found that the requirement to take an oath was not "necessary in a democratic society".⁴⁰

1.2. Obstacles in implementation of freedom of religion and belief in relation to COVID-19 restrictions

The largest pandemic epidemic to date in the twenty-first century is coronavirus disease (COVID-19), which caused 1,051,475 deaths worldwide as of October 6, 2020.⁴¹ This has led countries

³⁸ *Vogt v. Germany*

³⁹ *Lombardi Vallauri v. Italy*

⁴⁰ *Buscarini and others v. San Marino*

⁴¹ Worldometer, "COVID-19 Coronavirus pandemic," Worldometer, accessed October 6, 2020, <https://www.worldometers.info/coronavirus/>; "WHO announces COVID-19 outbreak a pandemic," WHO, March

around the world to impose strict rules that affect human rights, the economy, health and politics. The right to freedom of religion or belief (FORB) enshrined in the International Covenant on Civil and Political Rights (ICCPR) has been challenged and affected by the unique and urgent circumstances posed by the COVID-19 pandemic and the direct threats to society.

In the context of COVID-19, WHO has issued recommendations and guidelines to "faith-based organizations", specifically asking them to refrain from large group meetings and, if possible, to conduct "virtual rituals and belief activities". If meetings are held, social exclusion (WHO refers to "physical") should be applied.⁴² Religious rites such as touching and kissing (as well as sacred objects), holy communion (drinking from a common cup and putting waffles on the tongue), holy water fonts, foot washing, weddings, and funerals (regardless of social distance) should be avoided.⁴³ In short, "social distance" must be applied.

There are a limited number of measures in the fight against the pandemic to minimize human losses and prevent the spread of the pandemic. These can be grouped as pharmaceutical and non-pharmaceutical public health interventions. Pharmaceutical interventions include vaccines and antiviral agents, while non-drug interventions include high hygiene, social distance, isolation and quarantine (including travel restrictions). Pharmaceutical and non-pharmacological measures should usually be combined to reduce mortality and social and economic impacts. Often, as in the case of COVID-19, access to pharmaceutical measures may not be possible during the early onset of a pandemic, and only non-drug interventions such as social exclusion are available. The terms "social exclusion", "quarantine" and "isolation" are used specifically in the field of "public health" and share common roots. The main idea is to protect society by eliminating and isolating threats to society. These are traditional approaches that have been used for centuries to prevent and prevent disease epidemics.⁴⁴ Thus government's response to COVID-19 (social distancing, quarantine and isolation) is not new.

12, 2020, <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

⁴² The WHO prefers the phrase "physical distancing." See WHO, "Coronavirus Press Conference", last modified March 20, 2020, https://www.who.int/docs/default-source/coronaviruse/transcripts/who-audio-emergencies-coronavirus-press-conference-full-20mar2020.pdf?sfvrsn=1eafbff_0

⁴³ WHO, "Practical Considerations and Recommendations for Religious Leaders"

⁴⁴ Eugenia Tognotti, "Lessons from the History of Quarantine, from Plague to Influenza," *Emerging Infectious Diseases* 19 (2013): 254.

According to the ICCPR, there is no suspension (inactivation) of rights during public emergencies, but rather a proportional withdrawal.⁴⁵ Article 4, paragraph 1, of the ICCPR states that "in the event of a state of emergency threatening the life of a nation and which has been officially declared, States Parties may take action ... in breach of their obligations under this Covenant".⁴⁶ However, paragraph 1 also states that these measures must be proportional. Some rights, such as freedom of religion and belief, cannot be violated, even in extreme social situations.

Conversely, the right to peaceful assembly (Article 21), freedom of association (Article 22) and the rights of religious minorities (Article 27) may be proportionally restricted during declared public emergencies. If individuals are unable to assemble peacefully or freely in a social emergency, how does this affect the FORB, where religious and secular manifestations (for many organizations) come together and unite? Will these parts of the FORB be affected by proportional degradation during a public emergency, and will the rest of the forum not be affected? What about religious minorities? Will they still be protected under Article 18, or will their rights be proportionally violated during a public emergency because it is a right allowed to go beyond Article 27? It states that the FORB should be seen "as an integral part of the entire human rights system," not in isolation. In particular, there is a "close link between freedom of religion or belief and freedom of assembly and association." The main issues should be examined within the framework of other rights considered as the most relevant facts (*lex specialis*) and auxiliary rights (*lex generalis*).⁴⁷ However, deviations from Articles 21, 22 and 27 will also affect the FORB. Thus, religious and non-religious beliefs may affect the external parts of the forum during public emergencies declared in accordance with COVID-19, with the exclusion of the rights provided for in Articles 21, 22 and 27. All in all, "proportional degradation" becomes important.

Articles 4 and 5 of the IPC and paragraph 39 of the Siracusa Principles make it clear that proportional degradation can only occur in exceptional and factual or imminent threats to the life

⁴⁵ Johan van der Vyver, "Limitations of Freedom of Religion or belief," *Emory International Law Review* 19 (2005): 512–14

⁴⁶ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights state that such derogation is only allowed in cases of "exceptional and actual or imminent danger" See UN Commission on Human Rights, *The Siracusa Principles*, September 28, 1984, E/CN.4/1985/4, para. 39, accessed May 3, 2020, <https://www.refworld.org/docid/4672bc122.html>.

⁴⁷ OSCE Office for Democratic Institutions and Human Rights (ODIHR) "Guidelines on Freedom of Peaceful Assembly," OSCE/ODIHR (2001), para. 14, accessed May 3, 2020, <https://www.osce.org/odihr/73405?download=true>.

of a nation. "Threat to the life of the nation" is a threat to the entire population, threatening the physical integrity of the population and the political independence or territorial integrity of the state.⁴⁸ If a public health emergency is on this scale, it can be used as a basis for human rights violations. Also, unlike the limitations of Article 18, the model of exceptions is stricter in terms of the severity of the threat, the extent and severity of the restrictions imposed on rights. Some warn that the global public health discourse tends to portray health crises as emergencies, thus equating them with security threats. However, Article 4 of the ICCPR covers public health emergencies as long as they meet all the criteria. To determine this, the grounds for derogation must be interpreted in a restrictive manner by States Parties and must be "exceptional and temporary".⁴⁹ The investigation must also meet certain proportionality requirements. It must respond appropriately and adequately to the nation's "threat to life" and may not go beyond that. Measures restricting the association and assembly of groups and the rights of religious minorities should be used only for legitimate public health purposes and not to suppress dissent. Religious and non-religious communities should also be clearly informed about what emergency measures are, when they will begin and when they will end.

One of the advantages for the FORB is that if the restrictions are declared in terms of public emergencies, rather than in accordance with Article 18, only limited aspects of the law will be restricted (assembly and merger). The other advantage is that a State Party declaring a state of emergency must clearly indicate the start and end dates of the exception.⁵⁰ In contrast to the restriction provided for in Article 18, the disadvantage of the derogation of a public emergency is that, although there are some limited proportionality requirements, the derogation allows for a complete cessation of the right, not just a proportional restriction as in Article 18. Degradation involves more comprehensive measures than restrictions. Thus, parts of peaceful assembly and association (as well as the rights of religious minorities) can be completely stopped. In addition, public health waivers due to public emergencies are more flexible and may vary according to the

⁴⁸ Siracusa Principles, para. 39.

⁴⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, August 31, 2001, CCPR/C/21/Rev.1/Add.11, para. 2, accessed May 3, 2020, <https://www.refworld.org/docid/453883fd1f.html>.

⁵⁰ "Covid-19 Guidance" and Van der Vyver, "Limitations of Freedom of Religion or Belief," 512–13.

mutation of public health risk. This makes it easier to change and change the level of FORB restrictions during a pandemic.

Another possible threat to the FORB is that some of the most serious and systematic human rights abuses occur during public emergencies. A state of emergency is unilaterally declared by a State party. Although State parties are required to comply with the above requirements and proportionality measures, the declaration and decision on whether or not to implement these principles shall be decided by the State party independently.⁵¹ For example, under the assessment limit, a State Party has the right to determine whether there is an "urgent social need". The State party is simply required to make a formal statement, notify the other States parties and announce the procedures in accordance with national law. Article 4 (3) of the ICCPR also states that the UN must be informed of the reasons for the suspension and the specific rights they have violated, but this does not mean that the UN is involved in the actual decision. In general, international human rights has been widely ignored, and David Fidler has proven that international law is sensitive and inadequate to support strong pandemic cooperation during public emergencies.⁵² Accordingly, during the COVID-19, the UN Special Rapporteur on the right to freedom of peaceful assembly and association expressed concern about:

- lack of consultations of civil society organizations in restricting meetings and associations;
- dubious processes in which some restrictive laws have been passed;
- the broad and vague nature of some laws;
- lack of information dissemination;
- disproportionate fines for non-compliance;
- application of discriminatory measures;
- incomplete consideration of the results of some measures.

Whether or not countries declare public emergencies, the FORB can still be restricted under Article 18 of the ICCPR. The FORB also covers more than the rights of religious minorities and freedom

⁵¹ Siracusa Principles, para. 62.

⁵² Fidler, "To Fight a New Coronavirus: The COVID-19 Pandemic, Political Herd Immunity, and Global Health Jurisprudence."

of assembly and association. Restrictions on social exclusion COVID-19 also had a greater impact on these aspects of the FORB. For a number of organizations, the moral outcomes and impact on other aspects of the forum externum have been significant.

The health crisis has created difficulties in terms of the ability of individuals and communities to practice their religion or beliefs and has significantly limited the access of these subjects to places of worship, as well as the ability to observe religious holidays and participate in rituals associated with certain stages of life – for example, in religious funeral rites. The emergency situation also affected the ability of people to gather in private homes for collective worship, to hold community events and religious processions, as well as to preach religion or beliefs. In addition, physical distancing hindered the efforts of religious communities or communities holding certain beliefs in the field of charitable and humanitarian activities and working with the most vulnerable groups and providing them with assistance and support.

Responding to the pandemic, some states,⁵³ depending on the spread of COVID-19 in various national and local conditions, decisions were made to impose very strict restrictions, in practice equivalent to banning private prayers in places of public worship, as well as public religious gatherings. Other countries⁵⁴ imposed strict measures prohibiting public gatherings but allowed private prayers in places of public worship. Another group of countries⁵⁵ followed a moderate approach, in which public meetings were allowed if the number of participants did not exceed a certain limit (from 5 to 50 people). Individual states⁵⁶ have imposed rather mild restrictions, allowing collective religious events to be held subject to the rules of physical distancing or without any conditions at all. In these countries, some religious communities or communities adhering to certain beliefs have independently decided to introduce stricter rules than the minimum required by the law.

Most religious communities or communities adhering to certain beliefs were subject to government directives in the field of public health or voluntarily restricted their activities based on recommendations to protect public health. At the same time, some communities refused to comply

⁵³ For example, Germany, Denmark, Cyprus, Romania, The United Kingdom and Turkey.

⁵⁴ For example, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Uzbekistan, Finland, France, Croatia and Estonia

⁵⁵ For example, Netherlands, Poland, Czech Republic and Sweden.

⁵⁶ For example, Bulgaria, Hungary, Spain and Turkmenistan.

with the rules imposed, objecting to the requirements for physical distancing or insisting on the continuation of full-time worship. Some of these incidents caused a great public outcry.⁵⁷

In some cases, the authorities have arrested or detained religious leaders who refused to obey orders issued at the national or regional level. Such arrests led to an increase in social tension and unrest.

In some participating States, State and non-State actors have begun to adhere to dangerous attitudes, in particular, accusing Jews and Muslims⁵⁸ of spreading the virus. In addition, the pandemic has exacerbated existing discrimination and intolerance based on religion or belief, which has led to a surge in incitement to hostility or violence, an increase in the popularity of conspiracy theories and the search for "scapegoats". Such negative stereotypes, stigmatization, discrimination and incitement to violence or violence based on religion or belief have had a particularly negative impact on the ability of individuals and communities to exercise their right to freedom of religion or belief - for example, in terms of openly wearing religious clothing or symbols.⁵⁹

In the context of the pandemic, many individuals and communities have transferred their religious activities to the Internet. In this regard, the possibility of using this trend by the authorities of States to track, monitor and record "digital traces" in order to collect information about citizens is of growing concern. At the same time, in a number of cases, holding services in an online format for the first time allowed women and girls to participate in collective religious practice (if previously male relatives or a spouse did not allow them to leave home and visit places of departure cult). At the same time, participation in private worship services or online religious events can be very difficult or impossible for those who live in conditions of domestic oppression; women and girls who profess a religion or beliefs other than those held by male family members are particularly at risk in this regard. The widespread use of religious services in an online format also allowed converts to participate in collective religious practice (if they were previously afraid to publicly

⁵⁷ <https://en.hromadske.ua/posts/kyiv-pechersk-lavra-closes-for-quarantine-over-90-coronavirus-cases-found>

⁵⁸ <https://fullfact.org/online/coronavirus-mosque-shut-lockdown/>

⁵⁹ <https://hrwf.eu/france-covid-19-scapegoating-an-evangelical-church-in-mulhouse/>

participate in such events). At the same time, there were also cases when converts did not want to participate in online events due to fears that they might be identified.⁶⁰

Despite the quarantine, in several participating States there have been cases of law enforcement officers breaking into the homes of persons belonging to unregistered religious communities or communities adhering to certain beliefs; such actions have been regarded by some as persecution.⁶¹ Concern was also expressed about the sanitary and hygienic conditions of detention of persons in custody.⁶²

Governments should cooperate with religious and spiritual leaders in the fight against COVID-19, creating an opportunity to build trust and cooperation with wider segments of the population.

According to recent reports, some countries have responded instantly to the COVID-19 pandemic by imposing temporary restrictions on certain human rights, especially those related to isolation or quarantine. These restrictions have had a dramatic impact on a broader range of human rights, including freedom of movement and assembly, which in turn affect other rights, such as freedom of religion or belief.

In an attempt to fight an invisible enemy, countries around the world reacted differently. In Malaysia, Australia and Japan, places of worship and mosques were immediately closed to prevent the spread of the virus during religious gatherings. Saudi Arabia has closed its borders to pilgrims performing Hajj and heading to the holy land of Islam. The isolation of the whole of Italy meant listening to the mass of the faithful from home, while Pope Francis gave his blessing in the deserted St. Peter's Square in the Vatican. In the UK, humanists canceled all ceremonies indefinitely. All of the above are examples of restrictions that conflict with the right to assemble and the right to perform religious rites in public. At the same time, it remains indisputable that the pandemic requires temporary security measures that should be relaxed only when it is safe to do so.

⁶⁰ According to information received by the ODIHR, in some participating States, law enforcement officers, despite quarantine, continued to harass and invade the homes of persons belonging to unregistered religious communities or communities adhering to certain beliefs, in violation of the existing security measures introduced to combat coronavirus

⁶¹ https://www.forum18.org/archive.php?article_id=2574;

https://www.forum18.org/archive.php?article_id=2564;

https://www.forum18.org/archive.php?article_id=2563

⁶² https://www.forum18.org/archive.php?article_id=2571

In well-functioning democracies, citizens can reasonably expect their governments to lift existing restrictions in a timely manner. However, in many countries there is a fear that the pandemic may exacerbate authoritarian tendencies in the government. With regard to religious communities and minorities, this can lead to prolonged stigmatization, discrimination, and persecution.

In Iran, the government has released 85,000 prisoners to prevent the spread of the virus, but has reportedly placed some imprisoned members of the Sufi religious community in overcrowded cells.⁶³ In India, the pandemic is being used by government officials from the ranks of the Hindu majority to combat the Muslim minority, whose members are blamed for the increase in the number of cases of the disease.⁶⁴ In Georgia, the authorities allowed services to be held for Orthodox Christians during Easter but reacted with hostility when Muslims intended to gather during Ramadan.⁶⁵

In countries where leaders and politicians have a historical experience of prioritizing private interests at the expense of public ones, the prevailing level of public confidence in political leadership is often low. In these countries, new restrictions may be introduced in addition to those that citizens already face with fear and suspicion. The integrity of public officials will be questioned because they do not provide adequate public services, such as health services. In such countries, citizens have little or no positive experience in their interaction with the state. Recommendations and measures for health protection can be ignored either because they are difficult or even impossible to implement, or because citizens are not convinced of the honesty of the government's intentions.

In the face of skepticism, forcing people to accept time constraints in their lives can be an even more difficult task for state leaders. Involving influential actors such as local, religious, and spiritual leaders by giving them an active role in supporting measures to curb the virus can make a difference. However, in countries where the overall level of trust in politicians is low, proper cooperation between the government and various parts of society, in itself, can become a problem.

⁶³ <https://www.businessinsider.com/coronavirus-covid-19-iran-releases-eighty-five-thousand-prisoners-2020-3>

⁶⁴ Stigma and fear during COVID-19: essentializing religion in an Indian context, 31 May 2021, <https://www.nature.com/articles/s41599-021-00808-8>

⁶⁵ Eastern Europe and Central Asia confronted with COVID-19: Responses and responsibilities, Amnesty International, <https://www.amnesty.org/en/documents/eur01/2215/2020/en/>

CHAPTER II. INTERNATIONAL INSTRUMENTS AND FREEDOM OF RELIGION AND BELIEF IN AZERBAIJAN

2.1. Domestic legislation of regulation of freedom of religion and belief

Azerbaijan is the largest country in the South Caucasus and has 10 million of population. As to the Article 18 of the Constitution of the Republic of Azerbaijan is a secular state thus state and religion are separated, and equality of religions is guaranteed. Most statistics contend that ninety-six per cent of Azerbaijani population is Muslim, and approximately sixty-five percent is Shia and the rest is Sunni. The remainder (four per cent) is Russian Orthodox Church, Georgian Orthodox Church, Seventh-day Adventists, Molokans, Roman Catholic Church, Jehovah's Witnesses, Jews and Baha'i, the International Society of Krishna Consciousness (ISKON) and those professing no religion.⁶⁶ According to the State Committee on Religious Associations (SCWRA), there are 942 registered religious communities in Azerbaijan, of which 35 are non-Islamic (Christian – 24; Jews – 8; Krishna - 1; Bahais – 2). There are 2250 mosques, 136 of which are situated in Baku, 14 churches and 7 synagogues.⁶⁷

The religions of Azerbaijan consist of a set of religious movements spread among the peoples and ethnic groups living in the present territory of the country. There are various religious denominations in the Republic of Azerbaijan.

According to Article 48 of the Constitution of the Republic of Azerbaijan, everyone has the right to freedom of conscience. They have the right to determine their religion independently, to practice any religion alone or in association with others, or not to practice any religion, and to express and disseminate their beliefs in relation to religion. Paragraphs 1-3 of Article 18 of the Constitution state that religion is separate from the state in the Republic of Azerbaijan, all religious beliefs are equal before the law, and it is prohibited to spread and propagate religions that degrade the human person and contradict the principles of humanity. At the same time, the state education system is secular.

⁶⁶ Azerbaijan 2017 International Religious Freedom Report, US State Department, page 2, <https://www.state.gov/documents/organization/281126.pdf>

⁶⁷ The State Committee on Religious Associations of the Republic of Azerbaijan http://www.dqdk.gov.az/az/view/pages/306?menu_id=83

The Law of the Republic of Azerbaijan on Freedom of Religion (1992) guarantees the right of every person to determine and express his or her attitude to religion and to exercise that right.⁶⁸

The law provides further guarantee for religious freedom in the Republic of Azerbaijan and was made in accordance with the Constitution of the Republic of Azerbaijan and international treaties where Azerbaijan is one of the parties. This Law establishes rights, responsibilities and status of religious groups and regulates their relations. As to the Law everyone has the right to practice any religion, alone or in association with others, and to express and disseminate his or her religious beliefs.

The Article 1 of the Law indicates that no person shall be prevented from expressing his religious beliefs, participating in worship, religious rites and ceremonies, or learning religion. No one may be compelled to express (demonstrate) his or her religious beliefs, perform religious rites, or participate in religious ceremonies. It is not allowed to propagate a religious belief or way of life by using or threatening to use force, as well as for the purpose of creating racial, national, religious, social enmity and hostility. The spread and propagation of religions (religious movements) that degrade human dignity or contradict the principles of humanity are prohibited.

According to the Article 1 of the Law freedom of religion may be restricted only in the interests of public safety, public order, health or morals, or the protection of the rights and freedoms of others, as provided by law and where necessary in a democratic society.

According to Article 18 of the Constitution, people of all religions have the right to freely choose and worship their religion. The law protects this right from being violated by either the government or individuals. However, in an effort to limit the influence of voluntary extremists from abroad, the country adopted two amendments to the Constitution on March 18, 2009 that could have a direct impact on religion. Paragraph 2 of Article 18 of the Constitution was amended and approved as follows: "It is prohibited to spread and propagate a religion (religious movement) that degrades the honor and dignity of people and contradicts the principles of humanism." The following new paragraph 5 has been added to Article 48, which states: "No one may be compelled to express

⁶⁸ The Law of the Republic of Azerbaijan on Freedom of Religion, 1992, available at <http://e-ganun.az/framework/7649>

(demonstrate) his or her religious beliefs, perform religious rites or participate in religious ceremonies."

According to the Constitution, everyone has the right to choose and change their religion (including atheism), to join or create the religious groups of their choice, and to practice their religion, unless it requires them to share their faith with others. The Article 1 of the Law on Freedom of Religion explicitly prohibits the government from interfering in the religious activities of any individual or group; however, there are exceptions, in which the activities of a religious group "violate public order and stability." A number of legal provisions allow the government to regulate religious groups, for example, the law on religious freedom requires that religious organizations, including individual communities of the same denomination, be registered with the government.

Azerbaijani government always has claimed that there is cultural tolerance in the country and it is helpful to fight against discrimination and intolerance. However, most of the domestic human rights groups report that there is a growing persecution of Muslim activists. Lots of restrictive matters have been introduced to the government on religious issues. According to the Working Group on the Unified List of Political Prisoners in Azerbaijan, in February 2019, 67 political prisoners were arrested on religious grounds.⁶⁹ So, the restrictive national legislation has played a role in increase of state surveillance on religious communities, especially Islamic community. The measures of the government included controlled access to worship places, limitations on the conduct of religious ceremonies and ban of non-registered religious communities.

One of the main steps of the government was the adoption of the Law on Combating Religious Extremism in December 2015 that gave the authorities the power to close down certain religious communities by giving impunity to their actions during special operations.⁷⁰ Just before the Law entered into force there was a special operation in November 2015 in the village of Nardaran which is in the northeast of Baku. The village is the basis of Muslim Unity Movement (MUM) which is not a registered religious group. The members of the group define themselves as nonviolent and conservative. The special operation which is also known as "Nardaran operation" ended up in

⁶⁹ <https://www.humanrightsclub.net/siyasi-m%C9%99hbuslar/2019/az%C9%99rbaycanda-siyasi-m%C9%99hbuslarinvahid-siyahisi-hesabat/>

⁷⁰ Law of the Republic of Azerbaijan "on combating religious extremism" adopted on December 4, 2015. No. 27-VQ, available at <http://e-qanun.az/framework/31509>

arrest of dozens of Muslim Unity Members and it was reported that they faced ill-treatment and torture. Most of the members were convicted on terrorism, murder and attempts to seize power by violent means.⁷¹

As to international standards there is no mandatory state registration of religious organizations, thus state registration should be voluntary, and the organizations and communities should have their own autonomy. However, as to domestic law of Azerbaijan religious organizations must get through state registrations in order to operate. This requirement makes the exercise of the right conditional to state authorization and totally limits freedom of religion in Azerbaijan. The freedom of religion and belief cannot be a subject to registration regardless of being manifested by a person or a group of people, publicly or privately due to the fact that it is given to human beings and communities as a right and cannot depend on state approval. Actions that are usually made by Azerbaijani government to prohibit or sanction unregistered religious communities severely violate international human rights standards. According to OSCE and the Venice Commission Guidelines international human rights law protects religious and belief communities regardless of the fact that they have been approved by state and have a legal personality status or not. The Venice Commission Guidelines call states to respect religious freedom especially on this matter.⁷²

Even though it is acceptable by international standards for states to adopt regulations on the registration and operation of religious communities and organizations, states cannot interfere existence of religious organizations conditional on state registration.⁷³

The Law on Freedom of Religion sets force procedures on state registration of religious organizations. Article 12 of the Law sets out the following requirements for religious communities:

1. For the state registration of a religious community, at least fifty adults who have created it or their authorized representatives shall apply to the religious center or department with an application attached to the founding protocol and charter (regulations) of the community.
2. The application should also include a list of founders of the religious community, indicating citizenship, place of residence and date of birth, copies of identity documents, basics of

⁷¹ Amnesty International statement, Azerbaijan: Torture and Travesty of Justice In Nardaran Case, 6 February 2017, available at <https://www.amnesty.org/download/Documents/EUR5556332017ENGLISH.pdf>

⁷² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e)

⁷³ Ibid.

religious education, including the history of the religious community, forms and methods of its activities, traditions, attitude to family, marriage and education. information on restrictions on the rights and responsibilities of community members is attached.⁷⁴

According to article 7 of the same Law Islamic religious organizations need to submit reports to the Caucasus Muslim Department (CMD).⁷⁵ However, there is no such a condition for non-Islamic organizations. CMD has a wide control on management of Islamic organizations, especially their compliance with the Law on Religious Freedom.

The abovementioned regulations somehow contradict the article 18 of the Constitution of the Republic of Azerbaijan since there it is stated that religion is totally separated from state and religious beliefs are equal before the law. Side by side with it article 5 of the Law on Religious Freedom indicates that the state does not entrust religious organizations with any work related to it and does not interfere in their activities.

So, the requirement of state approval interferes operation of religious organizations and is not in accordance with international standards. The ECtHR in its case law has indicated that that ‘States cannot legitimately denote religious beliefs or form of their manifestations’ and that ‘the determination by the state of any preference to any particular religious leader ... is a violation of religious freedom’.⁷⁶ The mandatory requirement for religious unities to possess a religious leader and having a requirement for Islamic religious organizations to have a registration from the CMD interfere the process of state registration and also proves the fact that state and CMD have an enormous authority on Islamic religious organizations which is not in line with international human rights standards.

Side by side with the restrictions to effective implementation of freedom of religion there are several requirements to the list of members of the religious organizations. As to article 12 of the Law on Freedom of Religion and Belief the minimum number of founding members for a religious

⁷⁴ The Law of the Republic of Azerbaijan on Freedom of Religion, 1992, available at <http://e-ganun.az/framework/7649>

⁷⁵ According to Article 9 of the Law on FRB, the CMD is a united religious center or office for all Islamic organizations and for non-Islamic religious organizations the center or the office is considered to be their organization.

⁷⁶ ECtHR, Metropolitan Church of Bessarabia and Others v. Moldova, chamber judgment, of 13.12.2001, para 117.

organization is 50 people and the number increased from 10 to 50 as to the amendment to the same Law on 11 June 2011.⁷⁷ The requirement makes it a lot more difficult for religious communities to gain a status and operate as an organization.

As to the article 12 of the Law on Freedom of Religion it is stipulated that the religious organizations can just operate in the place that was indicated in their application for state registration. So, this restriction limits their freedom to operate in more than one place. As to OSCE/ODIHR and Venice Commission the requirement is restrictive and cannot be welcomed in a democratic society.⁷⁸

The other major problem about domestic law is Islamic religious organizations are not totally free to choose their place of establishment. Article 8 of the Law indicates that “Islamic religious communities are established in mosques by citizens of the Republic of Azerbaijan”. The provision limits the autonomy of religious organizations, more specifically it limits the place of establishment of Islamic religious organizations to mosques. Furthermore, the Law on Freedom of Religion also limits right to establish Islamic organizations to the citizens of the Republic of Azerbaijan and foreigners and stateless persons in the country do not possess the right to freedom of religion as it is limited just for citizens.⁷⁹

In several cases the Azerbaijani Government has closed worship places, including mosques. In 2009 which is the year that Baku was declared a capital of Islamic Culture, three mosques were closed and destroyed on the ground of “illegal construction”.⁸⁰ And according to the state officials the documents of the mosques were out of order.⁸¹ Majority of the mosques in Baku such as Lezgin Mosque, the Abu Bekr Mosque and the Turkish Mosque were closed and they were Sunni mosques and all of them were closed on the ground of necessary repair.⁸² All in all the authorities contended on the fact that all the mosques should be controlled by the Caucasus Muslim Board which is mostly perceived as a state controlled organization.⁸³

⁷⁷ Before the law was amended in June 2011, it required for at least 10 members.

⁷⁸ OSCE/ODIHR and Venice Commission, Guidelines for review of legislation pertaining to religion or belief, June 2004, paras 80–82

⁷⁹ Ibid 40, para 71

⁸⁰ <https://az.trend.az/azerbaijan/society/1492012.html>

⁸¹ <https://az.trend.az/azerbaijan/society/1468391.html>

⁸² http://www.forum18.org/archive.php?article_id=2429

⁸³ Ibid.

2.1. Implementation of freedom of religion in practice

There have been additional cases of discrimination on religious grounds in Azerbaijan. The Venice Commission and the ODIHR consider that some aspects of the legal framework for religious freedom do not comply with international norms.⁸⁴ The definition of "religious freedom" includes the right to perform religious rites in private and public as well as places of worship, to allow missionary activity, teaching, practice and observance, to reform the state registration system to allow individuals and religious communities to practice their religion without state registration, and to free religious literature. their reports should include key recommendations, such as the removal of unreasonable restrictions on the right to disseminate. The current unreasonable restrictions in this area often have a negative impact on Muslim communities and non-traditional religious groups, leading to discrimination against them.

Azerbaijan did not pass the law on alternative services, which it promised when it joined the Council of Europe in 2001. Although the Constitution allows for alternative service (Article 76.2 of the Constitution of Azerbaijan), a person belonging to a religious minority who refused military service because of his beliefs was convicted in April 2014 and August 2015 for evading military service.

According to Article 22.2 of the Law on Freedom of Religion, prior consent is required before the import and preparation of religious literature and other material. According to the Venice Commission and the ODIHR, this is a direct violation of Article 10.1 of the ECHR. Authorities say an additional decision is required to approve the distribution of this literature. In addition, religious communities were told that any material distributed should be sealed. However, the State Committee for Work with Religious Organizations did not have the necessary seals. Members of religious communities are punished under Article 167 of the Criminal Code and Article 300 of the Code of Administrative Offenses and face pre-trial detention if they do not comply with these rules. There is a risk of criminal prosecution under Articles 299 and 300 of the Code of Administrative Offenses for persons "engaged in religious propaganda" and for violating other provisions of the legislation on religion.

⁸⁴ Venice Commission and OSCE / ODIHR 2012, §§ 101 and paragraphs

It is obvious that public authorities need to change their general approach to religious freedom. It is crucial that their legislation be brought into line with the joint recommendations of the Venice Commission and the ODIHR, abandon future plans to restrict religious freedom, and end discrimination and restrictions on religious freedom that the ECHR does not accept. Until the necessary legal changes take effect, public authorities must interpret and apply the current legislation in accordance with the mandatory provisions of Articles 9 and 14 of the ECHR and the case law of the ECHR, should refrain from arrests and sentencing.

The religious restrictions have not only been imposed on non-Muslim communities but also to Muslim communities. Muslims in Azerbaijan (mostly Shiites) face additional restrictions:

-All Muslim religious leaders are appointed by the state-supported Caucasian Muslims Office and must be Azerbaijani-educated citizens;

-All mosques must be subordinated to the Caucasus Muslim Board, and only Azerbaijani citizens can establish Islamic religious communities.

In 2013, no Muslim community that was not affiliated with the Muslim Board had legal status. Police continue to enforce a 2008 government decree banning worship outside the mosques.⁸⁵ The Ministry of Education introduced the school uniform in 2010, which in turn bans the Islamic headscarf.⁸⁶ The introduction of the ban in universities in 2013 led to many complaints and protests, which led to the arrest of people.⁸⁷ At the end of 2013, two Muslims were fined one year's salary for worshipping unofficially in a cemetery and for not having official permission to do so.

Other than that, there is a state censorship on religious literature. State permission is required to produce, import, export, or distribute religious literature. Religious literature may not be sold outside officially approved locations, and foreigners may not preach. First-time offenders face up to two years in prison, while "conspiratorial" or organized groups or repeat offenders face between two and five years in prison. Legal bans on unidentified "religious propaganda" by foreigners and stateless persons have led to the deportation of some Muslims, Protestants, and Jehovah's

⁸⁵ <https://2009-2017.state.gov/documents/organization/134425.pdf>

⁸⁶ <http://arannews.com/News/20051/Hicabl%C4%B1lar-tamh%C3%BCquqlu-v%C9%99t%C9%99nda%C5%9Flard%C4%B1r--.html>

⁸⁷ <https://news.milli.az/society/583481.html>

Witnesses, as well as former Soviet citizens and long-term residents. Although the State Committee for Work with Religious Organizations announced in May 2013 that it would publish a list of banned literature, the list has not yet been made public. The government raided homes and confiscated religious literature, including Koran books, works by Turkish Muslim theologian Said Nursi, and Baptist literature. He also confiscated religious texts on the border. According to the report, the Georgian Orthodox Church, the Catholic Church, and some Muslim groups can more easily access or publish literature.

Side by side with it, closure and confiscation of places of worship is another issue that religious communities confront in Azerbaijan. Since 2009, many places of worship in Azerbaijan, including the Alban Mosque in Ganja, the Martyrs' Mosque in Baku, and the Juma Mosque in Nakhchivan, have been closed or destroyed. Baptists in Baku are waiting for the return of their historic places of worship. At the end of 2012, the Baku Baha'is lost their last historic building due to the city's reconstruction. The Georgian Orthodox Church is trying to reopen four churches and build a monastery in the Gakh region. The government's answer to the closure and confiscation is renovation. Thus, they cover the violation by calling it a restoration, however the main intend is to close some of the main worship places.

Also, it should be noted that even in some regions of Azerbaijan there is no worship place for some religious groups. For instance, let's overview the situation of religious groups in Nakhchivan which is an autonomous republic in Azerbaijan. The residents in that province face more severe restrictions on religious freedom than in other regions of Azerbaijan. Thus, local Sunni Muslims have no place to worship. Even some religious communities like Baha'is, Adventists and Hari Krishnas are banned in that region.

As it has already stated, Azerbaijani authorities need to make a lot of changes to the legislation, implementation of the rules and their suitability to international norms.

According to the secular nature of the State all Azerbaijanis can live in peace and with equal rights regardless of their religion. There are specific occasions which prove that Azerbaijan is a secular state:

1. All the religions are equal as to the Constitution. There is no specific status for the majority religion;

2. All of the three branches of government are secular. Thus, sharia law is not applied in any matters;
3. A general religious legislation is applied for Muslim and non-Muslim communities;
4. Religion is not a part of curriculum in Azerbaijani public schools;
5. Choosing or changing one's religion is not limited by the legislation. Everyone is free in their religious choices;
6. Other religions are not affected by the majority religion. For example, consuming alcohol and pork products is not allowed by Islam, however, their purchase and sale are available for non-Islamic part of the population;
7. The most important women and men are equal before the law, they enjoy equal rights. There is no discrimination against women in property rights, parental rights and so on. Side by side with it, freedom of religion is applied to marriage as well. So, male and female Muslims can get married with people that are practicing another religion. The non-Muslim spouse should not convert to Islam.

Freedom of religion protects wide range of activities both in private and in public sphere. As to article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief it is said that freedom “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief”.⁸⁸ In the article 9 ECHR lists down several activities such a worshipping and practice as an indicator of religion or belief.⁸⁹ The same article indicates right of religious people to get together for a worship in a peaceful way or do any kind of religious rituals. Additionally, in the UN HRC Resolution 6/37 there is recommendation that Member States should ensure that each individual has right to freedom of religion and to establish places of worship for religious purposes.⁹⁰

According to article 21 of the Law on Freedom of Religion religious ceremonies can be carried out independently in worship places, religious institutions, cemeteries and, etc. However, the problem is that only registered religious communities can carry out such kind of ceremonies. It

⁸⁸ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted in 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>

⁸⁹ ECHR, Gulerand Ughur v. Turkey, app no. 31706/10 and 33088/10, 02 December 2014, para 35

⁹⁰ Elimination of all forms of intolerance and of discrimination based on religion or belief, UN HRC Resolution 6/37 <https://www.right-docs.org/doc/a-hrc-res-6-37/>

also means the ceremonies can only be carried out by the citizens of the Republic of Azerbaijan, as the law does not allow foreigners or non-citizens to do so. Rituals and ceremonies related to Islam must be performed by a citizen of the Republic of Azerbaijan who not has received religious education abroad in accordance with the procedure established by the Law on Freedom of Religion in coordination with the relevant executive authority.⁹¹ Criminal Code of the Republic of Azerbaijan covers a punishment for such a violation, thus, violation of such requirement is punishable with a fine of 2000 to 5000 AZN or imprisonment up to a year.⁹² The following provision of the Criminal Code indicates that a foreigner and stateless person can be imprisoned for the same action for a period between one and two years. The beforementioned provisions are extremely disproportionate and proves that state's control on freedom of religion is quite tightened in Azerbaijan which is a serious violation of human rights and international standards.

As to domestic legislation there is at least some freedom of religion, however, when we glance at the practice, we can find out lots of violations of the freedom of religion and belief. As an instance Sardar Babayev was arrested in July 2017 under article 168-1.3.1 of Criminal Code on the ground that he obtained his religious education outside of the country. He led Friday prayers with CMD permission. He got his religious studies in Iran and also studied in Baku, Azerbaijan. He led Friday prayers since 2009 at Juma of Masalli. He was charged for leading Friday prayers on 4th of November, 18th of November and 9th of December in 2016.⁹³ In the end of 2016 the head of Masalli District administration made a compliant about Sardar Babayev to police. In court case Sardar Babayev was jailed for three years. He had been under arrest since February 2017 and his request for Koran and a prayer mat had been denied.⁹⁴

When it comes to religious attributes and clothing there is no specific prohibitions on religious symbols and clothing in domestic legislation of Azerbaijan. However, religious attributes and slogans are prohibited in public places that are outside of worship places.

States possess a large margin of appreciation related to the presentation of religious attributes. A person that wants to maintain his/her religious beliefs as a principal principle of his/her life can

⁹¹ The Law of the Republic of Azerbaijan 29-VQD adopted on 04 December 2015 (Azerbaijan Newspaper, 06 December 2015, 269, Compilation of the Legislation of the Republic of Azerbaijan, 2015 year, 12, article1443)

⁹² Criminal Code of the Republic of Azerbaijan, Article 168.1

⁹³ http://www.forum18.org/archive.php?article_id=2429

⁹⁴ Ibid

wear symbols and clothes of the religion that he/she follows. Wearing a religious wear and symbols comes from a person's religious beliefs and faith and it is protected by the ECHR.⁹⁵

There is no specific legislative prohibition in domestic law of Azerbaijan regarding to the utilization of religious clothes. Everyone is allowed to go to the public buildings and universities in preferred clothing, however there is an exception with regard to school uniforms.⁹⁶ In article 21 of the Law on Freedom of Religion it is stipulated that religious slogans and attributes are prohibited in public places which is outside of the worship space.⁹⁷ When it comes to the religious flags, they can be put inside the worship places. The main problem in the provision is there is no clear definition of "religious slogans and attributes", and it makes it harder to implement and understand.

There have been numerous cases related to the given provision as well. For example, in 2010 Ministry of Education of Azerbaijan forbade students to wear hijabs at secondary schools. It was forbidden for girls to wear hijab as it broke the rules on school uniforms.⁹⁸ After this, thousands of Muslims in Azerbaijan held demonstrations against the new rule.⁹⁹ The protests were held in December 2010, May 2011 and October 2012. During the last demonstration protestors faced violent attack by the police.¹⁰⁰ In the end of the protests several religious leaders got arrested by the government and some supporters of the leaders were sentenced to long prison terms.¹⁰¹

Religious education is a part of implementation of freedom of religion as well, so, it is necessary to analyze international provisions and Azerbaijani legislation to make the situation of religious education clear in Azerbaijan. Firstly, as to article 18 of the ICCPR everyone has right to freedom of thought, religion and belief. As to article 2 of Protocol 1 to the ECHR states must respect

⁹⁵ ECHR, *Eweida and others versus United Kingdom*, Appl. nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013, paragraphs 89-94

⁹⁶ Article 14.10 of the Law on Education provides that "the uniforms of the students in all educational institutions are determined by the charter of the educational institution",

http://www.e-ganun.az/alpdata/framework/data/18/c_f_18343.htm

⁹⁷ The Law of the Republic of Azerbaijan 29-VQD, Azerbaijan Newspaper, 06 December 2015, № 269, Compilation of the Legislation of the Republic of Azerbaijan, 2015 № 12, article 1493 <http://e-ganun.az/framework/31521>

⁹⁸ <https://web.archive.org/web/20110523080147/http://www.presstv.ir/detail/156365.html>

⁹⁹ <https://www.azadliq.org/a/2258013.html>

¹⁰⁰ <https://www.azadliq.org/a/2244300.html> , <https://modern.az/az/news/29526>

¹⁰¹ Azerbaijan: Behind tolerance facade Freedom of Religious or Belief Communities, Report of Norwegian Helsinki Committee, 2015, page 44.

parents' rights to make it sure that education and teaching at school is in accordance with their religious beliefs.

As to article 6 of the Law on Freedom of Religion educational system of state and religion are separated and religious studies, religion and philosophy courses and all in all, religion related studies may be included to the curricula of state educational institutions. However, exemption from such teaching is not covered in any of the provisions of the Law. It is a contradiction to the article 1 of the same Law and there it is stated that parents or guardians, by mutual consent, have right to raise their children in accordance with their religious beliefs and attitudes. As to article 18 (1) of ICCPR and 9 (1) of the ECHR everyone has freedom of religion also right to education as to article 2 of Protocol 1 of the ECHR. However, article 6 of the Law on Freedom of Religion indicated that religious education can be attributed to just citizens of the Republic of Azerbaijan. Restrictions of freedom of religion based on the citizenship is not allowed by ECHR and ICCPR.

In addition to this, as to article 6 of the Law on Freedom of Religion religious organizations establish courses for the study of the holy books of youth and the elderly in accordance with the charters of these religious organizations, with the consent of the religious centers and institutions to which they are subordinated.

According to the article 10 of the Law religious educational institutions may establish religious centers and departments only for the training of clergy and other personnel in religious specialties. The provision interferes the right to freedom of religion thus, it violates the right of individuals that are not members of religious unities and departments to manifest their religion through praying and teaching. In a democratic country such a restriction cannot be accepted as it is extremely restrictive.

Forcing individuals to take part in religious activities and religious education is criminalized under the article 167-1 of the criminal Code of the Republic of Azerbaijan. However, the word "forcing" is not clearly defined in the provision.¹⁰² The punishment for the deed is a fine or two years of imprisonment for individuals and a larger fine or from two to fine years of imprisonment for officials. Side by side with it, members of religious unities are punished for holding meetings for children and underage people organizing religious bodies in a way of unassociated with holding

¹⁰² Criminal Code of the Republic of Azerbaijan, Article 167-1

religious ceremonies as to article 515.0.3 of Administrative Code.¹⁰³ The individuals are fined between 1500 and 2000 AZN.

¹⁰³ Administrative Code of the Republic of Azerbaijan, Article 515.0.3

III. COVID-19 AND FREEDOM OF RELIGION AND BELIEF IN AZERBAIJAN IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

3.1. Covid measures, legislation on emergency situation

The World Health Organization announced on March 11, 2020 that the Covid-19 pandemic had occurred. This global health crisis has required governments to respond quickly, decisively and effectively to save lives, prevent the spread of the virus and prevent the overcrowding of public health systems. In many countries, governments have introduced emergency legal frameworks to repeal some routine (democratic) procedures and to set aside standard political and legal accountability mechanisms as part of the Covid-19 response. Elections were postponed and sometimes annulled, and central governments often made stronger commitments that combined the powers assigned to other local or regional governments. Although both the effects of the pandemic and the response to infection are felt on a global scale, in countries striving for peace and democratic transition, the results are often quite different.

A state of emergency is a special legal regime of powers and rules applied when a country faces a serious threat. In a state of emergency, normal laws are often overturned, and special and emergency measures are taken. Covid-19 responses showed different ways of institutionalizing emergency response. In response to Covid-19, three main approaches to the application of emergency measures were discussed:

- Rely on constitutional provisions that allow for emergency approaches;
- Interpret existing legislation or adopt new laws to provide a basis for emergency measures;
- Legally uncertain approaches that have a less clear legal basis, such as enforcement measures that do not have (or do not appear to have) a specific legal basis.

In the context of a pandemic, emergencies differ in terms of the procedures to be followed and the nature of the emergency, as well as the scope of competent government action. However, each allows for a number of flexible powers and appropriate measures to combat the pandemic. Four general elements of the constitutional provisions on the state of emergency have been identified:

- the conditions for its declaration;
- delegation of powers;

- restrictions on its use;
- provisions for legislation or judicial review.

For example, the constitution may require parliament to authorize a state of emergency before or after a state of emergency is declared.

The state of emergency is a temporary measure and the purpose of the state of emergency is to eliminate the circumstances that led to its application, to restore the rule of law, to ensure the rights and freedoms of citizens, foreigners, and stateless persons, regardless of the form of ownership. creation of conditions for normal functioning of all legal entities and protection of the Constitutional structure of the Republic of Azerbaijan.

The grounds for the application of the state of emergency are determined by Article 112 of the Constitution of the Republic of Azerbaijan. Hence, as to Article 112 the President of the Republic of Azerbaijan in the event of natural disasters, epidemics, epizootics, major environmental and other accidents, as well as actions aimed at violating the territorial integrity of the Republic of Azerbaijan, rebellion or coup d'état, violent riots, the lives and safety of citizens or the state. In the event of other conflicts threatening the normal functioning of its institutions, it shall impose a state of emergency in certain parts of the Azerbaijan Republic and submit its decree to the Milli Majlis of the Azerbaijan Republic for approval within 24 hours.¹⁰⁴

During the period of the state of emergency, the relevant executive authority may provide for the implementation of the following measures and temporary restrictions in the area of its application:¹⁰⁵

- to impose restrictions on the freedom of movement of citizens, the entry and residence of foreigners and stateless persons in the territory, and to establish a special regime governing their movement;
- banning or restricting the holding of meetings, rallies, demonstrations, street marches and pickets, as well as other mass events;

¹⁰⁴ The Constitution of the Republic of Azerbaijan, article 112, <http://e-qanun.az/framework/897>

¹⁰⁵ The Law of the Republic of Azerbaijan on Emergency State, <http://www.e-qanun.az/framework/6193>

- prohibition of suspension of the activity of enterprises and organizations by strike or other means;
- restriction of traffic and their inspection;
- application of curfew, i.e., prohibition of citizens to be on the streets or in other public places at certain times of the day without identity documents and special permits;
- temporary relocation of the population from endangered areas to safe areas, provided that they are provided with stationary or temporary accommodation;
- application of quarantine, implementation of sanitary-anti-epidemic, veterinary and other similar measures, as well as civil protection measures provided by the legislation;

Forces and means of relevant executive authorities are involved in order to perform the following tasks:

- creation of a special traffic regime in the area where the state of emergency is applied;
- protection of facilities that ensure the life and transport of the population, as well as the life and health of people, as well as facilities that pose a great threat to the environment;
- separation of the parties to the conflict, accompanied by violent actions, using weapons, military and special equipment;
- participation in the termination of the activities of illegal armed groups.

So, I would like to analyze the topic starting with the restrictions that were imposed in Azerbaijan during emergency situations, including COVID-19. One of the most recent restrictions were imposed on 24th of September considering the increase in the number of vaccinated citizens in the country, as well as the steady decline in the dynamics of infections, it was decided to apply the next phase of mitigation measures under a special quarantine regime.

According to the decision of the Operational Headquarters under the Cabinet of Ministers, from October 1, 2021, the restriction on the suspension of public transport on weekends, as well as in

the Baku Metro will be lifted. In addition, it was decided to resume the activities of the following areas of work and services from October 1, 2021.¹⁰⁶

-activities of recreation and entertainment venues (including clubs), as well as children's entertainment venues (including those in the boulevards and parks);

-activities of cultural facilities (including concert halls), as well as conference halls, cinemas, theaters, provided that they do not exceed 50 percent of the total capacity;

-activities of children's and other entertainment centers under large shopping centers, as well as cinemas with a total capacity of not more than 50 percent.

The restored work and service areas are open until 00:00, and the services provided in the closed areas of these work and service areas can be used only by persons over 18 years of age if they have a COVID-19 passport. Individuals who are unable to be vaccinated for certain reasons may enter places where a COVID-19 passport is required with a COVID-19 vaccine with a Certificate of Contraindications.

Eighty percent of the workforce in these areas must have a COVID-19 passport (COVID-19 vaccination certificate or COVID-19 immunity certificate).

Also, taking into account the fact that long-term indoor gatherings create favorable conditions for the spread of coronavirus infection, it was decided to carry out regular intercity passenger transport between cities and regions in order to reduce the risk of human transmission of COVID-19.

According to the decision, except for regular passenger transport between Baku and Sumgayit, Absheron region, except for persons under 18 years of age when carrying out regular passenger transport by rail and road (except for passenger transport by taxi) from cities and regions of the country passengers are required to be vaccinated against the first dose of COVID-19 from October 1, 2021, and the second dose from November 1, 2021, or to have a certificate of immunity against COVID-19.¹⁰⁷

¹⁰⁶ <https://525.az/news/176619-bezi-mehdudiyetler-yumsaldilir--operativ-gerargah?fbclid=IwAR0LyrjbS8anl3ULrysPCou2N6XSov9fIFpqZ0-ZyPOJRISCzUAiGzKbiw>

¹⁰⁷ <https://nk.gov.az/az/document/5581/>

Verification of COVID-19 passports will be carried out through a special mobile application ("Check App"). The application was created by the State Agency for Citizen Services and Social Innovations under the President of the Republic of Azerbaijan and has been used since the 1st of September in all places where a COVID-19 passport is required.

Appropriate control measures will be continued to ensure compliance with general rules such as the use of personal respiratory protection, social distance and hand hygiene, as well as other applicable requirements. Legal entities will be prosecuted in accordance with the Code of Administrative Offenses of the Republic of Azerbaijan.

The owner of the premises is directly responsible for the violations in the organization and implementation of the process of verification of the COVID-19 passport in the premises operating in the areas of work and services where the COVID-19 passport is required.

It could be said that the restrictions that are listed above are not quite proportional considering the fact that it has been a long time that we have the pandemic, and they should be eased for improving economic situation and mental health of population. However, only 43 percent of the population has been vaccinated, thus, going back to pre-pandemic life sounds very risky since vaccinated people is not even half of the population.¹⁰⁸

When it comes to the restrictions that are applied to religious communities, the most recent ones are adopted on the 31st of May in 2021. Thus, The Caucasus Muslims Office has announced the rules to be followed in mosques and other places of worship on the basis of the recommendations of the Operational Headquarters under the Cabinet of Ministers.

According to the information,¹⁰⁹ only those who have a COVID-19 passport (vaccination or immunity certificate) are allowed to participate in religious ceremonies.

People with symptoms of COVID-19, as well as children under the age of 14 are not allowed to come to mosques or other places of worship.

¹⁰⁸ <http://abc.az/mobile/view.php?id=79397&lng=az>

¹⁰⁹ https://www.bbc.com/azeri/azerbaijan-57237885?fbclid=IwAR3EUPAz5eycdv_GtttyHmcNK4m_iWdIEL-6XCo6KFbYDvukcESIK2BwWbU

Those wishing to worship must come to the mosque during the prayer or the relevant worship and leave the area as soon as it is over.

In the meantime, other rules, such as grouping in public places, wearing masks, and waiting for distance, must be followed.

Religious worship should be organized at the same time, provided that it does not exceed 50% of the places of worship (50 people in total).

Imams, community leaders, and other places of worship should monitor the implementation of the requirements in mosques and other places of worship, according to regulations developed on the basis of the recommendations of the Coronavirus Operations Headquarters.

Religious places of worship are open since June 10, 2021. However, unfortunately till this decision the worship places were closed due to restrictions, performing religious acts was not possible even by following quarantine rules.

3.2. Legality and proportionality of measures taken to restrict freedom of religion or belief

3.2.1. Generally applicable measures affecting religious freedom

Despite the Azerbaijani government's "embracing" and instrumentalization of religion during the Second Nagorno-Karabakh War, hopes for greater religious freedom after the war are rapidly fading.

Religious communities in Azerbaijan supported the war that began in September, although the war was widely supported by all sections of Azerbaijan. It united the people, the government and the army in the face of 'foreign enemies'.

It is estimated that although about 98.4% of the population in Azerbaijan is Muslim (the majority is Shiite and a Sunni minority), only a very small number are active practitioners.¹¹⁰ For many of them, the war was more about gaining 'divine approval' than 'protecting the homeland' patriotism.

For this reason, clergymen often went to military units to preach 'martyrdom' and 'sanctity of the homeland'.

¹¹⁰ <https://www.pewforum.org/2011/01/27/table-muslim-population-by-country/>

Many young believers volunteered to perform their “divine duties.” This is evidenced by the congregational prayers and images of soldiers mourning from military units and war zones.

Of course, for most Azerbaijanis, it was not a holy war, but a political and territorial conflict, and there were many images of soldiers drinking wine and eating pork. However, this does not change the fact that Islam is a source of motivation for soldiers who face the possibility of real death every day.

Although Azerbaijan is a secular state, Islamic identity has become one of the most prominent features of government discourse during military operations. For example, religious rites were widely used to symbolize the victories of the army and the recapture of cities from Armenian troops.

During the war, there was great hope among Azerbaijanis that victory would bring radical changes to the country. Victory would increase revenues, put an end to corruption, and increase the government's accountability to citizens.

According to this logic, by occupying the surrounding territories of Nagorno-Karabakh, Armenia violated the basic harmony of the political organism of Azerbaijan. This disharmony was at the root of Azerbaijan's social ills. By returning the lands occupied by Armenia, harmony and integrity would be restored and all problems would be resolved.

Although utopian hopes for the post-war future were very different, the expectations of many devout Muslims were specific. They hoped that the end of the war would lead to the normalization of religion-state relations.

Now, about a year after the start of the war, it is clear that war is not what many people dream of. Although President Ilham Aliyev is still popular, social tensions created by unfulfilled expectations are growing. In this context, the unmet but relatively modest expectations of faithful Azerbaijanis may be the seed of a future crisis.

In May 2021, the Law on Religion of Azerbaijan was amended to impose new restrictions on religious communities. According to the new amendments, non-religious communities are no longer allowed to give religious names or ranks to clerics, ask foreigners for permission to be

clergymen, establish religious educational institutions, or organize independent visits to religious places abroad.

There were also stricter restrictions on public religious events - ceremonies such as congregational prayers and remembrance could only take place in places of worship or shrines.

Azerbaijan has been a problematic country in terms of freedom of conscience since independence. For example, taking a picture with a headscarf to get a passport or ID card is still a problem for women wearing headscarves.

Although the issue was raised in the parliament in March 2021, there is still no progress.

Officials' previous attempts to reduce Islam and its influence in the country have included restrictions on the use of religious symbols, strict controls on the registration procedures of religious institutions, and the closure of several mosques in recent years.

The government's tough stance is reflected in the bans on the call to prayer, the distribution of religious literature, and the wearing of the hijab in public schools.

The official discourse draws attention to the difference between "traditional" and "non-traditional" Islam. The so-called "non-traditional" Islam is perceived as "destructive," "political," and "exported by foreign interests."

In contrast, 'traditional' Islam is defined as 'non-political', 'born in Azerbaijan' and 'not imported'. Represents narrative and antidote to religious extremism.

Although the fight against radicalism is carried out in many countries, there is a big difference. In most countries, anti-radicalism is practiced by promoting social and political inclusion and participation, thereby eliminating minority grievances. There is no such concept in Azerbaijan's efforts.

In fact, Azerbaijan does not pursue any "heart and mind" strategy, relying only on a strong force to combat violent extremism and radicalization under the name of the Law on Combating Terrorism.

Authorities say such drastic measures are needed to prevent the spread of foreign radicalism in the country. Statistics show that such claims are exaggerated.

According to a 2016 survey by the Pew Research Center, Azerbaijanis are among the least supportive of Sharia in most Muslim countries, and only 8% of people believe that Sharia law should take precedence over civil law.¹¹¹

Although some respondents are not sincere in expressing their views, there is little evidence that the idea of a theocratic system of government is popular in Azerbaijan.

Dissatisfaction in Nardaran¹¹² and Ganja¹¹³ should be seen as a search for social justice.

In any case, the above-mentioned restrictions are unconstitutional, recognizing the freedom of assembly and conscience of citizens, equality before the law, regardless of the presumption of innocence and religious affiliation. If there are extremists who abuse these freedoms, they must be judged fairly and held accountable. What is wrong and ineffective is to take action against the whole community, with the possibility that some members may commit illegal acts.

Only a sincere respect for the diversity of worldviews, beliefs and lifestyles can lead Azerbaijan in a more promising direction. Disproportionately restricting religious freedom and pushing dissent to the margins, on the other hand, can lead to radicalization and, as a result, the realization of a "self-justifying prophecy." Given similar experiences in other Muslim-majority countries, the current policy does not bode well for Azerbaijan.

First question that comes to our minds after getting acquainted with the restrictions that were imposed is that whether the restrictions are proportional or not. For a restriction to be proportionate:

- it should be determined by law;
- it is appropriate (there must be a link between the means used to minimize the spread of the virus and the end of the process);
- it must be necessary (not only appropriate) to achieve the intended purpose;

¹¹¹ <https://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/>

¹¹² <https://eurasianet.org/azerbaijan-examining-the-source-of-discontent-in-nardaran>

¹¹³ <https://oc-media.org/confrontation-at-baku-court-as-pepper-spray-used-against-defendants/>

-the restrictions should be proportional (the burden placed on the FORB should not be excessive in order to delay and minimize the effects of the pandemic); and

-there should be no less restrictive way to achieve the same goal.¹¹⁴

The first requirement states to the FORB that any restriction is "prescribed by law." During public emergencies, many states have expedited legislative procedures so that laws can be quickly proposed and passed to meet pressing needs, such as the COVID-19 pandemic. While such procedures allow for certain aspects of the regular legislative process to pass, the "principles of transparency, inclusion and accountability" still need to guide the overall process to ensure that laws are legitimate and accessible and "compliant with human rights and the law". This means that:

-restrictive laws or regulations must be accessible to citizens; and

-citizens must be able to anticipate the exact scope and meaning of the provision.

Restrictions on social distance should be described as clearly and clearly as possible. Governments should also make clear who has the authority to order and implement social exclusion strategies. Not only should they be clearly described and consistently applied, but they should also be given a start and end date. Laws and restrictions must also be published properly.

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¹¹⁴ Gunn, "Deconstructing Proportionality," 467–68.

¹¹⁵ Edelman and Richardson, "Imposed Limitations on Freedom," 248.

Restrictions on social distance should be described as clearly and clearly as possible. Governments should also make clear who has the authority to order and implement social exclusion strategies. Not only should they be clearly described and consistently applied, but they should also be given a start and end date. Laws and restrictions must also be published properly.

The second aspect of the proportionality test is that the social exclusion that limits FORB must be necessary to achieve the goal of preventing human loss and limiting the spread of disease. When it is necessary for the state to take certain measures to combat a serious threat to the health of the population or individual members of the population, it is a legal basis for restricting public health. The restrictions used must be specifically designed to prevent the identified threat or to achieve the stated goal. In other words, there must be a reasonable link between public health intervention and the achievement of a legitimate public health goal.

There are two important aspects to necessity. First, regulation may seem neutral, but it does not adequately address the damage, thus generally limiting the FORB unnecessarily. Second, regulation can solve the damage, but it does so in a way that discriminates against the FORB by specific religious groups and communities. First of all, governments may apply seemingly neutral and necessary regulations, but they can define the concepts of “public health” and “the rights and freedoms of others” too broadly and use them to over-empower and violate rights such as the FORB. In the second case, it is possible that such COVID-19 restrictions cover real damage, but at the same time have a disproportionate and unfair effect on the FORB of certain individuals or communities. The second instance was a problem during COVID-19, as although social exclusion measures were applied equally and nationally in most countries (not focusing on specific human communities), their effects were disproportionate to certain vulnerable groups. This is because while social alienation operates in a "context characterized by deep inequalities", patterns of illness and death reflect social inequalities. In both cases, it is important to determine whether regulations and restrictions are really necessary to achieve the goal of ensuring public health and reducing human losses.

Restrictions should not only be necessary and effective, but also must be proportionate. Social exclusion may be necessary both to achieve the goal of preventing human life and to be effective in limiting the spread of disease.

3.2.2. Specific measures restricting individual and communal religious freedom

The Preamble of the Law on Religion states that it ensures the exercise of Freedom of Religion and Belief in accordance with the Constitution of the Republic of Azerbaijan and international treaties.¹¹⁶ Article 2 also states that the legislation on freedom of religion consists of the Constitution, international treaties agreed by Azerbaijan, this Law and other relevant legislation of Azerbaijan.¹¹⁷ However, the law contradicts international standards that Azerbaijan agrees to implement on freedom of religion or belief.

For example, Article 1 does not state the right to change one's religion or belief. It also uses vague and ambiguous approach in explanation of prohibition of the propagation of religion and religious life by force or threat of force, including racial, national, religious, social hatred and hostility. It is forbidden to spread and propagate religions (religious denominations) that degrade human dignity or contradict the principles of humanism. In absolute contrast to international human rights standards, Article 1 states that "freedom of religion" may be restricted. International human rights law allows the expression of freedom of religion or belief (not the law itself) to be restricted only on carefully defined grounds.

The law contradicts itself elsewhere. For example, the law's requirement that all mosques belong to the Caucasus Muslim Board and other interference with the exercise of religious or non-religious freedom by Muslims and others contradict Article 5. It indicates: "Religion and religious organizations in the Republic of Azerbaijan are separate from the state. The state does not require religious organizations to perform state duties and does not interfere in their activities. All religions and religious organizations are equal before the law. No religion (religious denominations) or religious organizations may be preferred, and no restrictions may be imposed on them that do not apply to others."

The Law contains several restrictions on religious freedom for Muslims. Muslims face special additional restrictions that do not apply to other religions. For instance, all mosques must be under the auspices of the Caucasus Muslim Board.

¹¹⁶ Dini etiqad azadlığı haqqında Azərbaycan Respublikası qanunu, <http://www.e-qanun.az/framework/7649>

¹¹⁷ Ibid.

Article 7 of the Law on Religion requires all Islamic communities to submit a report on their activities to the Muslim Board. The article does not specify how often such reports should be submitted.

Article 8 specifically states that Islamic religious communities in mosques are established by Azerbaijani citizens. It remains unclear whether this will ban Islamic communities seeking to exist outside the mosque, or whether it will target mosques set up by foreign nationals.

Article 8 indicates that the appointment of religious figures in charge of Islamic places of worship shall be carried out by the Caucasian Muslims Office and shall be reported to the relevant executive authority.

Article 21 says Islamic rites and ceremonies may be performed only by Azerbaijani citizens educated in Azerbaijan.

The requirement of state permission for the exercise of freedom of religion or belief and other human rights contradicts its legally binding international human rights obligations.¹¹⁸ However, as it is seen this statement is totally ignored by Azerbaijani government.

Several changes should be done to the legislation in order to eliminate the cases of discrimination in the sphere of FoRB. These include:

- Expand the scope of the Law on Freedom of Religion to cover freedom of religion or belief;
- Expand the concept of "freedom of religion" by defining the right to adopt or change a religion or belief, as well as the right to express one's religion or belief individually or in public during worship, teaching, practice and rituals;
- Ensuring that only restrictions on the expression of freedom of religion or belief are established by law, provided that they are in full compliance with international law;
- Open access to appropriate religious propaganda and remove a ban on religious propaganda by foreigners and stateless persons;

¹¹⁸ OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities http://www.legislationline.org/download/action/download/id/5719/file/VC_ODIHR_Guidelines_Legal_personality_religious_communities_2014_en.pdf

- According to Article 4 of the Law on Freedom of Religion, to provide open access to alternative civilian service to persons who refuse to serve in the military due to religious or non-religious good faith;¹¹⁹
- Ensure that religious education in public schools is neutral and objective, and that public education covers the teaching of a particular religion or belief, without discrimination or by identifying alternatives that satisfy the wishes of parents or guardians;¹²⁰
- To consider the amendment or removal of Articles 7, 8 and 9 of the Law on Freedom of Religion as regulatory provisions forcing religious communities to be a special organizational structure, and to consider the internal organization of religious communities with greater autonomy and belief, as well as the choice of place of worship to provide self-government;
- Review or revision of the regulatory provision related to the name of the religious organization and the compliance of the charter of the religious organization with the charter of its religious center (department);
- To remove the provision of Article 21 of the Law on Freedom of Religion which states that rituals and ceremonies related to Islam may be performed only by citizens of the Republic of Azerbaijan educated in the Republic of Azerbaijan;¹²¹
- Eliminate excessive restrictions on the right of individuals and religious organizations to produce, import, export, freely distribute and sell religious literature, items and other information;
- Abolish the requirement to have the consent of the “relevant executive authority” to send citizens abroad for education and to exchange clergy internationally;
- As for the powers of the executive authorities to "obtain the necessary information" from religious groups, either to repeal this provision or to state it more precisely in such a way as to establish guarantees against state interference leading to arbitrariness and abuse;
- Revise the procedure for religious organizations to operate only at the legal address specified in the information submitted for state registration;

¹¹⁹ Law of the Republic of Azerbaijan on Freedom of Religion, <http://e-qanun.az/framework/7649>

¹²⁰ Ibid., article 6

¹²¹ Ibid.

- To give religious groups the right to appeal against the decision to refuse state registration;
- Either abolish the process of selecting clerics who oversee places of worship belonging to Islam, or organize this process in a more transparent and consultative manner;
- Allow religious organizations to raise funds carefully without discriminating;
- To allow religious organizations to collect donations from non-citizens as well;
- Revise the norm on the adoption of the charters (regulations) of religious organizations at the general meeting of religious persons or at religious congresses or conferences;
- Ensure a fair, transparent and non-discriminatory system of licensing religious education;
- Revise the provision that only religious centers and institutions may establish religious educational institutions to train clergy and other religious personnel.

Azerbaijan has systematically violated fundamental rights, such as religion or belief, freedom of expression and assembly, and has solemnly undertaken to respect and defend the government, while loudly declaring the alleged religious tolerance.

Contrary to the promises made after joining the Council of Europe in 2001, legislation has been amended several times in recent years to increase penalties for the peaceful exercise of the right to freedom of religion or belief. These recurring changes, which often lack little warning or public discussion, suggest that the government intends to continue to enforce and enforce legislation that violates human rights. It seems that Azerbaijan will remain a place where fundamental human rights go unpunished. In fact, the state conditioned the exercise of human rights with the permission of the state.

To address the situation, European and international human rights institutions should contact the government on the issues of violation of religious rights and freedoms. At the same time, religious communities can benefit from knowledge of their human rights and joint and principled approaches to their protection. Non-governmental groups and communities, both local and international, play an important role in supporting those who are under pressure for exercising their right to freedom of religion or belief. It is especially important that international actors, without exception, take a principled approach, unequivocally defending freedom of religion or belief.

However, the main responsibility for making changes in the legislation and practice that concretely eliminate the existing serious shortcomings lies with the authorities in Azerbaijan. This would benefit religious and faithful communities. It would also benefit the Azerbaijani state and its reputation.

A principled approach to respecting everyone's freedom of religion or belief may give rise to the state's own declaration of "religious tolerance."

CONCLUSION

The aim of the presented paper was to evaluate the proportionality and legality of COVID-19 restrictions on freedom of religion or belief. Azerbaijan was used as a case study and the thesis analyzed whether the legislation and implementation of existed provisions are in compliance with the international human rights law.

The COVID-19 pandemic has posed major and unprecedented challenges to international human rights, particularly the FORB. The potential threat to the FORB may be seen in the possibility of disproportionate reactions and regulations by the authorities when using state emergency rules and Article 18 to justify the restrictions imposed on the FORB during a pandemic. Restriction of the FORB during a state of emergency occurs through the declaration of a state of emergency that indirectly restricts the freedom of peaceful assembly, association, and the rights of religious minorities within the ICCPR. Restriction of the FORB may also take place directly under Article 18 (3). In both cases, the authorities have broad responsibilities to act in good faith, in a balanced manner, and to make a sustained effort to protect one hundred percent of all human rights (even in emergencies). Against this proportionality analysis, recommendations are made on how the authorities should act to minimize the restrictions placed on the FORB during the COVID-19 pandemic. It is claimed that fair restrictions on international human rights and the FORB can be justified under a pandemic, but States Parties cannot overemphasize their powers and thus limit the FORB unreasonably and disproportionately.

The first research question that the paper addressed gave us a general view on impact of COVID-19 restrictions on human rights, more precisely freedom of religion or belief. Freedom of religion is one of the vital freedoms that should not be so easily denied, even in emergencies, and religious communities, which represent the collective exercise of this fundamental right, are a unique and valuable resource at the disposal of society. combating critical threats. These are the two lessons that the COVID-19 pandemic has taught us, and we should note them well for future emergencies. It would be better to apply them to ordinary situations.

The second research question looked at violations against freedom of religion or belief that countries faced while applying COVID-19 restrictions. Coping with COVID-19 and applying restrictions in order to ensure safety of the world population is still a big challenge for the States. The key issue here is to prevent human rights abuses. However, human rights violations exist

everywhere in the world, and COVID-19 exacerbated it. For example, the page analyzes the legislation in Azerbaijan as an example, and if we look at it, we can see that the problem of religious freedoms exists not only in the period of COVID-19, but from the very beginning. The main reason for the problem is the gaps in the law and implementation that should be fixed by governmental bodies.

Another research question illustrated the impact of COVID-19 restrictions on implementation of FoRB and religious groups. As it is already known most of the religious meetings and ceremonies are held in public places. Thus, the COVID-19 restrictions affected implementation of religious ceremonies a lot. Governments had to set a limit to the number of visitors, even in some countries worship places were entirely closed for the visitors in order to protect public safety and health which was not well received by religious groups.

The next research question is about the situation of freedom of religion or belief in Azerbaijan. Thus, the Constitution of the Republic of Azerbaijan establishes the separation of religion and the state and the equality of all religions. It also protects the right of individuals to express their religious beliefs and to perform religious rites, provided that this does not violate public order or public morals. The law prohibits government interference in religious activities. It is also stated that the government and citizens have a responsibility to fight religious extremism and radical views on religious freedom. However, the Law on Freedom of Religion has plenty of gaps and provisions that are not in compliance with international human rights standards. In most of the cases the acts of governmental bodies and legislation do not match which lead to violation of freedom of religion or belief not only during the COVID-19 times but also before the pandemic.

When it comes to the implementation of international norms by Azerbaijani government, the constitution states that if there is a conflict between the normative legal acts included in the legislative system of the Azerbaijan Republic (except for the Constitution of the Azerbaijan Republic and acts adopted by referendum) and interstate agreements to which the Azerbaijan Republic is a party, those international agreements shall apply. However, there is no bright example for the given statement.

Failure to comply with the proportionality requirements when using social distance during COVID-19 has the potential to unreasonably limit FoRB. The proportional response to COVID-19 places a number of responsibilities on governments against the FoRB. During the COVID-19

pandemic, it is even more important to repeat these responsibilities due to the lack of cooperation and coordination between states. From the analysis of the requirements of the proportional constraint of the FORB, it can be concluded that the following tasks are assigned to the state.

To begin, authorities should involve religious and non-religious communities and individuals in pandemic planning and the restrictions imposed. Ideally, this should have happened before the pandemic. Religious and non-religious communities should be involved in making important decisions that affect them.

Laws and the restrictions they contain must go through adequate legislative processes. Restrictions must be clearly defined, their consequences taken into account adequately, and then communicated to all religious and non-religious believers. Those authorized to apply these measures should also be clarified.

Support should be provided to religious and non-religious communities and individuals to minimize FORB restrictions. The least restrictive measures should be taken in each case, taking into account and adapting to the religious and belief needs of individuals.

There should be regular, transparent and comprehensive communication with religious and non-religious communities. The FORB needs to be informed clearly and honestly about the risks and benefits of social exclusion measures. Governments must be transparent when they discover known and unknown and new evidence that provides for a review of restrictive measures.

Particular attention should be paid to the protection of sensitive religious and secular communities, as well as to the provision of social justice and procedural justice. The OSCE recommends that States should refrain from sensationalizing or misrepresenting religious or religious communities when they oppose social exclusion and should not blame the communities as a whole. This is especially important to prevent vulnerable groups from becoming scapegoats.

Governments should not use this as an opportunity to pursue alternative goals other than protecting public health and minimizing the spread and impact of the pandemic.

Penalties for non-compliance with social exclusion measures should not be too severe for religious or non-religious believers and faithful communities.

Restrictions should not be imposed unnecessarily. Nor should they go beyond the crisis of disease or take effect unless they are effective or necessary to achieve the goal of public health.

Authorities should apply restrictions in a timely manner, based on available scientific evidence on the nature, spread, cause, and transmission of the virus. The authorities should not be negligent in responding to the health of the population, and thus should not lead to the adoption of extensive social exclusion measures to save the situation and to limit the FORB.

Authorities should always try to support one hundred percent of all rights and not create a hierarchy of rights. Governments must remain sensitive to the importance of the measure of freedoms lost to members of different faiths. Authorities should seek to see the seriousness of these losses and limitations not only from a separate perspective, but also from the perspective and experience of a religious or non-religious community or individual. In other words, restrictions on the FORB will not suffice, given as a restriction on the clinical, technical aspect, rather than as a restriction on the identity, conscience and part of human dignity (and sometimes livelihoods, socio-economic support and information channels) of supporters.

Authorities should ensure that social exclusion measures do not interfere with the forum internship of religious or non-religious believers or faith communities. This should not happen directly (explicitly restricting the right to hold, hold or accept a belief) or indirectly (by restricting the forum's external forum, thereby influencing the forum's internship).

All of the above recommendations also apply to the creation and communication of an exit strategy (from a pandemic) and the restoration of the main FORB as soon as possible.

In general, governments must interpret the rationale for restrictions in a serious, honest and humane manner, in accordance with human dignity, freedom and equality. Together, this means that all government responses to COVID-19 must be closely monitored, not only during declared public emergencies, but also in terms of proportionality, necessity, and retreat after the crisis has been brought under control.

ABBREVIATIONS

OSCE	Organization for Security and Co-operation in Europe
ECHR	European Covenant on Human Rights
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations
NGO	Non-governmental organization
FoRB	Freedom of religion or belief
MUM	Muslim Unity Movement
CMD	Caucasus Muslim Department
ODIHR	Office for Democratic Institutions and Human Rights
UN HRC	United Nations Human Rights Council
ACHR	American Convention on Human Rights

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