

Коментарі

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*Are freedom of religion or belief and security reconcilable?**

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Чи сумісні свобода релігії і переконань з безпекою?

Анотація: У даній роботі представлений документ ОБСЄ / БДПЛ «Свобода релігії або переконань і безпека», який розглядається в більш широкому контексті дебатів про сек'юритизації релігії.

Автор пропонує розглянути документ в три етапи: 1) поставити документ у його контекст; 2) пояснити поняття всебічної безпеки, розробленого ОБСЄ; 3) запропонувати кілька міркувань щодо його застосування до свободи релігії або переконань. До політичного та культурного контексту відносяться два глобальних процеси, які сьогодні найбільше впливають на свободу релігії або віросповідання у всьому світі - націоналізація релігії та її сек'юритизація. Зупиняючись на потенційних загрозах з боку релігії для безпеки, автор критикує позицію тих країн, які вважають, що

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насильство та тероризм, які стають все частішими у багатьох частинах світу, натхненні релігійною поведінкою. І так мислять не лише в тоталітарних чи авторитарних державах, які не дбають про права людини, але і в деяких демократичних суспільствах.

В розумінні взаємозв'язку між релігійною свободою і безпекою автор пропонує відійти від традиційної, орієнтованої на державу концепції безпеки, яка зосереджена насамперед на безпеці держав від військової агресії, до тієї, яка зосереджена на безпеці людей, їх захисті та розширенні прав і можливостей. Пропонується національну, державну, військову безпеку трактувати як інструменти для забезпечення особистої та громадської безпеки, які є основою сьогоденної концепції безпеки.

Документ пропонує три керівні принципи, які забезпечують надійну основу для вирішення конфлікту між правом на релігійну свободу та правом на безпеку.

1) принцип навчання, який пропонує освітні програми, що сприяють знанню різних релігій та їх соціальних проявів.

Але навчитися спокійно жити в релігійно різноманітному середовищі недостатньо. Сам по собі він не створить згуртованого та всеохоплюючого «спільного життя». потрібно

2) принцип взаємодії. Без особистого вступу в діалог тільки знання не можуть створити взаємоповаги.

Навчання та взаємодія потребують

3) сприятливого середовища існування, яке може бути побудовано за допомогою політичних та правових заходів, що створюють впевненість та довіру через визнання прав, зокрема права на свободу віросповідання.

На основі цих керівних принципів пропонується звернутися до чотирьох кейсів, розглянутих у документі. Вони стосуються навернення, релігійного екстремізму, місця поклоніння та мітингів, реєстрації релігійних організацій. Автор докладно аналізує навернення та реєстрацію. Так, реєстрація релігійної або віросповідної організації далеко не техніка, яка стосується лише юристів. Це може бути питанням життя або смерті для всієї організації, оскільки прості операції, такі як відкриття банківського рахунку або оренду приміщення для молитовних зустрічей, залежать від реєстрації. Ось чому набуття правосуб'єктності у формі, яка дозволяє здійснювати основні види діяльності релігійних організацій чи організацій віросповідання, вважається частиною права на колективну та інституційну свободу віросповідання чи віри. Картина стає більш проблематичною, коли ми говоримо про так звані «екстремістські» релігійні організації. Чи не є вони загрозою для безпеки (включаючи особисту безпеку), яка вимагає, щоб вони були поставлені в становище, щоб не нашкодити? Відповідь на це питання ґрунтується на розрізненні екстремізму та насильницького екстремізму. Поки вони не перетворюються на насильницькі дії чи підбурювання до насильства чи дискримінації, екстремістські погляди є проявом свободи вираження поглядів, протидії якій слід протистояти на власній основі, тобто протиставляючи ідеї ідеям. Тільки коли екстремістські ідеї перетворюються на насильство чи підбурювання до насильства, вони стають загрозою безпеці людини чи громади. Тому документ ОБСЄ рекомендує державам-учасницям ОБСЄ «забезпечити, щоб заходи, пов'язані з безпекою, стосувалися поведінки, а не думок чи переконань, та

розрізняли насильницький екстремізм та екстремізм».

Рекомендації спрямовані не лише до держав. Релігійні та віросповідні громади, організації громадянського суспільства та засоби масової інформації «відіграють важливу роль у взаємозв'язку між свободою віросповідання чи вірою та безпекою». Вони несуть відповідальність за створення культурного та соціального середовища, заснованого на відповідальності та відданості, дві чесноти, необхідні для гармонізації свободи та безпеки.

Ключові слова: Свобода релігії або переконань, безпеку, поведіння в іншу віру, реєстрація релігійних організацій

Abstract. This paper presents the OSCE / ODIHR document on "Freedom of Religion or Belief and Security", placing it in the broader context of the debate about securitization of religion.

The author proposes to consider the document in three stages: 1) to put the document in its context; 2) explain the concept of comprehensive security developed by the OSCE; 3) to suggest several considerations regarding its application to freedom of religion or belief.

The political and cultural context is one of the two global processes that today most affect freedom of religion or belief around the world - the nationalization of religion and its securitization. Addressing the potential danger to religion by security, the author criticizes the position of those countries which believe that violence and terrorism, which is becoming more frequent in many parts of the world, is inspired by religious behavior. And so not only in totalitarian or authoritarian states that do not care for human rights, but also in some democratic societies.

Understanding the relationship between religious freedom and security, the author proposes to move away from the traditional, state-oriented concept of security, which focuses primarily on the security of states against military aggression, to one focused on the security of people, their protection and empowerment. It is proposed to treat national, state, and military security as tools for personal and public security, which are the basis of today's security concept.

The document proposes three guiding principles that provide a sound basis for resolving the conflict between the right to religious freedom and the right to security.

1) the principle of teaching that offers educational programs that promote knowledge of different religions and their social manifestations.

But learning to live in a religiously diverse environment is not enough. By itself, it will not create a cohesive and inclusive "common life" so we need

2) the principle of interaction. Without personal involvement in the dialogue, knowledge alone cannot create mutual respect.

Training and interaction are needed

3) an enabling environment that can be built through political and legal measures that create confidence and trust through the recognition of rights, including the right to freedom of religion.

Based on these guidelines, the article proposes to address the four cases discussed in the document: conversion, religious extremism, places of worship and meetings, registration of religious organizations. The author analyzes in detail the conversion and registration. Registering a religious or religious organization is far from a technique that only

applies to lawyers. This can be a matter of life or death for the whole organization, since simple transactions such as opening a bank account or renting a meeting room are subject to registration. The picture becomes more problematic for so-called "extremist" religious organizations. we need distinct extremism and violent extremism and address security-related measures behaviors rather than thoughts or beliefs.

The recommendations are not just for the States. Religious communities, civil society organizations and the media "play an important role in the relationship between freedom of religion or religion and security." They are responsible for creating a cultural and social environment based on responsibility and dedication, the two virtues needed to harmonize freedom and security.

Keywords: Freedom of religion or belief, security, conversion, registration of religious organizations.

I was asked to present the document on "Freedom of Religion or Belief and Security" that the OSCE has recently published [See OSCE/ODIHR 2019] and I shall do that in three steps. First, I shall place the document in its context, second I shall devote some time to explaining the notion of comprehensive security developed by the OSCE and finally I shall make a few considerations concerning its application to freedom of religion or belief. First, the political and cultural context. If I should name the two global processes that today most affect freedom of religion or belief all over the world, I would name the nationalization of religion and its securitization. Leaving aside the first and focusing on the second process, in many countries religions are seen as a potential

danger to security. This view is supported by the fact that religiously inspired violence and terrorism have unfortunately become more and more frequent in many parts of the world.

One may ask how sincere the religious motivations of these violent acts are, but it is undeniable that they are often justified through the reference to religion. In this perspective, some limited restrictions of freedom of religion are seen as a reasonable price to pay to grant personal and societal security. Let me make a couple of examples. Violent antisemitism is growing in a country and a government spokesperson suggests that Jews should refrain from wearing the kippà in public to avoid becoming the target of religious violence. It is a reasonable and well-intended proposal, but at the same time is a limitation of the freedom of Jews to manifest their religious faith. In another country, some places of worship are deemed to be places where religious radicalism is preached and taught. To contrast this dangerous drift, people attending religious services in those places are subjected to security screenings that go from identification to body searching and affect also the peaceful believers (who are likely to be the majority) who want to access that place of worship without any intention of perpetrating crimes. Who could question the reasonableness of these measures, which aim at granting security for all? At the same time, they entail a limitation of freedom of religion that in the long run will be internalized and accepted as a matter of fact.

These examples do not come from totalitarian or authoritarian States that do not care about human rights. They are taken from the daily life of democratic States and this is the most worrying element of the picture. Security and freedom of religion or belief are on collision course even in countries that prize

human rights and sincerely try to implement them. This is why we need to pay close attention to how to defuse the potential clash between freedom of religion or belief and security in contemporary society. I assume you are quite familiar with the meaning, content and role of the right to freedom of religion or belief, therefore I shall not dwell too much on it. It is a right that covers both the internal and external dimensions of human life. I have the right to adopt and change my religion –this is a matter for my conscience and nobody else- and I have the right to manifest my religion or belief through worship, observance, practice, teaching and many other activities [See OSCE/ ODIHR 2014].

Moreover, it is both an individual and a collective right. Each individual is entitled to enjoy freedom of religion or belief irrespective of his or her race, sex, colour, social origin or nationality and each religious or belief community has the right to define autonomously its internal organization, provided it is not against the constitutional order of a country. The increasing religious diversity and the growing public role religions have acquired in many countries raise new problems but we all have an idea of what freedom of religion or belief means.

When we come to security, things are a little more complex. First of all, security is a polysemic word that has many and different meanings. We speak of national security, State security, public security, international security, military security and so on and each of these expressions has different implications. Second, there is a question that needs to be answered before we start considering the relationship between security and freedom of religion or belief: is security a human right? While the answer is definitely yes when we speak of freedom of religion or belief, the answer is no

when we speak of State, national, international or military security. They may represent, in some cases, legitimate limitations to the enjoyment of human rights but nothing more. However, other dimensions of security need to be taken into consideration. Take for example, art. 12 of the South African constitution. It declares "Everyone has the right to freedom and security of the person, which includes the right [...] to be free from all forms of violence from other public or private sources". The security of the person is a human right that States have the obligation to uphold [See OSCE/ODIHR 2019: 19]. In this perspective, national, State, military security are tools to grant personal and community security, which are at the core of today's concept of security [See Crawford 2019].

As underlined in many UN documents, the notion of security needs to be re-conceptualized "in a fundamental way by: (i) moving away from traditional, state-centric conception of security that focused primarily on the safety of states from military aggression, to one that concentrates on the security of the individuals, their protection and empowerment" [United Nations Trust Fund for Human Security, chapter 1, sect. 1.1.].

I think that addressing the relationship between freedom of religion or belief and security of the person as a relationship between two human rights provides us with a better way to deal with the potential conflicts between these rights. When a State enacts legal provisions that limit freedom of religion or belief in the name of security, the first question is not whether they are legitimate restrictions to the liberty of an individual or a community. Rather, it is whether the State security they invoke is really necessary to ensure the security of the person that is at the center of

the notion of security. In this perspective, the relationship between freedom of religion or belief and security cannot be reduced to a matter of restricting, when necessary, the enjoyment of the former right in the name of one of the multiple dimensions of the latter right. It is a matter of conceiving and implementing both freedom of religion or belief and security of the person in a way that corresponds to the primary role of each human right, which is upholding human dignity.

OSCE was the first security organization that conceived of and adopted a multidimensional concept of comprehensive security. In this perspective, security is comprised of three equally important dimensions: the politico-military, the economic and environmental, and the human rights dimension. This concept entails the idea that the protection of human rights and fundamental freedoms and economic and environmental governance is as important for the sustainability of peace and security as is politico-military co-operation. Security cannot be attained if these three goals are not pursued and attained simultaneously [OSCE/ODIHR 2019: 17].

When we come to the relations between security and freedom of religion or belief the OSCE document I am presenting offers three guiding principles that provide a sound framework for addressing what I called hotspots, that is the issues where a conflict between these two rights is more likely to develop. The first principle concerns learning. Religious illiteracy is increasing, particularly in the young generations, and we are in need of educational programs that foster the knowledge of different religions and their social manifestations. However, these

programs are not enough if they are not supported by the awareness that religious or belief diversity is a permanent feature of our societies. Therefore, learning how to live peacefully in a religiously diverse environment is not enough. We need also to understand how to make use of this diversity to build a cohesive and inclusive “living together”. This second type of learning, however, is not only a matter of knowledge. It requires –and this is the second guiding principle– engagement. Without engaging personally in a dialogue that takes seriously our different Weltanschauungen, knowledge alone is unable to create mutual respect. Finally, learning and engagement require a favorable habitat, that can be built through political and legal measures that create confidence and trust through the recognition of rights: granting the right to freedom of religion or belief is the first and most important of these measures.

On the basis of these guiding principles it is possible to address the four case studies considered in the document. They concern conversion, religious extremism, worship and meeting places, registration of religious organizations. I shall focus on the first and the last of them. From a legal point of view, conversion may have two different meanings. It may indicate the act through which I adopt, change or leave a religion or a belief and this is an individual right that is absolute and cannot be limited or restricted. The same word may designate the act of converting somebody, that is persuading a person to adopt, change, leave his or her religion or belief and this is a right that in a few well-defined cases can be subjected to some limitations. In general, when converting a person implies some forms of coercive persuasion –which may be violent or non-violent– both freedom of religion or belief

and personal security may be jeopardized. Short of this, proselytism and missionary activities are a manifestation of the right of freedom of religion or belief that cannot be limited for security reasons. Accordingly, the OSCE document concludes that “the state has a duty to provide a legal and social framework in which the rights [...] to engage in non-coercive persuasion can be freely and fully exercised”, including the State duty “to protect individuals and communities engaging in non-coercive persuasion from violence, intimidation, harassment and discrimination” [OSCE/ODIHR 2019: 67].

The registration of a religious or belief organization is far from being a technicality that concerns only lawyers. It may be a matter of life or death for the whole organization as simple operations such as opening a bank account or renting a room for prayer meetings may depend on registration. This is why obtaining legal personality in a form that allows the basic activities of religious or belief organizations is considered to be part of the right to collective and institutional freedom of religion or belief. The picture becomes more problematic when we speak of the so called “extremist” religious organizations. Aren’t they a security danger (including personal security) that requires that they are put in a position to do no harm? The answer to this question is based on the distinction between extremism and violent extremism. As long as they are not translated into violent acts or incitement to violence or discrimination, extremist views are a manifestation of freedom of expression that should be countered on its own ground, that is by opposing ideas to ideas. Only when extremist ideas are translated into violence or incitement to violence they become a threat to the security of a person or a community. Therefore, the OSCE

document recommends that the OSCE participating States “ensure that security-related measures address behavior rather than opinions or beliefs and distinguish between violent extremism and “extremism”” [OSCE/ODIHR 2014: 32]. However, recommendations are not directed only to States. Religious or belief communities, civil society organizations and the media “have important roles to play in the interface between freedom of religion or belief and security” [OSCE/ODIHR 2019: 26].

They bear the responsibility for creating a cultural and social environment grounded on responsibility and commitment, two virtues that are indispensable to harmonize freedom and security. For this reason, they are the recipients of specific recommendations that aim at enhancing their capacity to generate civic values and attitudes that support the State’s political and legal activity. It is time to conclude. The road toward the harmonization of freedom of religion or belief and security is long and rather difficult. We need to go patiently through a process of trial and error that teaches us how to deal with the most difficult situations. The OSCE document is a step forward in the right direction.

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