



Human Rights Law Clinic Papers 2024

An Analysis of Compliance to the Freedom of Religion and Belief within the Caucuses and the Identification of Trends Amongst Selected OSCE Members Regarding Adherence to International Standards

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i) List of Abbreviations

AAHC	Armenian Apostolic Holy Church
DEIDRB	Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FoRB	The Freedom of Religion or Belief
GOC	Georgian Orthodox Church
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights

1.0- Introduction

This memorandum aims to analyse and evaluate the Freedom of Religion and Belief legislation of Armenia, Azerbaijan, and Georgia for compliance with international norms. It will scrutinise domestic implementation and highlight similarities and disparities across legal frameworks. Divided into an introduction, six main parts and a conclusion including; a background section examining regional trends in the evolution of religious rights amid state transitions, doctrinal examination of international instruments and jurisprudence, legislative challenges, and implementation. Additionally, sections will also delve into domestic law's practical application, its interaction with national security, and the impact of the Covid-19 pandemic upon compliance to international FoRB standards. The goal is to uncover commonalities and unique developments with the region. The memorandum will conclude with recommendations for future FoRB developments.

2.0- Background

Following the Soviet Union's collapse and subsequent independence, Azerbaijan, Armenia, and Georgia crafted constitutions reflecting their cultural and religious histories. They joined the Council of Europe¹ and ratified the European Convention on Human Rights (ECHR)² and the International Covenant on Civil and Political Rights (ICCPR)³ between 1992-1994,⁴ signalling their transition to democracy. Ratifying the ECHR committed them to its standards upheld by the European Court of Human Rights (ECtHR), and they became OSCE participating states, receiving an OSCE mission between 1992-93.⁵ These states are party to conventions ensuring equality regardless of belief, religion, or conscience, with minimum standards for internal legislation and state practice.⁶ Article 18 of the ICCPR and Article 9 of

¹ Armenia, Azerbaijan and Georgia joined the Council of Europe in 2001, 2001 and 1999 respectively, see: <<https://www.coe.int/en/web/tbilisi/the-coe/objectives-and-missions>> Accessed 20 May 2024.

² Convention for the Protection of Human Rights and Fundamental Freedoms CETS No 005, entered into force 3 September 1953 (ECHR).

³ International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁴ See:

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en> Accessed 20 May 2024.

⁵ See: <<https://www.oscepa.org/en/members/member-countries>> Accessed 20 May 2024.

⁶ Vladimíra Pejchalová Grünwaldová, 'General and Particular Approaches to Implementation of the European Convention on Human Rights' (2018) 55 Canadian yearbook of international law 248, 249-55.

the ECHR guarantee freedom of religion and belief (FoRB) as OSCE commitments, mirrored in their constitutions.⁷ Respecting FoRB involves upholding each individual's ability to have, adopt, change, choose, or practice the religion or belief of their choice,⁸ It does not offer a hierarchy of religions or beliefs' and restrictions are only permitted to safeguard public safety, order, health, morals, or others' rights.⁹ While Armenia emphasises statehood principles and sovereignty restoration in its constitution,¹⁰ Azerbaijan focuses on societal welfare and justice¹¹ and Georgia prioritises international human rights law, ratifying human rights covenants without reservations.¹² Despite compliant constitutional language, adherence to international FoRB standards also hinges on effective enforcement, acknowledging religious and belief-based communities' diverse needs.¹³ This memorandum will further examine the practical implementation to identify trends and differences in compliance within the Caucasus.

⁷ OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June-29 July 1990).

⁸ The freedom of thought, conscience, and religion encompasses a range of religions and beliefs, regardless of size, age or whether they are theistic or non-theistic. The protections afforded to religion and beliefs includes the protection of individual, collective, institutional, educational, and communicative dimensions. For more information, please see below:

Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, conscience and religion, 31 August 2022, 8-12, 24-32; Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion) CCPR/C/21/Rev.1/Add.4, paragraph 2.

⁹ Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion) CCPR/C/21/Rev.1/Add.4, paragraph 8.

¹⁰ Hayastani Sahmanadrut'yun (Constitution of the Republic of Armenia) Article 17, paragraph 1. Adopted 6th December 2015. For English Translation Please see:

<https://www.president.am/en/constitution-2015/#:~:text=In%20the%20Republic%20of%20Armenia,individual%20shall%20be%20a%20crime> Accessed 18 March 2024, Preamble of the Constitution of Armenia.

¹¹ Azərbaycan Respublikası Konstitusiyası (Constitution of the Republic of Azerbaijan) Article 18, paragraph 1. Adopted by Referendum on November 12 1995 and subsequently amended by referenda on 24 August 2002, 18 March 2009 and 26 September 2016. For English Translation Please

see: <https://president.az/en/pages/view/azerbaijan/constitution#:~:text=The%20Constitution%20was%20prepared%20by,force%20on%2027%20November%201995> Accessed 22 February 2024, ibid Preamble of the Constitution of the Republic of Azerbaijan.

¹² International Covenant on Civil and Political Rights (ICCPR) – ratified in 1994, European Convention of Human Rights (ECHR) – ratified in 1999, Protocol 12 of the European Convention on Human Rights (fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law) – ratified in 2001, Framework Convention for the Protection of National Minorities – acceded in 1995.

Georgia is dedicated to international human rights law, as evidenced within the state constitution which emphasises Georgian independence and peaceful relations with other peoples, continuing the historic legal traditions of the Georgian nation and the legacy of the 1921 Constitution. See : საქართველოს კონსტიტუცია, (Constitution of Georgia) Adopted on 24 August 1995 subsequently amended on 13 October 2017, hereinafter Constitution of Georgia, Preamble of the Georgian Constitution.

¹³ Sarah H. Cleveland, 'Banning the Full-Face Veil: Freedom of Religion and Non-Discrimination in the Human Rights Committee and the European Court of Human Rights' (2021) 34 Harvard Human Rights Journal 217, 227-29.

3.0- Applicable Legal Standards

FoRB occupies a significant position within the human rights framework, deriving from key sources such as Article 18 of the Universal Declaration of Human Rights (UDHR), the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (DEIDRB), and various articles in the ICCPR. Notably, a universally accepted definition of religion is absent from international human rights instruments and discourse¹⁴ due to its contentious nature. It is important to acknowledge that a single definition of FoRB doesn't exist. This right has been defined by several actors,¹⁵ but a particularly helpful example is proposed by Katherine Cash. This definition details that FoRB invokes state responsibility "to respect, protect and promote" FoRB along "seven dimensions"¹⁶. These dimensions can be summarised as including "the internal [FoRB]" i.e "to have, choose, change or leave a religion or belief" (*forum internum*),¹⁷ freedom of manifestation (*forum externum*),¹⁸ "protection from coercion",¹⁹ "protection from discrimination",²⁰ "parents... [and] children's rights",²¹ "[t]he right to conscientious objection",²² and "[e]mployer and employee" rights.²³ Cash's definition of belief mirrors that provided by the ECtHR, stating that the term "denotes views that attain a certain level of cogency, seriousness, cohesion and importance"²⁴ or "a

¹⁴ Notably the UN Human Rights Committee has stated that "the terms "belief" and "religion" are to be broadly construed" and encompass "theistic, non-theistic and atheistic beliefs". Please see: UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993, Paragraph 2.

¹⁵ Please see the definitions contained within the following:

Stefanus Alliance International, 'Freedom of Religion or Belief: Why, What and How', Ed Brown, Kristin Storaker and Lisa Winther (eds) (5th edn) (2020). Please see: <https://d3lwycy8zkggea.cloudfront.net/1615794491/forb-english-2020.pdf>. Accessed 18th May 2024.

Conference on Security and Co-operation in Europe, 'Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of The Provisions of the Final Act Relating to the Follow-Up to the Conference' (19 January 1989) Paragraph 16. Please see: <https://www.osce.org/files/f/documents/a/7/40881.pdf> Accessed 18th May 2024.

¹⁶ Katherine Cash, 'What Freedom of Religion or Belief Involves and When it May be Limited', Kristina Patring (eds), SMC Faith in Development (2021) 6. Please see: <https://www.smc.global/wp-content/uploads/documents/A-Quick-Guide-to-Religious-Freedom.pdf> Accessed 18th May 2024.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid* 9.

²⁰ *ibid* 9.

²¹ *ibid* 10.

²² *ibid* 10.

²³ *ibid* 13.

²⁴ *Campbell and Cosans v United Kingdom* App No 7743/76 (Series A) (25 February 1982) paragraph 36.

coherent view on fundamental problems”.²⁵ Beyond this, the enduring importance of FoRB can be seen within the wider international legal framework, as highlighted in the DEIRDRE which emphasises religion or belief as “one of the fundamental elements in [the] conception of life and that freedom of religion or belief should be fully respected and guaranteed”.²⁶

3.1- The International Covenant on Civil and Political Rights

The ICCPR stands as a cornerstone of international law regarding FoRB. Article 18 of the ICCPR safeguards FoRB, asserting that “everyone shall have the freedom of thought conscience and religion,” encompassing the right to choose or adopt a religion or belief and to manifest it individually or collectively “in public or private”.²⁷ It prohibits coercion impairing this freedom²⁸ and mandates states to respect parents’²⁹ “liberty... to ensure religious and moral education” for their children.³⁰ The Covenant emphasises providing protection for children’s FoRB, requiring measures from the State, family, and wider society.³¹ Additionally, the ICCPR obliges states to afford FoRB “without distinction”, including gender.³² While Article 18 ensures FoRB, it includes a limitation clause, allowing restrictions only when “prescribed by law” and “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others”.³³ It distinguishes between the internal and external dimensions

Katherine Cash, ‘What Freedom of Religion or Belief Involves and When it May be Limited’, Kristina Patring (eds), SMC Faith in Development (2021) 4.

Please see: <https://www.smc.global/wp-content/uploads/documents/A-Quick-Guide-to-Religious-Freedom.pdf> Accessed 18th May 2024.

²⁵ *X. v The Federal Republic of Germany*, App No 8741/79 (10th March 1981) paragraph 1.

Katherine Cash, ‘What Freedom of Religion or Belief Involves and When it May be Limited’, Kristina Patring (eds), SMC Faith in Development (2021) 4.

Please see: <https://www.smc.global/wp-content/uploads/documents/A-Quick-Guide-to-Religious-Freedom.pdf> Accessed 18th May 2024.

²⁶ UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, A/RES/36/55, (signed 25 November 1981).

²⁷ The text of the ICCPR specifies forms of manifestation to be “worship, observance, practice and teaching”. Please see below:

ICCPR, Article 18(1); UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993, Paragraph 1.

²⁸ ICCPR (fn 3) Article 18(2).

²⁹ *ibid* 18(4), ICCPR also explicitly includes the right of “legal guardians” in this respect.

³⁰ Notably, the precise wording of the covenant states “in conformity with their own convictions”, an important distinction, placing emphasis upon the continuation of the parents or legal guardians’ beliefs as opposed to those held by others. Please see: ICCPR, Article 18(4).

³¹ ICCPR (fn 3) Article 24.

³² *ibid* Article 3.

³³ *ibid* Article 18(3).

The UN Human Rights Committee emphasises that limitations to the FoRB be “strictly interpreted” and that limitations should not exceed the legitimate purposes “for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.”

of FoRB, permitting limitations only on the manifestation of FoRB, not its cognitive aspect.³⁴ Unlike other freedoms, there can be no derogation from FoRB “[i]n time of public emergency which threatens the life of the nation”³⁵ (national security). The ICCPR further obligates states to adopt “laws or measures... necessary to give effect” to FoRB, ensuring effectiveness³⁶ and providing remedies for violations.³⁷ It also guarantees “the right to liberty of movement and freedom to choose... residence”,³⁸ prohibits unequal treatment based on religion “before the courts and tribunals”,³⁹ and prohibits “advocacy of... religious hatred... constitut[ing] incitement to discrimination”.⁴⁰ FoRB intersects with other freedoms outlined in the Covenant,

UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993, Paragraph 8.

³⁴ It is important to note that such limitations are exhaustive and may only be invoked for the purposes prescribed within Article 18(3) mentioned above. Additionally, the distinction between the cognitive and manifestation elements of FoRB (also referred to as the ‘internal’ and ‘external’ dimensions) regarding legitimate restrictions upon FoRB. The cognitive element of FoRB relates to an individual's choice or inner convictions regarding religion and belief, as such, no limitation or derogation by the state is permitted. Such impermissible acts of this nature may include requirements to carry religious affiliation on identity cards or swearing oaths of a religious nature. In contrast, the manifestation element represents “a broad range of acts” such as religious teaching and may be limited, but only for the purposes provided within the ICCPR.

For cognitive element please see:

UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993, paragraph 3.

For more information please see: UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993.

For manifestation element please see:

UN Human Rights Committee, CCPR General Comment No.22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30th July 1993, paragraph 4.

See also:

Dominic McGoldrick, ‘Thought, Expression, Association, and Assembly’, Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, and David Harris (eds), *International Human Rights Law* (4th edn) (OUP, 2022) 215.

³⁵ ICCPR (fn 3) Article 4 (2).

³⁶ *ibid* Article 2(2).

³⁷ This includes violations by “persons acting in an official capacity”. Further, the ICCPR obligates states to ensure that the violated individual “shall have is right thereto determined by competent judicial, administrative or legislative authorities or by any other competent authority provided by the legal system”.

Please see: ICCPR (fn 3) Article 2, paragraph 3(a).

In addition, states are obligated to “develop the possibilities of [a] judicial remedy”.

ICCPR (fn 3) Article 2, paragraph 3(b).

Where remedies are granted by such “competent authorities” they must be enforced.

Please see: ICCPR (fn 3) Article 2(3)(c).

³⁸ ICCPR (fn 3) Article 12(1).

Notably, the freedom to “leave any country” regardless of religion or belief, except for the purposes provided within Article 18(3) is also included within the Covenant.

Please see: ICCPR, Article (fn 3) 12(2).

³⁹ ICCPR (fn 3) Article 14(1).

⁴⁰ *ibid* Article 20(2).

including freedom of assembly,⁴¹ association,⁴² participation in “public affairs”,⁴³ access to public services,⁴⁴ and “equal protection of the law”,⁴⁵ extending protections to minority religious groups.⁴⁶

3.2- The European Convention on Human Rights

ECHR mirrors the ICCPR in enshrining FoRB. Like Article 19(1) of the ICCPR, ECHR’s Article 9 guarantees “freedom of... religion,” encompassing the “freedom to change religion or belief” and manifest FoRB “in worship, teaching, practice and observance.”⁴⁷ Article 9(2) closely mirrors ICCPR’s Article 18(2) and 18(3), allowing limitations “prescribed by law” for “public safety... public order, health or morals,” or “others[’]” rights,⁴⁸ deemed “necessary in a democratic society.” However, ECHR explicitly mentions “religious and philosophical convictions”⁴⁹ regarding parental rights to education, broader than ICCPR’s “religious and moral education”. Notably, the ECHR lacks an explicit provision on coercion in the context of FoRB, unlike ICCPR’s Article 18(2).⁵⁰ A significant difference is ECHR’s allowance for derogation during a public emergency, while ICCPR prohibits it.⁵¹ Enforcement mechanisms differ: the ECtHR interprets and enforces ECHR rights, offering binding decisions on complaints, unlike the UN Human Rights Committee (HRC), which provides non-binding opinions. ECtHR utilises a ‘margin of appreciation’ to defer to domestic courts,⁵² absent in the HRC.

4.0- The Republic of Armenia

⁴¹ *ibid* Article 21.

⁴² *ibid* Article 22(1).

⁴³ *ibid* Article 25(b).

⁴⁴ *ibid* Article 25(c).

⁴⁵ *ibid* Article 26.

⁴⁶ *ibid* Article 27.

⁴⁷ ECHR (fn 2) Article 9(1).

⁴⁸ *ibid* Article 9(2).

⁴⁹ *ibid*, Protocol No.1, Article 2.

⁵⁰ ICCPR (fn 3) Article 18(2).

Although the ECHR does not explicitly mention coercion, the partly concurring opinion of Judge Petiti, expanded upon the difference between proselytising and coercion. The case followed a similar rationale when considering the question of whether proselytism constituted a manifestation of religion.

Please see: *Kokkinakis v Greece* App No 14307/88 (ECHR, 25 May 1993) (Partially Concurring Opinion of Judge Petiti) paragraphs 20-21.

⁵¹ ECHR (fn 2) Article 15, ICCPR, Article 4.

⁵² Basak Çali, Regional Protection, Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, and David Harris (eds) *International Human Rights Law* (4th edn) (OUP, 2022) 440-441.

The Armenian constitution contains several articles relevant to FoRB. Article 17 guarantees the “freedom of activities of religious organisations”⁵³ and affirms the separation of religious organisations from the state.⁵⁴ Article 18 recognises the Armenian Apostolic Holy Church (AAHC) as the “national church”⁵⁵ and regulates its interaction with the state on a legal basis.⁵⁶ However, the most evident link to international standards is seen in Article 41, which mirrors many freedoms in the ECHR and ICCPR. It guarantees the right to freedom of religion, including “the freedom to change religion or belief”, and to manifest it in various forms,⁵⁷ with a limitation clause restricting FoRB only for state security, public order, health, morals, or others’ rights or freedoms. Notably, the inclusion of state security may diverge from international standards. Moreover, the constitution addresses military service, allowing for alternative service if it contradicts “religious faith or belief”.⁵⁸ Article 41 also ensures legal equality and autonomy for religious organisations, with their establishment and operation “prescribed by law”.⁵⁹ Additionally, Article 76 governing the constitution’s operation during states of emergency or martial law, subjects all religious freedoms to suspension or restriction, except Article 41(1), with actions subject to international commitments and derogations.⁶⁰

4.1- Implementation of Legislation

The central issues regarding Armenia’s compliance with international FoRB pertain to registration and proselytism. Armenian legislation prohibits ‘soul hunting,’ encompassing proselytism and coerced conversion, but lacks a clear definition of this concept.⁶¹ Additionally, it restricts religious entities with headquarters abroad from receiving financial support, although enforcement mechanisms are absent.⁶² Moreover, religious organisations are barred from providing or receiving financial support from political parties and forming ‘public

⁵³ Constitution of the Republic of Armenia (fn 10) Article 17, paragraph 1.

⁵⁴ *ibid* Article 17, paragraph 2.

⁵⁵ *ibid* Article 18, paragraph 1.

⁵⁶ *ibid* Article 18, paragraph 2.

⁵⁷ Notably, this includes manifestation ‘either alone or in community with others and in public or in private’ through ‘preaching, church ceremonies, other rites of worship or in other forms’.

Please see:

ibid Article 41, paragraph 1.

⁵⁸ *ibid* Article 41, paragraph 3.

⁵⁹ *ibid* Article 41, paragraph 4.

⁶⁰ *ibid* Article 76.

⁶¹ United States Department of State, *2022 Report on International Religious Freedom: Armenia* (Office of International Religious Freedom 2022) 4. See: < <https://www.state.gov/reports/2022-report-on-international-religious-freedom/armenia/>> Accessed 20 May 2024.

⁶² *ibid*.

organisations'.⁶³ The Christian Religious Organisation of Jehovah's Witnesses in the NKR v. Armenia (JWNKR v. Armenia) case illustrates these issues, addressing registration, education, and proselytism amid an armed territorial dispute with Azerbaijan over Nagorno-Karabakh. Despite the government citing national security and proselytism,⁶⁴ the ECtHR, with the backing of caselaw precedence,⁶⁵ found Armenia in violation of ECHR standards, ruling that the interference with the organisation's FoRB was disproportionate.⁶⁶ ⁶⁷ This case reflects broader difficulties faced by religious minority groups in Armenia regarding registration and interference with FoRB,⁶⁸ although compliance with ECtHR decisions is apparent, with "no reports of interference with religious meetings of Jehovah's Witnesses in Nagorno-Karabakh"⁶⁹ following the ruling. However, it remains uncertain whether registration has been granted to the organisation in question.

4.2- Limitation of Rights via National Security and Public Order

⁶³ The term 'public organisations' refers to officially registered non-governmental entities.

Please see:

United States Department of State, *2022 Report on International Religious Freedom: Armenia* (Office of International Religious Freedom 2022) 4. See: <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/armenia/>> Accessed 20 May 2024.

⁶⁴ *Christian Religious Organization of Jehovah's Witnesses in the NKR v Armenia* App no 41817/10 (ECHR, 22 March 2022) paragraph 16.

⁶⁵ *Kokkinakis v Greece* App No 14307/88 (ECHR, 25 May 1993), paragraph 48.

⁶⁶ In addition, the court found that the practice of proselytism constituted a legitimate form of manifestation and thus the refusal of registration by the government interfered with their FoRB under the ECHR.

Please see:

Christian Religious Organization of Jehovah's Witnesses in the NKR v Armenia App no 41817/10 (ECHR 22 March 2022) paragraph 57.

⁶⁷ The government in this case listed several purposes for the restriction to be in place, among others national security (paragraph 78) and proselytism (paragraph 70) which the court accordingly dismissed as [ir]relevant and [in]sufficient to justify interference in this case" (paragraph 80), finding Armenia in violation of ECHR standards (paragraph 81).

Please see:

Christian Religious Organization of Jehovah's Witnesses in the NKR v Armenia, App no 41817/10 (ECHR, 22 March 2022), paragraphs 70, 78, 80, 81.

⁶⁸ Requirements for registration include, among other things, having a "historically recognized holy scripture" and being "free from materialism" and "follow a doctrine espoused by a member of the "international modern system" of religious communities" in addition to having a minimum membership of 200 individuals.

United States Department of State, *2022 Report on International Religious Freedom: Armenia* (Office of International Religious Freedom 2022) 5. <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/armenia/>> Accessed 20 May 2024.

⁶⁹ United States Department of State, *2022 Report on International Religious Freedom: Armenia* (Office of International Religious Freedom 2022) 10. <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/armenia/>> Accessed 20 May 2024.

Article 41 paragraph 2 of the Armenian Constitution explicitly identifies ‘state security’ as a legitimate ground for constraining the exercise of freedom of thought, conscience, and religion, restrictions on basic rights and freedoms should not exceed those prescribed by international treaties ratified by the Republic of Armenia.⁷⁰ International human rights law views this restriction test quite strictly and does not recognize the illegitimate purposes of deviating from it, moreover it explicitly states, that ‘restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.’⁷¹ Limitations are permissible solely for the designated purposes they were intended for, necessitating a direct correlation and proportionality to the specific exigency they address, impositions must refrain from discriminatory intent or application.⁷² The same spirit is repeated under ECtHR case-law, the exceptions delineated in Article 9(2) concerning the FoRB should undergo a stringent interpretation, given their exhaustive enumeration and inherently restrictive definitions, these exceptions do not permit restrictions on grounds of national security, emphasising the necessity for precision and caution in their application.⁷³ The absence of this provision was not incidental; rather, it underscored the paramount significance of religious pluralism as a cornerstone of democratic societies. Furthermore, it highlighted the principle that a state is prohibited from dictating or coercing individuals regarding their beliefs, emphasizing the imperative of religious freedom and autonomy.⁷⁴

4.3- Covid-19 Restrictions on Religious Freedom

During the Covid-19 pandemic, many countries, including Armenia, implemented restrictions to curb the virus’ spread, sometimes affecting religious gatherings.⁷⁵ These measures, while limiting freedom of religious assembly, aimed primarily at safeguarding public health rather than targeting religious practices. Limiting FoRB during emergencies is permissible under Article 76 of Armenia’s Constitution,⁷⁶ but the government did not invoke this provision during the pandemic. According to correspondence with the Council of Europe Secretary General, religious rights were not limited.⁷⁷ However, restriction on assembly did impact FoRB in

⁷⁰ ‘Joint Opinion on the Draft Law Amending the Law on Freedom of Conscience and on Religious Organisations’, Adopted by the Venice Commission 16-17 March 2018, 14.

⁷¹ Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion) CCPR/C/21/Rev.1/Add.4, paragraph 8.

⁷² *ibid.*

⁷³ European Court of Human Rights ‘National Security and European Case-Law’ 2013, 22.

⁷⁴ *Nolan And k. v Russia* App no 2512/04 (ECHR, 12 February 2009) paragraph 73.

⁷⁵ Vladimir Vardanyan, The impact of the Covid-19 Pandemic on Human Rights and the Rule of Law, Parliamentary Assembly, Committee on the Legal Affairs and Human Rights, paragraph 12.

⁷⁶ Constitution of the Republic of Armenia (fn 10) Article 17, paragraph 1.

⁷⁷ Reservations and Declarations for Treaty No.005 - Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005) accessed 15 April 2024

Armenia. In Armenia and other countries, governments sometimes used force against religious groups and blamed them for the pandemic.⁷⁸ Reports from 39 countries attributed the virus' spread to religious groups, with some entities directing hostile rhetoric toward Christian groups in Armenia.⁷⁹

5.0- The Republic of Azerbaijan

In examining Azerbaijan's FoRB legislation, a comprehensive analysis reveals a multifaceted legal framework embedded within the constitution. Key provisions underscore principles of secularism and equality amongst religions,⁸⁰ prohibiting propaganda contrary to human dignity,⁸¹ safeguarding secularism in education,⁸² and committing to non-discrimination⁸³ and privacy rights.⁸⁴ Noteworthy protections include freedom to profess any religion or none, express and disseminate beliefs,⁸⁵ and perform religious rituals within bounds of public order and morality.⁸⁶ Azerbaijani legislation intricately addresses issues such as election participation,⁸⁷ restrictions on religious officials, and dissolution of religious organisations for actions causing animosity or "degrad[ing] human dignity".⁸⁸ The State Committee on Religious Associations oversees an onerous⁸⁹ registration process with criteria for approval and consequences for non-compliance, extending to control of religious literature, symbols, and

<<https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=0>>.

⁷⁸ Samira Majumdar, 'How COVID-19 Restrictions Affected Religious Groups Around the World in 2020', Pew Research Centre.

⁷⁹ *ibid.*

⁸⁰ Constitution of the Republic of Azerbaijan (fn 11) Article 18, paragraph 1.

⁸¹ *ibid* Article 18, paragraph 2.

⁸² *ibid* Article 18, paragraph 3.

⁸³ *ibid* Article 25, paragraph 3.

ibid Article 25, paragraph 4.

⁸⁴ *ibid* Article 32, paragraph 7.

⁸⁵ *ibid* Article 47, paragraph 2.

⁸⁶ *ibid* Article 48, paragraph 5.

⁸⁷ *ibid* Article 56, paragraph 2.

⁸⁸ United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022), 1.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

⁸⁹ To register, religious organisations are required by law to submit extensive personal information, including *inter alia*, "place of residence... religious education... [and] copies of identity documents" of "at least 50 members" in addition to information regarding the organisation alongside their application.

United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022), 4.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

regulations governing foreign involvement.⁹⁰ Many of these practices and provisions conflict with international standards or risk misuse in practice.⁹¹

The assessment of Azerbaijani legislation's compliance with international FoRB standards yields mixed results. The constitution provides freedoms conforming to international standards such as separation of religion and state,⁹² equality of religions,⁹³ and individual freedoms in expressing beliefs.⁹⁴ It prohibits forced expressions of faith, protects privacy,⁹⁵ and prohibits use of technology to disclose private information.⁹⁶ However, aspects like the requirement for religious organisations to register⁹⁷ may violate international conventions⁹⁸ and be susceptible to abuse.⁹⁹ Provisions combating religious extremism and radicalism, while defining terms and prescribing penalties, risk abuse in interpretation and application. Overall, while Azerbaijan's legislation aligns with some international FoRB standards, certain areas pose concerns either through direct contravention or potential for abuse. Assessing compliance requires the pairing of 'black-letter' law, with its practical implementation.

5.0.1- Overview of Compliance within the Constitution

While numerous articles in the Azerbaijani Constitution align with provisions of the ECHR and the ICCPR, several either do not comply or could potentially contravene international

⁹⁰ *ibid* 4.

⁹¹ The system of state registration of religious organisations for example risks misuse. Although such registration is not directly in contravention with international standards, such legal devices still risk being utilised for the purposes of discrimination. Please see below for an example pertaining to Azerbaijan's registration system discriminating against small religious organisations. Felix Corley and John Kinahan 'Azerbaijan: Religious Freedom Survey, 2018, Occasional Papers on Religion in Eastern Europe Volume 39 Issue 1 (2019) 70.

⁹² United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022), 1.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

⁹³ Constitution of the Republic of Azerbaijan (fn 11) Article 18, paragraph 1.

⁹⁴ *ibid* Article 48, paragraph 2.

⁹⁵ *ibid* Article 48, paragraph 5.

⁹⁶ *ibid* Article 32, paragraph 7.

⁹⁷ United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022), 3-4.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

⁹⁸ Crucially registration itself is not identified by ECHR caselaw as an issue. Many cases often revolve around refusal to register. Please see: *Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, App no 41817/10 (22nd March 2022).

⁹⁹ Azerbaijan's strict criteria for registration (as discussed below) may be interpreted as an attempt to restrict the proliferation of small religious groups. Notably, this memorandum does not identify this as a rationale behind Azerbaijan's actions, this example is merely used for the purposes of explanation.

standards regarding FoRB. This section will not comprehensively review every related article in the constitution but will focus on domestic implementation of key articles and the extent to which it adheres to international norms and standards.

Many articles related to FoRB in Azerbaijan's constitution directly comply with international standards. For example, Article 25 requires the state to "guarantee the equality of... religion... [and] beliefs" and prohibits "[r]estrictions of rights and freedoms on the grounds of... religion... [and] beliefs".¹⁰⁰ These requirements extend to ensuring that "[n]o one may be harmed, granted [or refused] advantages or privileges"¹⁰¹ and that there's equality in "proceeding[s] before state authorities and bearers of public authority that decide upon his/her rights and duties".¹⁰² Although not the only compliant article, it's crucial to note that parallels between domestic legislation and statutory norms don't guarantee overall compliance. Compliance assessment requires examining legislative alignment and effective implementation, as mandated by international law.¹⁰³

Despite examples of compliance, some Azerbaijani legislation may conflict with international standards. Article 515 of the 2016 Administrative Code¹⁰⁴ stands out as an example of non-compliance. According to Azerbaijani religious freedom law, communities must obtain state registration for FoRB exercise to be legal.¹⁰⁵ This requirement may violate the right to manifest religion in Article 18 of the ICCPR and Article 9 of the ECHR.¹⁰⁶ If the requirement imposes undue burdens or discriminatory requirements, it may prevent individuals from freely manifesting their religion, violating international standards.¹⁰⁷ An example of a potential undue

¹⁰⁰ Constitution of the Republic of Azerbaijan (fn 11) Article 18, paragraph 1.

ibid Article 25, paragraph 3.

¹⁰¹ ibid Article 25, paragraph 4.

¹⁰² ibid Article 25, paragraph 5.

¹⁰³ The use of the word "ensure" within Article 2(1) of the Covenant requires measures beyond mere legislating.

ICCPR (fn 3) Article 2, paragraph 1.

¹⁰⁴ Authors Note: English Translation of Azerbaijan legislation is not available, as such this memorandum is unable to provide a direct doctrinal analysis of the '2016 Administrative Code' and is reliant upon interpretations by other sources. Please see: Felix Corley and John Kinahan 'Azerbaijan: Religious Freedom Survey, 2018, Occasional Papers on Religion in Eastern Europe Volume 39 Issue 1 (2019) and United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022). <https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

¹⁰⁵ Felix Corley and John Kinahan 'Azerbaijan: Religious Freedom Survey, 2018, Occasional Papers on Religion in Eastern Europe Volume 39 Issue 1 (2019) 70.

¹⁰⁶ ICCPR (fn 3) Article 18(1).

¹⁰⁷ For example, in cases where the nature of the organisation is not deemed religious and thus not able to register as a religious organisation.

Please see for example:

Kimlya and Others v Russia App no 76836/01 and 32782/03 (ECHR, 1 October 2009).

burden is evident in the law itself, where registration requires “a [notarised] application signed by at least 50 of its members” and personal information of all members,¹⁰⁸ effectively disallowing smaller groups from registration and enjoying legal protections.

5.1- Implementation of Legislation

As previously mentioned, in the evaluation of Azerbaijan’s compliance with international standards, it is crucial to consider the practical implementation of domestic legislation. While Azerbaijan’s state constitution includes numerous articles addressing FoRB in alignment with international standards, deeper analysis reveals non-compliance at lower levels of law. This non-compliance often revolves around social, political, or cultural factors, particularly when assessing whether state-imposed limitations align with legitimate purposes outlined in the ICCPR and ECHR. Therefore, while Azerbaijan’s constitution may demonstrate alignment with international norms regarding FoRB, discrepancies arise when examining the application of laws at lower levels, prompting questions about the consistency of state actions with international standards.

Non-compliance of state practice within Azerbaijan, in contravention of its international obligations and its own constitution is evident as seen within both HRC Communications¹⁰⁹ and ECtHR caselaw. A prominent example of the laws disassociation with its practical implementation can be found within *Nasirov and Others v. Azerbaijan*. The case, among other things, concerned restriction of religious literature in violation of Article 9 of the ECHR. The ECtHR found that “domestic courts failed to rely on any provision of domestic law” when assessing the lawfulness of how the literature in question was intended to be used, regardless of the legitimacy of the restriction or the need to interfere with the applicants FoRB.¹¹⁰ Further, domestic courts had not relied upon Azerbaijani legislation in its decision or performed an effective examination of whether the alleged offences had taken place and as such, the ECtHR ruled that restrictions were not “prescribed by law”¹¹¹ and thus not compliant with international

Notably, this case found left it to the state to determine whether Scientology constituted a religion and was thus able to apply for registration.

¹⁰⁸ United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022) 4.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

¹⁰⁹ Please see: UNGA Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2805/2016. (*Aliyev et al v. Azerbaijan*).

Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2832/2016. (*Huseynova et al v. Azerbaijan*).

¹¹⁰ *Nasirov and Others v Azerbaijan* App no 58717/10 (ECHR, 20 February 2020) paragraph 64.

¹¹¹ *ibid* paragraph 66.

standards. Following this decision, the court did not seek to assess whether the restrictions fulfilled a legitimate aim, however the court specified that it “cannot accept the reasoning of the domestic courts... that the books could not be distributed in public places”.¹¹² This could be interpreted as the court tacitly endorsing the view, that the prevention of this form of manifestation was contrary to Article 9 of the ECHR.¹¹³

As detailed within the case of *Nasirov and Others v. Azerbaijan*, the state often exhibits non-compliance when implementing FoRB legislation. Given the example above, in addition to a collection of similar cases,¹¹⁴ it is reasonable to assess, that in terms of practical implementation, Azerbaijan exhibits patterns of non-compliance with international FoRB standards and obligations.

5.2- Limitation of Rights via National Security and Public Order

The use of “public order”¹¹⁵ as a legitimate aim in Azerbaijan is often used in relation to those receiving religious education abroad both as a restriction upon religious freedoms, but also as a criminal offence under Azerbaijani domestic legislation.¹¹⁶ Although Azerbaijan does not provide a reasoning for the criminalisation and restriction of these individuals for acts such as “conducting... Islamic rites”.¹¹⁷ The Azerbaijani government’s rationale for such actions can be seen within *Sardar Babayev v. Azerbaijan*, where the government argued that the domestic legislation and subsequent restriction was necessary for “the protection of public order... to prevent negative influences of foreign religious extremist and fundamentalist ideologies”.¹¹⁸

¹¹² *ibid* paragraph 64.

¹¹³ Proselytism has been accepted by the ECtHR as a form of manifestation, which counter to the domestic court’s assertion within *Nasirov and others v. Azerbaijan*, does not infringe upon the rights and freedoms of others and therefore by default, its prevention is not always a legitimate aim. For further information regarding proselytism as a form of manifestation please see: European Court of Human Rights, Case of *Kokkinakis v Greece*, App no 14307/88, (25 May 1993), paragraph 48.

¹¹⁴ *Sardar Babayev v Azerbaijan*, App no 24015/17 and 26896/18 (ECHR, 1 February 2024), *Tagiyev and Huseynov v Azerbaijan* App no 13274/08 (ECHR, 5 December 2019).

¹¹⁵ As prescribed within the ECHR, Article 9(2), and the ICCPR 18(1).

¹¹⁶ *Sardar Babayev v Azerbaijan* App no 24015/17 and 26896/18 (ECHR, 1 February 2024), paragraphs 27-32.

¹¹⁷ See: Felix Corley and John Kinahan ‘Azerbaijan: Religious Freedom Survey, 2018, Occasional Papers on Religion in Eastern Europe Volume 39 Issue 1 (2019) and United States Department of State, 2022 *Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022) 6.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18 March 2024.

¹¹⁸ *Sardar Babayev v Azerbaijan* App no 24015/17 and 26896/18 (ECHR, 1 February 2024), paragraph 65.

It is important to note here that the restriction and punishment of non-registered religious officials has been shown within caselaw to serve a legitimate aim and is not in itself, a violation of international standards.¹¹⁹ Despite precedent and the application of a “wide margin of appreciation”, however, the court ultimately saw fit to conduct a closer investigation into the facts. Ultimately, the court found in favour the applicant in this case, citing the inconsistency of domestic legislation, to the principles provided for within ECHR, namely, that the manifestation of FoRB by the applicant did not constitute a risk to public order and was simply punished for receiving a religious education abroad.¹²⁰ Additionally, the Court refuted the government’s claim that such measures were necessary in a democratic society for the purposes of protecting the secular nature of the Azerbaijani state, as required by the ECHR.¹²¹ Although not mentioned by the court explicitly, the precedence involved a sanction of a significantly lower fine and, without the prescribed domestic sanction of imprisonment¹²² which further contributes to the non-compliance of Azerbaijan’s domestic law with international standards.

The court directly addressed this in conformity with the Joint Opinion of the Venice Commission and the OSCE/ODIHR over this specific practice by the Azerbaijani state.¹²³ The court notes, that the law was “unnecessarily strict” and the non-compliance of restrictions “imposed... solely on the basis of... [an individual’s] place of study”.¹²⁴ The court further assessed, that such restrictions were an effective method in “the fight against extremism”¹²⁵ in direct contradiction with the state purposes of the restriction prescribed by domestic legislation.

¹¹⁹ Within *Masaev*, the court ruled that the requirement of necessitating religious organisations to register with the State in order for individual’s manifest their religious views pursued a legitimate aim. The court reasoned that sanctions upon individual’s for manifesting their religious beliefs without their organisations prior registration was “necessary for the purpose of education and deterrence”, with the subsequent fine “not “be[ing] significant and... thus... proportionate to the aim pursued”.

Please see: *Masaev v Moldova* App no 6303/05 (ECHR, 12 May 2009), paragraph 20.

¹²⁰ *Sardar Babayev v Azerbaijan* App no. 24015/17 and 26896/18 (ECHR, 1 February 2024) paragraph 76.

¹²¹ ECHR (fn 2) Article 9(2).

¹²² *Masaev v Moldova* App no 6303/05 (ECHR, 12 May 2009) paragraph 11.

¹²³ European Commission for Democracy Through Law (Venice Commission), Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and The OSCE/ODIHR, Adopted by the Venice Commission at its 92nd Plenary Session (12-13th October 2012) 6.

¹²⁴ *Sardar Babayev v Azerbaijan* App no. 24015/17 and 26896/18 (ECHR, 1 February 2024) paragraph 77.

¹²⁵ *ibid* paragraph 78.

Babyev is emblematic of a larger trend within Azerbaijani legislation and practice regarding the restriction of FoRB.¹²⁶ The language used to justify such restrictions, is usually in keeping with the provisions of international standards and contributes to a veneer of legitimacy for illegitimate restrictions. The reasoning and purposes behind the attempted legitimisation of restrictions by the government are beyond the scope of this memorandum, but suffice to say, the use of ‘public order’ within this case, to legitimise non-compliant state-action is not entirely unique. Although Azerbaijan, particularly in regard to ‘public order’ and restrictions upon religious organisations and officials, seeks to utilise seemingly compliant language in its justifications, in practice, domestic legislation and its implementation is non-compliant with international standards.

5.3- Covid-19 Restrictions on Religious Freedom

When considering the compliance of Azerbaijan’s covid regulations with international FoRB standards, this memorandum was unable to assess specific regulations due to an inability to translate Azerbaijani text. For this reason, the memorandum will refrain from providing a definitive opinion upon whether such restrictions complied with international standards. Notably however, the research conducted by this memorandum was able to identify certain key pieces of information regarding the context of religious freedoms and restrictions during the pandemic. Another element of this analysis to consider is the lack of sources specifically discussing FoRB violations throughout the period of the pandemic, as such this memorandum has utilised a limited number of sources, notably US Department of State Reports, and thus cannot provide a balanced inquiry into the facts. Although it was not possible to identify a concerted pattern of restrictions specifically related to FoRB, this memorandum identifies several key examples of Covid-19 policy interacting with FoRB.

The first identified incidents concern “legal action” against members of the Muslim Unity Movement for alleged breaches of Covid-19 quarantine measures, amongst other charges. Notably, this group is an unregistered religious organisation,¹²⁷ and some purport that these

¹²⁶ For example, Azerbaijani law may revoke the citizenship of those who “propagate religious doctrines in a “hostile” manner” this term is highly subjective and is liable to be abused for nefarious purposes.

Please see: United States Department of State, *2022 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2022), 8.

<https://www.state.gov/wp-content/uploads/2023/05/441219-AZERBAIJAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> Accessed 18th March.

¹²⁷ Although it should be mentioned that the Azerbaijani government alleges that the group pursues a political ideology and is linked to Iran.

charges were “baseless” and in pursuit of a political aim.¹²⁸ Without specific context, or support from ECHR caselaw, the memorandum is only able to speculate upon the supposed rationale or purposes behind the legal action. Further, it is difficult to assess whether such legal action constitutes a legitimate aim, should there have been a breach of Covid-19 regulations by members of the group, restrictions upon manifestation may be legitimate for many of the purposes provided within international statutes, namely “public safety, order, health... or the fundamental rights and freedoms of others”,¹²⁹ however, without more information concerning the reasoning behind the sanctions, it is not possible to assess whether the government was in compliance with international standards. The assessment of political dimension behind restrictions is beyond the purview of this brief, notwithstanding, if the purpose of restrictions upon FoRB of these individuals was for purely political purposes beyond the legitimate aims, then they may be non-compliant.

Another example of potential non-compliance can be seen within the inaction of the government in restricting religious organisations. The US Department of State Report purports that there were fewer incidents of persecution against Jehovah’s Witnesses for the manifestation of their religious beliefs through proselytism. The report asserts that members of this community suggest this is due to the inability to take part in such activities, due to Covid-19 restrictions. Although superficially this may be deemed a positive, it emphasises that restrictions had been implemented against the community prior to the pandemic. Proselytising has been confirmed by the ECHR as a legitimate form of religious manifestation and that restriction purely for taking part in this form of manifestation is non-compliant with the ECHR.¹³⁰

Given the limited information surrounding specific restrictions during the Covid-19 pandemic, this memorandum is reluctant to prescribe either compliance or non-compliance to FoRB restrictions in Azerbaijan in this period. Of note, the memorandum does not intend to suggest that non-compliance specifically did not occur during this period and the examples mentioned above, have the potential to either be compliant or non-compliant with international standards given the specific circumstances surrounding restrictions and their justification. Further, the absence of restrictions due to the inability to proselytise, for example, may suggest a non-compliant trend in the government’s action prior to the pandemic.

United States Department of State, *2020 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2021) 8 < <https://www.state.gov/reports/2021-report-on-international-religious-freedom/azerbaijan/> > Accessed 20 May 2024.

¹²⁸ *ibid.*

¹²⁹ ICCPR (fn 3) Article 18(3).

¹³⁰ *Kokkinakis v Greece* App no 14307/88 (ECHR, 25 May 1993) paragraphs 48 and 49.

6.0- Georgia

Georgia's legislation on FoRB reflects a nuanced constitutional framework emphasizing secularism, equal treatment among religious groups, and dedication to ensuring individuals can freely practice their beliefs without prejudice.

The topic of religion remains highly sensitive in Georgia. According to the last census conducted in 2014, 83.4% of the Georgian population identified themselves as Eastern Orthodox Christians, 10.7% Muslim, 2.9% Armenian Apostolic, and other 3%.¹³¹ Article 16 of the Georgian Constitution guarantees freedom of belief, religion, and conscience, while also recognizing the significant historical role and independence of the Apostolic Autocephalous Orthodox Church of Georgia from the State.¹³²

The Constitution of Georgia guarantees principles of equality and non-discrimination,¹³³ yet historical evidence suggests that religious issues have often been exploited by various governments for political purposes. This phenomenon can be attributed not only to the significant historical influence of the role of the Georgian Orthodox Church (GOC) but also its incredibly high rating and trust in society.¹³⁴

The GOC evolved into an influential non-governmental institution, shaping public opinion and holding significance for authorities during pre-election periods, leading to constitutional amendments in 2001 and the Constitutional Agreement with the State of Georgia and the Apostolic Autocephalous Orthodox Church¹³⁵ (hereinafter Constitutional Agreement).¹³⁶

¹³¹ საქართველოს სტატისტიკის ეროვნული სამსახური, საქართველოს 2014 წლის მოსახლეობის საყოველთაო აღწერის ძირითადი შედეგები, 2018 (National Statistic Office of Georgia, The main results of the 2014 General Population Census Results of Georgia, 2018) 9.

¹³² საქართველოს კონსტიტუცია, (Constitution of Georgia) Adopted on 24 August 1995 subsequently amended on 13 October 2017, hereinafter Constitution of Georgia, Art. 8.

¹³³ *ibid*, Art. 11.

¹³⁴ The Caucasus Research Resource Center (CRRC), 'Survey: Religious Bodies and the Army Traditionally Among the Most Trusted Institutions in Georgia', 31 January 2021. <<https://georgianjournal.ge/society/36812-survey-religious-bodies-and-the-army-traditionally-among-the-most-trusted-institutions-in-georgia.html>> Accessed 21 May 2024.

¹³⁵ Jeremy T. Gunn, Dag Nygaard, *Georgian Constitutional Values versus Political and Financial Interests: The Constitutional Agreements Departure from the Georgian Principle of Equality* (Norwegian Centre for Human Rights 2015) 40-43.

¹³⁶ The constitutional agreement between the State and the Apostolic Autocephalous Orthodox Church of Georgia conducted in 2002 shall be 'in full compliance with the universally recognised principles and norms of international law in the area of human rights and freedoms', Constitution of Georgia (fn 132) Art. 8.

According to the Agreement the GOC enjoys a privileged status in Georgia, including in relation to tax and property regulations.¹³⁷

Georgia, as a secular state, upholds the independence of religious organizations, vital for freedom of religion and democratic ideals,¹³⁸ initially aligning with international legal standards.

The principle of secularism in Georgia lacks clarity regarding its alignment with non-discrimination and equality principles, as special legislation or the Constitutional Court of Georgia do not define it.¹³⁹ The different statuses of religious associations in correlation with the basic right to equality before the law, are not discussed in Georgian legislation.¹⁴⁰

The absence of separate legislation regulating the FoRB in Georgian legislation is not negatively assessed. On the contrary, most religious communities do not see a need for such a law or additional regulations, as these might risk establishing 'a hierarchy of state-favoured religious communities'¹⁴¹ However, determining a principle of secularism would be beneficial when assessing the different treatment of various religious groups.

The constitutional agreement in the hierarchy of norms is higher than international treaties under the Georgian Constitution,¹⁴² and there is no answer as to whether this permission contradicts the idea of secularism. The Georgian Constitution also enshrines that legislation must comply with the standards of international law.¹⁴³ However, the 2001 constitutional amendment indicates the state's effort to prioritise national legislation over international treaty law, potentially violating principles of public international law.¹⁴⁴ The European Court of Human

¹³⁷ 'საქართველოს სახელმწიფოსა და საქართველოს სამოციქულო ავტოკეფალურ მართლმადიდებელ ეკლესიას შორის' კონსტიტუციური შეთანხმების დამტკიცების თაობაზე საქართველოს პარლამენტის დადგენილება (Parliamentary decree on 'Constitutional Agreement between state of Georgia and the Apostolic Autocephalous Orthodox Church' on 22 October 2002, Art 6(5) and Art 11, available in Georgian).

¹³⁸ საქართველოს საკონსტიტუციო სასამართლოს გადაწყვეტილება (Decision of the Constitutional Court of Georgia №1/1/811, 3 July 2018, §23 (available in Georgian) hereinafter Decision Constitutional Court of Georgia.

¹³⁹ თინათინ ერქვანია, 'რელიგიური გაერთიანებების თანასწორობის პრინციპის უზრუნველყოფა სეკულარიზმის მოდელის იდენტიფიცირების გარეშე? საქართველოს საკონსტიტუციო სასამართლოს აქტუალური მართლმსაჯულება' (2019) სტატიათა კრებული: ადამიანის უფლებათა დაცვა და სახელმწიფოს ვალდებულებები 25, 38-42 (Tinatin Erkvania, 'Ensuring the principle of equality of religious associations without identifying the model of secularism? Current judgements of the Constitutional Court of Georgia' (2019) Article collection: Protection of Human Rights and Obligations of the State 25, 38-42) (Nana Ghvaladze translation).

¹⁴⁰ *ibid.*

¹⁴¹ Institute for Tolerance and Diversity (TDI), TDI and Forum 18, 'Joint Report to the United Nations on the State of Religious Freedom in Georgia', 2020, 5.

¹⁴² Constitution of Georgia (fn 132) Article 4(5).

¹⁴³ *ibid.*

¹⁴⁴ Jeremy T. Gunn, Dag Nygaard, *Georgian Constitutional Values versus Political and Financial Interests: The Constitutional Agreements Departure from the Georgian Principle of Equality* (Norwegian Centre for Human Rights 2015) 37-43.

Rights (ECtHR) jurisprudence permits states to acknowledge the historical significance of certain religious associations, but without discrimination.¹⁴⁵ Georgia has not made any reservations to the Vienna Convention on Treaty Law and has not disclosed the underlying motive for this prioritisation.¹⁴⁶

When defining the relationship between the state and the church, it is important to consider the protection of human rights and fundamental freedoms,¹⁴⁷ ensuring policies respect individuals' rights to religious expression fosters inclusivity and respect for diverse beliefs in society.¹⁴⁸ The constitutional agreement does not contain discriminatory provisions, but it is favourable only for one religious group and has been repeatedly used by the authorities as a means of justifying decisions of unequal treatment.¹⁴⁹

The financing of religious organisations, discriminatory norms in legislation, and the unclear role of Governmental supervision by the specially created structure of the State Agency for Religious Affairs are included in the Public Defender Office's annual report on the Situation of Protection of Human Rights and Freedom of Georgia¹⁵⁰ 2022.¹⁵¹ Notwithstanding, the requirement of non-discriminatory treatment of different religious groups enshrined in multiple international treaties, including anti-discriminatory legislation adopted in 2014,¹⁵² the trend of unequal treatment not only exists as a bad practice in Georgia but also is backed by the legislation.

6.1- Implementation of Legislation

The challenges that Georgia faces in terms of FoRB include but are not limited to: unequal treatment of different religious groups; obstacles to the building of non-Georgian Orthodox places of worship; investigating crimes committed on religious grounds; returning buildings

¹⁴⁵ *Case of 97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v Georgia* App no 71156 (ECHR, 3 May 2007) paragraphs 131-132.

¹⁴⁶ Gunn and Nygaard (fn 144) 37-43.

¹⁴⁷ Decision of the Constitutional Court of Georgia №1/1/811, 3 July 2018, §21 (available in Georgian).

¹⁴⁸ Jerome J. Shestack, 'The Philosophic Foundations of Human Rights' (1998) 20 Human Rights Quarterly 201, 204-5.

¹⁴⁹ Commissioner for Human Rights of the Council of Europe, Country report following the visit to Georgia from 21 to 24 February 2022, paragraph 46.

¹⁵⁰ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, paragraph 2022, 12.1, 140.

¹⁵¹ Hearings in the Parliament held 20 October 2023 and is the latest report so far focusing on human rights. <https://parliament.ge/media/news/parlamentma-sakhalkho-damtsvelis-angarishi-moismina-1>).

¹⁵² 'დისკრიმინაციის ყველა ფორმის აღმოფხვრის შესახებ' საქართველოს კანონი (Georgian law 'On the elimination of all forms of discrimination') Adopted on 2 May 2014.

confiscated in the Soviet era to their lawful owners; and the promotion of an environment that facilitates freedom of religion and belief in public schools.¹⁵³

This part of the memorandum due to its limited format, covers not all, but only the most important and contemporary challenges that Georgia faces regarding the proper implementation of its legislation in terms of FoRB.

Tax Code and the State Real Estate topics in connection with the GOC entered into the active phase of resolution with the decision of the Constitutional Court of Georgia in 2018.¹⁵⁴ The provision of the Law of Georgia on State Property, which allowed the Government of Georgia to transfer real estate free only to the Orthodox Church, was cancelled.¹⁵⁵ However, the decision was implemented by the government in such a way that the discriminatory practice was still maintained by achieving only formal compliance with it. The amendment in the legislation replaced the unrestricted transfer of state-owned properties with the option to transfer land at a nominal price (1 GEL),¹⁵⁶ and in practice, the religious group that enjoys this privilege is still only the Orthodox Church.¹⁵⁷

Hence, it is arguable that the legislative amendment does not effectively uphold the essence of the Constitutional Court's ruling. It is significant to highlight that the plaintiffs in the case sought parity with the Orthodox Church concerning property transfers, they claimed equal access to state-owned real estate for all religious denominations.¹⁵⁸

Another Constitutional decision declares VAT exemption without the right of deduction about the renovation, painting and building of churches and temples contracted only by the Patriarchate of the Georgian Orthodox Church, was discriminatory and unconstitutional.¹⁵⁹ However, VAT exemption without the right of deduction on the delivery of a cross, candle, icon, book, calendar, and other religious object, which are used only for religious purposes by the Patriarchate of Georgia remains part of the Tax Code.¹⁶⁰

¹⁵³ Recommendations developed by the Council of Religions under the auspices of the Public Defender of Georgia, 2017.

¹⁵⁴ Decision of the Constitutional Court of Georgia (fn 147) (available in Georgian).

¹⁵⁵ *ibid.*

¹⁵⁶ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2022, paragraph 12.1, 140.

¹⁵⁷ Institute for Tolerance and Diversity (fn 141) 7.

¹⁵⁸ Decision of the Constitutional Court of Georgia (fn 147) paragraph 6.

¹⁵⁹ საქართველოს საკონსტიტუციო სასამართლოს გადაწყვეტილება (Decision of the Constitutional Court of Georgia) №1/2/671, 3 July 2018, paragraph 44 (available in Georgian) hereinafter Decision of the Constitutional Court of Georgia.

¹⁶⁰ საქართველოს საგადასახადო კოდექსი (The Tax Code of Georgia) adopted on 17 September 2010, Article 170(1)R (available in Georgian).

The Constitutional Court continues to review a case alleging discrimination against non-GOC religious groups related to the Tax Code of Georgia. This is a combination of three cases pending before the court stating that the GOC's exclusive property tax exemption on land used for noneconomic purposes violates constitutional guarantees of equality before the law.¹⁶¹ The issue concerns the legality of a law prohibiting religious groups, except the GOC, from privatizing state-owned religious buildings and reclaiming properties seized by the Soviet regime and now held by the state.¹⁶²

The new 'Defence Code' of Georgia presents another illustration of unequal treatment based on religious affiliation. Pursuant to the new regulations, specific data collection procedures for recording the mobilization reserve have been introduced, notably as stipulated in Article 97(5) of the Code, it became mandatory to complete the electronic documentation of individuals' religious affiliation and clergy status.¹⁶³ According to the Parliamentary Secretary of the Government of Georgia, the only rationale behind recording an individual's religious affiliation is purportedly confined to logistical considerations, primarily aimed at organising dietary provisions in alignment with their religious beliefs.¹⁶⁴

However, forcing/obliging a person to reveal his/her religion/confession constitutes a violation of the fundamental right to freedom of religion, according to the practice established by the European Court of Human Rights.¹⁶⁵ The state authorities are not authorized to interfere in the sphere of freedom of conscience of a person and try to find out his or her religious beliefs or to impose the obligation to reveal these beliefs.¹⁶⁶ In this case, religion or belief belongs to the internal sphere of a person's freedom of religion which is an essential component of freedom of religion and conscience.¹⁶⁷

The new 'Defence Code' has another discriminatory provision. As per the new regulation, deferring military service will no longer be an option, and clergy members will be required to

¹⁶¹ *ibid* Article 99(1)D.

¹⁶² US State Department, '2022 Report on International Religious Freedom: Georgia', (2022) < <https://www.state.gov/reports/2022-report-on-international-religious-freedom/georgia/> > Accessed 20 May 2024.

¹⁶³ საქართველოს თავდაცვის კოდექსი (The Defence Code of Georgia) Adopted on 12 October 2023 (available in Georgian).

¹⁶⁴ სალომე ჩადუნელი, 'რა შემთხვევაში გაიწვევენ სტუდენტსა და სასულიერო პირს ჯარში - ცვლილებები თავდაცვის კოდექსში' 20 ნოემბერი 2023, რადიო თავისუფლება, < <https://www.radiotavisupleba.ge/a/32692132.html> > (Salome Chaduneli, 'In what case will a student and a clergy be called for military after Defence Code changes' 20 November 2023, RadioLiberty) Accessed 14 March 2024.

¹⁶⁵ *Sinan Işık v Turkey* App no 21924/05 (ECHR 2 February 2010) paragraph 37, *Mockutė v Lithuania* App no 66490/09 (ECHR 27 February 2018) paragraph 117.

¹⁶⁶ *ibid* paragraph 41.

¹⁶⁷ *ibid* paragraph 42.

undergo alternative civilian service.¹⁶⁸ However, this exemption will not apply to the Orthodox Church, which is safeguarded by the Constitutional Agreement.¹⁶⁹ The clergy of other religious associations will have to undergo alternative labour service, while the representatives of the Orthodox Church have the privilege of being completely exempted from military and alternative labour service.¹⁷⁰

The given approach creates a discriminatory environment for other religious groups and cannot be justified on the grounds of proportionality or considered as a means of achieving a legitimate goal.¹⁷¹ In several cases, the European Court found that a law granting exemptions from military service to the clergy in some religions but not others was discriminatory and in violation of the ECHR.¹⁷²

According to the UN Human Rights Committee, the right to conscientious objection derives from Article 18 of the ICCPR¹⁷³ and differentiation between conscientious objectors based on the nature of belief is not allowed.¹⁷⁴ The fact that a particular religion constitutes a majority of the population should not lead to a violation of Convention rights, nor should it foster discrimination against adherents of alternative religious convictions or non-believers.¹⁷⁵

Concerning another piece of legislation perceived as discriminatory, the Labour Code of Georgia exclusively designates days off for religious holy days observed only within the Orthodox Christian tradition.¹⁷⁶

The issue of religious discrimination and intolerance in Georgia extends beyond the traditional divides between majority and minority religions. The government's approach, resembling a

¹⁶⁸ The Defence Code of Georgia (163) Article 93(2).

¹⁶⁹ Constitutional Agreement between the state of Georgia and the Apostolic Autocephalous Orthodox Church (fn 137) Article 4(1).

¹⁷⁰ Norms on the principle of conscientious objection see in საქართველოს კანონი 'არასამხედრო ალტერნატიული შრომითი სამსახურის შესახებ' (Law of Georgia on 'Non-military, alternative labour service') adopted on 28 October 1997, Articles 1, 3, 4. (available in Georgian).

¹⁷¹ On similar case in assessing the special role of the Georgian Orthodox Church the Constitutional Court of Georgia concluded that 'It is not intended to strengthen the religious privileges of Orthodoxy, and granting a certain right to the Church does not mean preventing the enjoyment of the same right by other religious organizations' see: Decision of the Constitutional Court of Georgia №1/1/811, 3 July 2018, (available in Georgian).

¹⁷² *Lang v Austria* App no. 28648/03 (ECHR 19 June 2009) paragraph 31-32.

¹⁷³ Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion) CCPR/C/21/Rev.1/Add.4, paragraph, 11.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid* paragraph, 9.

¹⁷⁶ საქართველოს ორგანული კანონი 'საქართველოს შრომის კოდექსი' (The Georgian Organic Law 'Georgia Labour Code') adopted on 17 December 2010, Article 30(1) (available in Georgian).

‘carrot and stick’ tactic, persists, with some religious groups cooperating closely with the government while others resist interference in their internal affairs.¹⁷⁷

This dynamic, reminiscent of Soviet-era control, is evident in the government's prioritization of security concerns over religious minority rights. Moving forward, it is imperative to shift focus towards promoting inclusion, non-discrimination, and religious tolerance, ensuring the protection of minority rights.¹⁷⁸ This approach also has been exacerbated during Covid-19 measures regarding exceptions granted to religious organizations. Regrettably, this perspective was evident in the State Agency for Religious Issues¹⁷⁹ development of a Religious Policy Development Strategy in 2015, which prioritized state security concerns over the protection of religious minority rights.¹⁸⁰

6.2- Limitation of Rights via National Security and Public Order

Like the ICCPR and the ECHR, Georgian legislation provides the limitations of human rights. Beyond the restrictions imposed during states of emergency as outlined in the Constitution, ordinary circumstances also permit limitations on human rights.¹⁸¹ The list of legitimate aims provided is comprehensive and strictly exhaustive and omission of ‘national security’ is not coincidental.¹⁸² Any restriction on FoRB must align with one of the aims listed in the Convention to be considered compatible. Such limitations must specifically aim to pursue an objective associated with those outlined in the provision.¹⁸³

According to the Constitution of Georgia, limitations on human rights and freedoms, must be regulated by law.¹⁸⁴ Georgia’s laws on ‘Civil Security’ and ‘Public Health’ lack clear guidelines for limiting FoRB and don’t define permissible human rights restrictions during states of emergency, including epidemics or pandemics, or in ordinary circumstances.¹⁸⁵ The lack of

¹⁷⁷ ECRI Report on Georgia (sixth monitoring cycle), Council of Europe 23 June 2023, 26-27.

¹⁷⁸ *ibid.*

¹⁷⁹ The State Agency for Religious Affairs is a legal entity under public law, which, carries out information, research, scientific-educational and recommendation activities in the field of religion for the Government of Georgia and the Prime Minister of Georgia, Created since 2014, after the anti-discrimination legislation was adopted.

¹⁸⁰ ECRI Report (fn 177) 26-27.

¹⁸¹ Constitution of Georgia (fn 132) Article 16(2). Such limitations are permissible solely within the bounds of the law and are aimed at safeguarding ‘public safety, health or the rights of others necessary in a democratic society.’

¹⁸² Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, conscience and religion, 31 August 2022, 37.

¹⁸³ *S.A.S. v France* App no 43835/11 (ECHR 1 July 2014) paragraph 131.

¹⁸⁴ Constitution of Georgia (fn 132) Article 16(2).

¹⁸⁵ კონსტანტინე კორელია, ‘ადამიანის უფლებათა შეზღუდვები საქართველოში პანდემიის დროს’ (2021) სტატიათა კრებული: ადამიანის უფლებათა დაცვა და კოვიდ-19-ის პანდემია 33,

explicit regulation creates ambiguity in balancing public health with fundamental human rights, including FoRB, posing challenges for states in upholding democratic principles and the rule of law.¹⁸⁶

The formation of religious alliances influencing politics isn't unusual in the region. States often try to control these powerful groups, claiming security reasons. Revealed surveillance on clergy and weak state responses fuel suspicions of state spying.¹⁸⁷ Diminished trust in state entities jeopardizes governing regimes' legitimacy, particularly affecting transitional and immature democracies, altering political dynamics significantly.¹⁸⁸

The absence of specific legislation providing legitimate limitations for FoRB along with the State Security Service's impact on clergy members' lives, shall be considered inconsistent with international standards.

6.3- Covid-19 Restrictions on Religious Freedom

An extensively debated issue in Georgia during the period of the state of emergency pertained to the intersection of freedom of assembly and freedom of religion. Given that freedom of religion encompasses not only individual expression but also collective worship, which necessitates assembly, limitations imposed on the freedom of assembly inherently impinge upon the exercise of religious freedoms.¹⁸⁹ It is crucial to highlight that the Constitution of Georgia expressly prohibits the limitation of FoRB during a state of emergency.

During the COVID-19 state of emergency, the Georgian Government didn't implement specific regulations for religious organizations, leading to ambiguity in granting the Orthodox Church

41-44 (Konstantine Korkelia, 'Restrictions of human rights in Georgia during the pandemic' (2021) Collection of Articles: Human Rights Protection and the Covid-19 Pandemic 33, 41-44) (translated by Nana Ghvaladze).

¹⁸⁶ *ibid.*

¹⁸⁷ The leaking of surveillance activities targeting clergy members by the State Security Service caused widespread outrage in 2021. The Georgian Prosecutor General's Office announced an investigation into the reported breaches of privacy. Additionally, it acknowledged representatives of religious denominations as victims of these breaches. There always have been continual doubts regarding the activities of the State Security Service, particularly concerning covert surveillance and spying on clergy members. See: US State Department, '2022 Report on International Religious Freedom: Georgia', (2022) 10. Accessed 15 March 2024 < <https://www.state.gov/reports/2022-report-on-international-religious-freedom/georgia/>>.

¹⁸⁸ Robia Charles, 'Religiosity and Trust in Religious Institutions: Tales from the South Caucasus (Armenia, Azerbaijan, and Georgia)' (2010) 3 Politics and Religion 228, 233.

¹⁸⁹ *Georgian Muslim Relations and Others v Georgia* App no 24225/19 (ECHR 30 November 2023) paragraph 83.

pandemic-related privileges, possibly bypassing legislation and undermining secular principles and religious freedom rights.¹⁹⁰

ECHR doesn't favour one right over another; all rights are equally important and should be balanced in a society built on pluralism, tolerance, and open-mindedness.¹⁹¹ Georgia's decree limiting gatherings to three people encroached on religious freedom, sparking discontent among Orthodox Church representatives, leading to negotiations with authorities, resulting in the parishioners being allowed to attend the Easter liturgy on April 18, 2020, under certain conditions.¹⁹² However, other religious groups were not provided analogue possibilities, or with any information regarding conducting worships.¹⁹³

Comparing Georgia's Constitution with international and European human rights standards shows it doesn't permit restricting rights forbidden by these standards, however, challenges persist in implementation, such as discriminatory treatment based on religion and biased enforcement of regulations.

7.0- The Identification of Trends and Differences

This memorandum reveals positive and negative trends in selected states' compliance with international FoRB standards. Despite low religious practice rates, trust in religious institutions is strong, challenging assumptions. These post-Soviet nations maintain faith in religious institutions alongside modernisation.¹⁹⁴ Armenia, Azerbaijan and Georgia differ in their approach to religion-state interaction despite advocating for secularism. Georgia grants relative independence to the GOC,¹⁹⁵ while Armenia recognises the AAHC as a 'national church'¹⁹⁶, potentially biasing toward majority religions. These approaches highlight the dichotomy between constitutional secularism and the potential for bias toward the majority

¹⁹⁰ Tolerance and Diverse Institute (TDI) Freedom of Religion and Belief Amid and Beyond the Covid Pandemic Report (2020-2021) May, 11.

¹⁹¹ *Georgian Muslim Relations and Others v Georgia* App no 24225/19 (ECHR 30 November 2023) paragraph 83.

¹⁹² Korkelia (fn 185) 68.

¹⁹³ Tolerance and Diverse Institute (fn 190) 11.

¹⁹⁴ This challenges the assumption that high religiosity correlates with trust in such institutions. Robia Charles, 'Religiosity and Trust in Religious Institutions: Tales from the South Caucasus (Armenia, Azerbaijan, and Georgia)' (2010) 3 Politics and Religion 228, 228-29, 234.

¹⁹⁵ Constitution of Georgia (fn 122) Art 8.

¹⁹⁶ Although this memorandum was unable to find any specific examples of favouritism being shown toward the Armenian Apostolic Holy Church over minority religious organisations, the structure of the Armenian constitution endows the church with a special position in Armenian society. Should such rights not be afforded to minority religious organisations, this may be seen as favourable treatment of the majority religious organisation of the state. Constitution of the Republic of Armenia (fn 10) Article 17, paragraph 1.

religious organisations of the state. Although not explicitly stated within the constitution, religions endowed with national status are established as autonomous non-state entities, exerting significant influence. In the case of Georgia specifically, provisions directly permit and legitimise favouritism towards these entities. The state-sponsored favouritism of majority religions may violate the principle of non-discrimination outlined within international statutes.¹⁹⁷ Azerbaijan does not recognise a national religion, standing as an outlier. All three states display non-compliance with international FoRB standards regarding legitimate aims¹⁹⁸ and treatment of minority groups. This is particularly clear, in the realm of national security and public order, where trends regarding compliance with international standards on FoRB reflect diverse approaches. Armenia's legal framework emphasises strict adherence to limitations prescribed by ratified international treaties,¹⁹⁹ limiting restrictions on FoRB to those directly related to state security and explicitly outlined in constitutional provisions. Azerbaijan often invokes public order concerns to justify restrictions on FoRB, but its implementation frequently diverges from international norms, leading to scrutiny from international bodies such as the ECtHR.²⁰⁰ Georgia grapples with legislative ambiguity and state surveillance over religious institutions, impacting FoRB within the context of national security. Inconsistencies in legal frameworks and enforcement underscore challenges in balancing public health and religious freedoms during emergencies.²⁰¹ Clearer legal frameworks and judicial oversight are needed to align with international standards and protect FoRB rights.

¹⁹⁷ Institute for Tolerance and Diversity (TDI), TDI and Forum 18, 'Joint Report to the United Nations on the State of Religious Freedom in Georgia', 2020, 5. *Also*: ICCPR (fn 3) Article 26.

¹⁹⁸ Furthermore, when it comes to state practice, the three states display a general disregard for the purposes of such legislation, utilising language which on the surface, appears to be compliant with the purposes of international statutes, however, belies a more arbitrary basis for restriction. As seen within:

Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia, App no 41817/10 (22nd March 2022).

Nasirov and Others v Azerbaijan, App no 58717/10 (20th February 2020).

¹⁹⁹ See for example: Constitution of the Republic of Armenia (fn 10) Article 41, paragraph 3.

²⁰⁰ As seen within: *Sardar Babayev v Azerbaijan* App no 24015/17 and 26896/18, (ECHR, 1 February 2024) paragraph 65.

²⁰¹ The Covid-19 pandemic prompted various countries, including Armenia, Azerbaijan, and Georgia, to implement restrictions impacting religious gatherings, ostensibly to curb virus transmission. Across these countries, there's a common theme of restrictions on religious gatherings during the pandemic, Samira Majumdar, 'How COVID-19 Restrictions Affected Religious Groups Around the World in 2020', Pew Research Center.

United States Department of State, *2020 Report on International Religious Freedom: Azerbaijan* (Office of International Religious Freedom 2021) 8.

Konstantine Korkelia, 'Restrictions of human rights in Georgia during the pandemic' (2021) Collection of Articles: Human Rights Protection and the Covid-19 Pandemic 33, 41-44 (translated by Nana Ghvaladze).

8.0- Conclusion

To conclude, this memorandum has conducted a detailed analysis of Armenian, Azerbaijani and Georgian legislation focusing upon the doctrinal analysis of domestic legislation, its implementation, national security and public order and restrictions throughout the Covid-19 pandemic, all in relation to compliance with international FoRB standards.

The analysis of these states underscores the nuanced dynamics at play within each country. While all three nations grapple with balancing religious freedoms and state interests, inconsistencies in legal frameworks and enforcement practices highlight the need for clearer guidelines and enhanced oversight. The Covid-19 pandemic further accentuated the challenges in navigating the intersection of public health and religious freedoms. Moving forward, addressing these inconsistencies and biases will be crucial in ensuring robust protection of FoRB and upholding the rights of all individual's, regardless of religious affiliation within the Caucasus.

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