

CRIMEA – THE NEW CHALLENGE FOR FREEDOM OF RELIGION

The paper deals with analysis of modern statement of the freedom of religion and religious organizations existence in occupied Crimea. The key issue of the paper is to highlight main differences in Ukrainian and Russian law in the sphere of freedom of religion which could provoke human rights violation in religious sphere. Issues concerning re-registration of religious organizations, formalization of property rights, limits in religious organizations' establishment, fighting extremism rules have been addressed.

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The right to freedom of thought, conscience, religion or belief is a fundamental right, as recognized under international human rights treaties. According to article 9 of the European Convention on Human rights (Convention for the Protection of Human Rights and Fundamental Freedoms)¹, everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of religion is also protected by numerous international legal acts and main laws of the majority of the countries as well. Rules of the freedom of religion can be summarized in the following standards:

- freedom to adopt or change religion;
- to profess religion and beliefs individually or collectively;
- the right to manifest religion in practice:
 - wearing of religious clothes and religious symbols;
 - freedom of worship, including places of worship;

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS No. 5, entered into force 3 September 1953.

- establish, maintain and register religious organizations, including right to be appointed clearly;
- maintain communications with individuals and communities in matters of religion;
- teach a religion or belief (including missionary activity);
- make appropriate publications, not offending others;
- the right of parents to ensure the religious and moral education of their children
- conscientious objection;
- observance of religious holidays;
- obligation of other individuals and states to respects the status of believers, religious organizations, churches and associations;
- State's obligation to ensure religious education.

As a result, everybody has the right to freedom of religion and its expression. However, the exercise of these freedoms, since it is connected with duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹

One of the main indicators of the freedom of religion is a quantity of religious communities of different con-

fessions which act on the territory of exact state. Only the state, which provides a possibility of peaceful coexistence of different religions, could be recognized as a state which respects freedom of religion.

As of January 1, 2014, 1409 religious organizations were registered in the Crimea; however, some 674 communities, mainly Muslim ones, operated without registration². 137 religious communities were registered in Sebastopol city.

The Ukrainian Orthodox Church was the largest confession in the Crimea (in a canonical unity with the Moscow Patriarchate). It was represented by three dioceses – the diocese of Simferopol and Crimea, the diocese of Dzhankoj, and the diocese of Feodosia. They consisted of 532 religious organizations – the diocese of Simferopol and Crimea incorporated 4 monasteries, 4 brotherhoods, a religious educational establishment, and 323 religious communities; the diocese of Dzhankoj consisted of 137 communities; and the diocese of Feodosia was represented by 2 monasteries and 61 communities.

The Ukrainian Orthodox Church of Kiev Patriarchate was represented in the Crimea by 44 religious organizations including one Spiritual board, three missions, one brotherhood and 39 religious communities.

The Islamic religious organizations were the second largest confession of all existed in Crimea. They were represented by the Spiritual Board of the Muslims

¹ Otto-Preminger-Institut v. Austria, *ibid*, § 42

² Ministry of Foreign Affairs of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>);

of Crimea (SBMC) and Spiritual Centre of the Muslims of Crimea (SCMC).

Also such religions as Protestants (among which Baptists, Jehovah's Witnesses, 7-days Adventists, Lutherans etc.), Catholics, Karaims existed in the Crimea before 2014.

After Crimea's annexing by Russian Federation in 2014 Crimean religious communities and organizations faced a necessity to meet Russian regulation of religious activity, in particular Federal law "On Freedom of Conscience and Religious communities" (adopted on September, 12, 1997)¹ and Federal law "On Counteracting Extremist Activity" (adopted on June, 25, 2002)². The analysis of such legislation allows concluding that Russia provides much more strict rules of religious communities' existence in Russia in comparison with Ukrainian norms.

Firstly Ukrainian law "On Freedom of conciseness and religious organizations" (adopted on April, 23, 1991)³ (further – Ukrainian law) recognizes equality of all religions whereas Russian Federal law "On Freedom of Conscience and Religious communities" (further – Russian law) recognizing equality of all religions, underlines a special role of Orthodoxy in the history of Russia, creating and developing of its spirituality and culture (preamble). So in Russia the priority is given to Orthodox religion (and in particular Moscow Patriarchate).

¹ Available online at http://www.consultant.ru/document/cons_doc_LAW_16218/

² Available online at <http://base.garant.ru/12127578/>

³ Available online at <http://zakon4.rada.gov.ua/laws/show/987-12>

Then Russian law contains more rigorous norms about religious community creation. According to article 9 of the mentioned law, a local religious organization could be founded by a minimum of ten Russian citizens who have reached the age of 18, who reside in the same locality or in the same city or village. And also before 13.07.2015 there was an additional prescription that those citizens were united in a religious group, with confirmation issued by local authorities of its existence in the territory for at least 15 years. In Ukraine religious community could be founded by not less than 10 humans (independently of their citizenship). So those religious activists of the Crimea (for instance Crimean Tatars), who denied changing a citizenship from Ukrainian into Russian, lost a possibility to register religious community.

On 2014 (till July, 13, 2015) registration of religious organizations in Russia was on charge. People had to pay a registration fee equivalent of approx. 50 USD for registration of religious organization. In Ukraine the registration of religious communities was free of charge any time.

Some of religious organizations failed to submit necessary papers because they were not separate legal entities but just representatives of religious communities, registered on the territory of mainland Ukraine. These organizations had to submit number of documents according to Russian law (statute, records of community meetings, list of community members etc.)

All mentioned peculiarities caused situation when a number of officially registered religious communities in the Crimea decreased greatly. As of

December, 25, 2015, near 100 religious organizations were re-registered in the Crimea in accordance with the Russian law¹. The deadline for all religious communities to re-register with the Russian Justice Ministry expired on 1 January 2016, so over 1,100 religious communities which had legal status under Ukrainian law no longer have legal status under Russian law.

As a consequence without registration under Russian law, religious communities can exist as there, but they are not recognized as legal entities and so cannot act in civil turnover (have property, rent property, enter into other contracts, employ people etc.). Lots of communities have met a unilateral cancellation of property rental contracts, which deprived them of places of worship and other activity.

Also even in case of obtaining a status of legal entity religious organizations had to re-register their property rights for the lands and other real property. According to the part 3 article 3 of the Law of the Republic of Crimea "On peculiarities of regulation of property and land relations on the territory of the Republic of Crimea", adopted by the State Council of the Republic of Crimea on July, 30, 2014, religious organizations, which had lands on the status of permanent use, might re-register this right for the right of free of charge temporary use². So the status of such lands use had changed from permanent to temporary. And it causes a risk of non-prolongation of such use in future.

¹ See online registration database of the Federal Tax Service, available at: <http://egrul.nalog.ru/>.

² Available online at http://gkreg.rk.gov.ru/rus/file/pub/pub_241980.pdf (in Russian)

But one of the most dangerous for freedom of religion provisions of Russian legislation is the rules against extremism. Article 14 of the Federal law "On Freedom of Conscience and Religious communities" prescribes that actions, directed on the extremism activity, are the reason of religious organization's liquidation and a prohibition of its activity. Federal law "On counteraction of extremist activity", adopted on July, 25, 2002 regulates main issues of religious organizations' liability for extremism. Article 9 of the mentioned law regulates that in case of providing extremist activity, which violated human rights and freedoms or caused damage to the personality or the health of citizens, environment, public order, public security, property, legal economic interests of humans or legal entities, society, state, or such activity which poses a real threat of a damage, religious organization could be liquidated. And in case if the religious community was not registered as a legal entity, its activity could be prohibited. All property of the liquidated religious organization becomes a property of Russian Federation.

Criminal code of Russian Federation contains several articles which determine severe punishment for public call for extremist activity, organizing of extremist community, organizing of extremist organization activity, financing of extremist activity.

On December, 2013 the Criminal Code of the Russian Federation was added by new provisions banning so-called "extremist" or "separatist" statements (entered into force on May, 9, 2014). Article 280.1 of the Criminal

code of Russian federation has a name “Public call for the actions, aimed at violating of territorial integrity of Russian Federations”¹ and is used to prevent and punish the expression of views allegedly opposed to the Russian government in its annexation of the Crimea. According to the article 280.1 of the Criminal code of Russian Federation such activity is punishable by large fines or forced labor up to three years, or by arrest up to six months, or by imprisonment up to five years with a ban on conducting such activity for the same period.

In the Crimea such legislative rules are used against those people who have dissenting views on the annexing of the Crimea, including journalists, political organizations (as Menjlis of Crimean Tatars), religious leaders.

For example in March 2014, the law enforcement bodies detained a priest of the Ukrainian Greek Catholic Church Nikolai Kvich in the City of Sevastopol². The kidnapping of the priest was followed by a search of his property and an eight-hour interrogation; an inventory of one of the Orthodox temples of the Kyiv Patriarchate; and threats directed against other Ukrainian priests and their families.

On June – September, 2014 illegal searches of “extremist” literature were held in Medrece (Islamic school) in Kolchugino village and in Kiber Djami mosque in Simferopol. On May, 2015 seven of nine Baptists who conducted an outdoor religious meeting in a village

in central Crimea were fined. On June, 2015 the warden of a hostel for medical academy students has been fined over two Muslim books found in a prayer room which Russian authorities deemed “extremist”.

Different organizations, analyzing a situation with a freedom of religion in the Crimea, evaluated it as critical.

Following an invitation by the Government of Ukraine on 15 June 2015, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) conducted a joint Human Rights Assessment Mission (HRAM) on Crimea from 6 to 18 July 2015. The authorities in Crimea did not respond to requests to facilitate access to Crimea for the HRAM,⁴ for which reason the HRAM primarily conducted fact-finding and research in the territory of mainland Ukraine, as well as through remote interviews with relevant contacts in Crimea and elsewhere.

The conclusion, made in the report, is the following: “By excluding thousands of NGOs, media and religious organizations from operating in Crimea (including based on citizenship of founders), under the auspices of mandatory re-registration requirements, de facto authorities have also set the table for violations of other interrelated human rights and fundamental freedoms”³.

A Norwegian-Danish-Swedish initiative, Forum 18, which is a non-profit charitable foundation, characterizes a situation in the Crimea as a following:

¹ Available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=198907>

² Information on the situation in the Republic of Crimea (the Russian Federation) within the scope of UNESCO competence. As of April 8, 2015, available at <http://russianunesco.ru/eng/article/207>

³ The Report of the Human Rights Assessment Mission on Crimea, jointly published by ODIHR and HCNM, is available at: <https://www.osce.org/odihr/180596>

“Individuals and religious communities have faced raids, fines, religious literature seizures, government surveillance, expulsions of invited foreign religious leaders, unilateral cancellation of property rental contracts and obstructions to regaining places of worship confiscated in the Soviet period. Only one percent of communities which had state registration under Ukrainian law have succeeded in gaining the compulsory Russian re-registration. Members of a wide range of religious communities are highly cautious about discussing anything that could be interpreted as criticism of Russian rule for fear of possible reprisals. This includes a reluctance to discuss restrictions on freedom of religion or belief”¹.

Freedom House (an independent watchdog organization dedicated to the expansion of freedom and democracy around the world)² in its report mentioned: “In their efforts to suppress opposition to the annexation, the occupation authorities often target Ukrainian religious institutions and schools that promote Ukrainian language, history, and culture. Nearly one-third of Ukrainian Orthodox churches had been forced to close by November, and at least one Roman Catholic parish leader was forced to leave Crimea”³.

Russian authority visa-versa evaluates the inter-confessional situation in the Crimea as stable and predictable. “The Constitution of the Russian Federation, the Constitution of

the Republic of Crimea of April 11, 2014, and the Charter of the Federal City of Sevastopol of April 14, 2014, guarantee the nations of the Crimean Federal District the freedom of conscience, the freedom of worship, including the right to practice any religion individually or with others or practice none, freely chose, profess or disseminate religious and other convictions and act according to such... Believers in that district have all opportunities to realize their right to freedom of religion. The representatives of the clergy and general public support the position of state and law-enforcement bodies to ensure law and order, including in the field of inter-ethnic relations countering radicalism and extremist manifestations”⁴.

Conclusion

The European Court of Human Rights has established a wide interpretation to the meaning of religious freedom. Hence, religious rights are protected if they:

- attain a certain level of cohesion, importance and credibility;
- are respected in democratic society;
- do not conflict with fundamental rights;
- relate to aspect of human life and behavior;
- are not inconsistent with human dignity;⁵

Freedom of religion contains two elements. The first is the right to manifest

¹ <http://www.forum18.org/analyses.php?region=86>

² <https://freedomhouse.org/about-us>

³ Freedom House Overview on the Crimea, available at <https://freedomhouse.org/report/freedom-world/2015/crimea>

⁴ Ministry of Foreign Affairs of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>);

⁵ Campbell and Cosans v UK, nos. 7511/76 and 7743/76, § 36, ECHR 1983

one's religion, which may be limited only in case of legal restrictions, which are necessary for the protection of:

- the interests of public safety in a democratic society;
- public order, health or morals;
- the rights and freedoms of others.

The second is the right to freedom of religion itself, which means the right to have one's religion, thought, conscience or belief, and which cannot be restricted under any circumstances.

The Guidelines on Freedom of Association, jointly issued by ODIHR and the Venice Commission, further underscore that "re-registration should not automatically be required following changes to legislation on associations". Yet even when re-registration is necessary, due to exceptional and fundamental changes in the legal framework, "if they do not re-register, the associations should be able to continue to operate without being considered unlawful.

The European Court of Human Rights has found that refusal or delay by authorities in the registration of associations, including where necessary to obtain legal personality, may constitute an interference with the freedom of association¹.

¹ Case of Ismayilov v Azerbaijan, Judgment of the European Court of Human Rights (17 January 2008).

As the UN Human Rights Committee has elaborated, such offenses as extremist activity" should be "clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression².

So there are many rules, created by international bodies, organizations, courts for freedom of religion understanding and for possible restrictions of religious manifest. As in other spheres of life rules and restrictions of freedom of religion should correspond to a reasonable expediency and be proportional to the possible danger of exact religious manifest.

Of course the criteria of possible restrictions (the interests of public safety in a democratic society; public order, health or morals; the rights and freedoms of others) are really evaluative, "rubber" categories. And they are evaluated differently by Russian authorities and by international experts. But if to make a comparative analysis between the situation before March, 2014 and after Russian annexing of the Crimea, we could state that the Crimea becomes a new challenge to the freedom of religion.

² UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (12 September 2011), para. 46. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

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