

ENSHRINING AND OBSERVANCE OF RELIGIOUS FREEDOM IN THE REPUBLIC OF MOLDOVA

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ABSTRACT: Enshrining and Observance of Religious Freedom in the Republic of Moldova.

Religious freedom is a fundamental element of democracy and respect for human rights. According to the legislation, the decisions establishing discrimination based on religion in Moldova and other national and international reports, we can generally observe a tendency to respect religious freedom, but in certain areas such as religious freedom in public schools or the partial lack of solutions for alternative military service urges the state and society to make progress in this field.

Keywords: *conscience, religious freedom, discrimination, cults.*

The right to freedom of conscience and religion¹ is intended to defend and guarantee perhaps the most intimate and profound values of a person, and their prohibition and limitation, by someone and especially by a public authority, have a profound impact on the individual and generally on the ideal of democracy in a state.²

1 Ioan-Gheorghe ROTARU, "Libertatea religioasă – temelie a demnității umane" ("Religious freedom - foundation of human dignity"), in Daniela Ioana Bordeianu, Erika Androne, Nelu Burcea, *Manual for the leader of the Religious Freedom Department*, "Life and Health" publishing house, Bucharest, 2013, pp. 210-215; Idem, "Religious liberty - a natural human right", in *the Journal of Freedom of Conscience*, Gannone Diop, Mihnea Costoiu, Liviu-Bogdan Ciucă, Nelu Burcea (coord.), Editions IARSIC, Les Arsc, France, 2015, pp.595- 608; Idem, "Key aspects of the Freedom of Conscience", in *the Journal for Freedom of Conscience - Supplement (Journal for Freedom of Conscience)*, Ioan-Gheorghe Rotaru, Dragoș Mușat (eds.), Editions IARSIC, Les Arsc, France, 2016, pp .30-37.

2 Vadim FORTUNA, „Essential components of freedom of conscience and religious freedom in the Russian Federation through the prism of the European Convention of Human Rights”, *Journal for Freedom of Conscience*, 8 (2), pp. 328-348.

We consider that the element of respect for freedom of conscience and religious freedom is an essential indicator of the guarantee of respect for human freedoms, because their violation, limitation or prohibition can have a profound impact on the individual and his values, thus it determines a primary subject of evaluation and attention from society and the state for compliance and guarantee.

Enshrinement in the legislation of the Republic of Moldova

In the Republic of Moldova, the right of the citizens to preserve, develop and express their ethnic, cultural, linguistic and religious identity is recognized and guaranteed.³

The Constitution of the Republic of Moldova declares that all citizens of the Republic of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.⁴ This principle of non-discrimination reinforces the respect of any rights and freedoms of any person regardless of his religious beliefs.

In art. 31 of the Constitution of the Republic of Moldova is highlighted and proclaimed but without defining what it essentially means. But it is guaranteed, as follows: „Freedom of conscience is guaranteed. It must manifest itself in a spirit of tolerance and mutual respect.”⁵

Therefore, in the Constitution of the Republic of Moldova we do not find an express definition of what freedom of conscience means, but we can observe that it specifically refers to the observance and regulation of religious cults.

Through the Constitution the state assumes and declares the freedom of cults within the limits in which they are registered and operate accordingly: „Religious cults are free and are organized according to their own statutes, under the conditions of the law.”⁶

Even if the state does not get involved in the autonomy of the cults, it assumes the role of arbiter with the function of preventing and punishing

3 Constitution of Republic of Moldova No. 1 of 29-07-1994, Published: 29-03-2016 in Official Gazette No. 78, art. 10.

4 Constitution of the Republic of Moldova, art. 16.

5 Constitution of the Republic of Moldova, art. 31, para. 1.

6 Idem, art 31, para.2.

in certain cases: „In relations between religious cults, any manifestations of enmity are prohibited.”⁷

The definition of freedom of conscience is provided by the framework law that regulates the given field, namely by Law no. 125 of 11-05-2007 regarding freedom of conscience, thought and religion.

In art. 4 (1), it is established that: „Every person has the right to freedom of thought, conscience and religion. This right must be exercised in a spirit of tolerance and mutual respect and includes the freedom to belong or not to a certain religion, to have or not to have certain beliefs, to change one’s religion or beliefs, to profess one’s religion or beliefs individually or in common, in public or in private, through teaching, religious practices, worship and the fulfillment of rites. Every person and religious community can freely join any religious cult.”⁸

In the sense of this law, *religious beliefs* represent a complex of ideas, principles and teachings of faith or religious dogmas that a person believes in, which he willingly accepts, confesses and according to which he conducts himself in life.

In the same way, the term *believer* is determined in the sense of the legislation of the Republic of Moldova, which means a person who believes in certain religious truths and who voluntarily belongs to a religious community with whose members he shares the same beliefs, the same faith, participates in the same religious activities and practices, being subject to a freely chosen religious authority.

In the context of an *association of believers*, the legislation determines the notion of *religious cults*, which means a religious structure, with the status of a legal entity, which carries out its activity on the territory of the Republic of Moldova according to doctrinal, canonical, moral, disciplinary norms and its own historical and religious traditions, which do not contravene the legislation in force, being constituted by persons subject to the jurisdiction of the Republic of Moldova, who manifest their religious beliefs in common, respecting the established traditions, rites and ceremonies.

Through this organizational law, the freedom and defense of the right of religious association is regulated, the inter-confessional intolerance

7 Idem, art 31, para 3.

8 Law of Republic of Moldova No. 125 of 11-05-2007 regarding freedom of conscience, thought and religion.

and the legal protection from the state in case of violation of these freedoms are reiterated.

At the same time, the state excludes any assessment on its part of the legitimacy of religious beliefs.⁹ Unfounded mixing of state bodies and organizations, of persons with a position of responsibility in the activity of religious communities, as well as of religious communities in the activity of state bodies and organizations, of persons with a position of responsibility, is not admitted.

Thus, any act or action that violates the rights enshrined in state legislation can be challenged in court. The judicial or administrative defense of the right of religious association of the faithful may result in the restoration of the violated right, the liquidation of the actions of state bodies and organizations, of persons with a position of responsibility, as well as of private persons who create difficulties in the exercise of that right, the reparation of the damage caused by violating this right.

The European Convention in the cases against Moldova

Article 9 of the European Convention on Human Rights and Fundamental Freedoms regulates freedom of thought, conscience and religion in the following two paragraphs:

1. Every person has the right to freedom of thought, conscience and religion; this right includes the freedom to change one's religion or belief, as well as the freedom to manifest one's religion or belief individually or collectively, in public or in private, through worship, education, practices and performance of rituals.

2. The freedom to manifest one's religion or beliefs cannot be subject to other restrictions than those provided by law which, in a democratic society, constitute necessary measures for public safety, the protection of order, health, public morals, rights and of the freedoms of others.¹⁰

The regulations of the European Convention represent the regulatory basis of rights and freedoms in our country, as are the recommendations of the European Court.

⁹ Law regarding freedom of conscience, thought and religion, art. 4, para. 3.

¹⁰ The European Convention on Human Rights and Fundamental Freedoms, art. 9.

In the Decisions of the European Court against Moldova we can observe certain recommendations that form a complex system of recommendations for the field of freedom of conscience.

For example, the Court found the violation of freedom of religion by the dispersion by the public order authorities of the Republic of Moldova of a prayer meeting organized by a group in a private house, as well as sentencing the applicant to an administrative fine for „practicing an unrecognized by the state religion.”¹¹

As we observe in the Constitution of Moldova, religious cults are recognized as free, but at the same time they must be organized according to their own statutes, that is, they must be organized or registered specifically by the state. Religious cults are autonomous, separate from the state and enjoy its support, including by facilitating religious assistance in the army, in hospitals, in penitentiaries, in asylums and in orphanages.”¹² It is the authorities who describe and follow a proper registration procedure for cults. But in certain situations, this can become an indirect interference in autonomy.

Thus, the judges of the European Court in a case of refusal to register a religious cult, found that the refusal to recognize or grant legal personality to a religious community constitutes an interference in the exercise of the rights provided for in art. 9 of the European Convention, in their external and collective dimension, regarding the community, but also regarding its members. The mere toleration, by the national authorities, of the activities of an unrecognized religious organization is not a substitute for official recognition where only the latter can confer rights on the persons concerned.¹³

Therefore, the fact that registered religious worship is protected in the Constitution does not prevent its observance until registration, so that its registration can follow the interests of believers, if they generally correspond to other fundamental freedoms.

In this regard, the European Court mentioned that within the framework of the recognition or registration of the religious community, states have the competence to control whether a movement or an association carries out, for so-called religious purposes, activities that are harmful to the population or to public safety. Since it cannot be ruled out that the

11 The Masaev v. Moldova case.

12 Constitution of the Republic of Moldova, art. 31, par. 4.

13 The Metropolis of Bessarabia and others v. Moldova case.

program of a religious organization hides goals and intentions different from those made public, to be sure one can compare the content of this program with the acts and positions taken by its members.¹⁴

The state may also require that the statutes of a religious association clearly define religious beliefs and rituals in order to allow the public to distinguish between different cults and to avoid confrontation between religious communities.

Thus, the European Court found a violation of art. 9 of the Convention in the case of the refusal of the Moldavian authorities to grant legal recognition to the Metropolis of Bessarabia, on the grounds that such recognition would harm the interests of the Metropolis of Moldova, already recognized by the Government. Without legal recognition, the applicant church could not carry out its activity; its priests could not officiate services; its members could not meet to practice religion; moreover, without legal personality, it could not benefit from the jurisdictional protection of its patrimony and defend itself against acts of intimidation. By refusing recognition on the grounds, in particular, that the applicant church was only a „schismatic group” in relation to the other Orthodox church, the Moldovan Government failed to fulfill its obligation of neutrality and impartiality.

In the case of the Metropolis of Bessarabia and others v. Moldova, the Court elaborated a fundamental conclusion for all the legal systems of the Council of Europe states: “In a democratic society, in which several religions or branches of the same religion coexist within the same population, it is possible prove it necessary to add limitations to this freedom in order to reconcile the interests of different groups and to ensure that the beliefs of all are respected. However, in exercising its regulatory power in this area and in its relationship with various religions, cults and beliefs, the state must be neutral and impartial; this has to do with maintaining pluralism and the proper functioning of democracy”.¹⁵

Findings regarding the observance of freedom of conscience

Violations in the field of freedom of conscience can be undertaken directly, as we saw in the situation of the refusal to register a religious cult, or they can

14 Idem, points 105 and 125.

15 Idem, points 115-116.

be committed in the context of other social or economic relations. So, these abuses are usually observed as certain forms of discrimination reported on people who manifest their religious or conscience identity in some form.

For such a situation we have the Anti-Discrimination Council from the Republic of Moldova, established by law, an independent institution charged with reviewing complaints of discrimination, including discrimination of a religious character or based on religious affiliation.

Parliament chooses council members through a competitive process, appointing them to five-year terms. The council does not have sanctioning powers; however, it may determine if an act of discrimination took place, offer advice on a remedy, and request prosecutors to initiate criminal proceedings. It may also suggest pertinent legislative amendments or participate in working groups authoring legislative initiatives.

A 2019 report by the Anti-Discrimination Council noted that discrimination based on religion or belief was found in 6.25% of all finding decisions.¹⁶

Among these violations and problems was observed the refusal to adapt the procedure for submitting the declaration of assets and interests, according to religious beliefs, the use of indoctrinated educational materials with an emphasis in favor of a religion in public educational institutions that are secular, was noted the construction of religious edifices on the territory of public educational institutions, but also the non-respect of the neutrality of the public service and the principle of secularism, by placing religious symbolism in public institutions.¹⁷

In the Council's 2020 report, the criteria most frequently cited in the complaints received and ascertained were the facts of discrimination based on the following criteria: sex/gender, disability/state of health, language, and opinion. During this period, no discriminations on the grounds of violation of freedom of conscience were documented.¹⁸

16 In 2019, the Council had for examination 257 complaints alleging a situation of discrimination.

17 GENERAL REPORT ON THE SITUATION IN THE FIELD OF PREVENTING AND COMBATING DISCRIMINATION IN THE REPUBLIC OF MOLDOVA IN 2019, p. 29.

18 GENERAL REPORT ON THE SITUATION IN THE FIELD OF PREVENTING AND COMBATING DISCRIMINATION IN THE REPUBLIC OF MOLDOVA IN 2020.

Findings of religious discrimination in 2021

In 2021, by the Anti-Discrimination Council based on the decisions establishing discrimination, 5.9% were found on account of religious beliefs.¹⁹

Among the problems detected in this chapter can be listed: the impossibility of validating the medical insurance policy; the impossibility of submitting declarations of wealth and personal interests; the use of indoctrinated educational materials with emphasis in favor of a religion; the construction of religious buildings on the territory of a kindergarten; the discomfort created by the installation of a crucifix in a public institution.²⁰

As a result of referrals, the Council recommended in its 2021 report that the State take measures to support the alternatives implemented to reasonably accommodate the religious beliefs of prisoners under the protection of the State for both Orthodox Christians and convicts of other confessions, depending on their particular needs, including through the application of digital technologies.²¹

Foreign missionaries may submit work contracts or volunteer agreements to apply for temporary residency permits and may reside and work in paid status or as unpaid volunteers. Only missionaries working with registered religious groups may apply for temporary residency permits. Foreign religious workers with these permits must register with the National Agency for Employment and the Bureau for Migration and Asylum. They must present documents confirming the official status of the registered religious group for which they will work, papers confirming their temporary residence, and proof of valid local health insurance. Foreign missionaries belonging to registered religious groups who do not wish to apply for temporary residency may remain in the country for 90 days on a tourist visa.²²

19 In 2021, the Council had for examination 312 complaints in which a situation of discrimination was invoked.

20 GENERAL REPORT ON THE SITUATION IN THE FIELD OF PREVENTING AND COMBATING DISCRIMINATION IN THE REPUBLIC OF MOLDOVA YEAR 2021, p.22-23.

21 Idem, p.50-51.

22 Report on International Religious Freedom: Moldova. U.S. Department of State 2021.

Aspects regarding religious freedom in public educational institutions

The Anti-Discrimination Council recommended, in the sense of the identified causes, ensuring the secular character of education by not allowing the building and location of places of worship in the premises or on the territory of educational institutions, and not allowing the conduct of ceremonies of a religious nature in the premises or on the territory of educational institutions, but also ensuring the neutrality of the service public and the principle of secularism.

According to Report on International Religious Freedom Moldova of the U.S. Department of State it is found that: The constitution provides for freedom of religious education and stipulates that the state educational system should be secular. According to the law, religion classes in state educational institutions are optional. Students may submit a written request to a school's administration to enroll in a religion class. Religion classes are offered in grades one through nine. The religious curriculum offers two types of courses: one for Orthodox denominations and Catholics, and the other for evangelical Christians and Seventh-day Adventists. The religious curriculum for Orthodox and Catholic groups derives from instructional manuals developed by the Ministry of Education, with advice from the MOC, and includes teaching guidelines developed with the support of the BOC. Regular teachers and MOC and BOC priests teach these optional courses, which focus on Orthodox Christianity. Regular teachers and representatives of the Evangelical Christian Church teach the second course, which is based on religious manuals and literature from Romania, the United States, and Germany.²³

The Anti-Discrimination Council recommended the Ministry of Education, Culture and Research to develop a Methodological Guide by which to establish the criteria for evaluating the correspondence of alternative didactic materials to the quality standards for the discipline „Moral-Spiritual Education”, and for educational institutions to review the auxiliary materials used by teachers, in the light of the findings and explanations formulated in the decision.²⁴

23 Report on International Religious Freedom: Moldova. U.S. Department of State 2021.

24 GENERAL REPORT ON THE SITUATION IN THE FIELD OF PREVENTING AND COMBATING DISCRIMINATION IN THE REPUBLIC OF MOLDOVA YEAR 2021.

Compulsory military service in Moldova and ineffective solutions for people who cannot perform military service

In the Republic of Moldova, defense of the homeland is a right and a sacred duty of every citizen. Military service is fulfilled within the military forces, intended for national defense, border guarding and maintaining public order, under the law.

So, in Moldova, military service is mandatory for any young man for a period of one year. But in art. 10 of the law on freedom of conscience, thought and religion is regulated for citizens who cannot perform military service for confessional, thought or conscience reasons, the fact that the state establishes civil or alternative service.

According to the law, male citizens between the ages of 18 and 27 have the right to choose alternative civilian service over military service if the latter runs counter to their religious beliefs. Those who choose civilian service may complete it at public institutions or enterprises specializing in areas such as social assistance, healthcare, industrial engineering, urban planning, road construction, environmental protection, agriculture or agricultural processing, town management, and fire rescue. There are no blanket exemptions for religious groups from alternative civilian service, but higher-ranking clergy, monks, and theology students are exempted from such service. Refusal to enroll in civilian service is punishable by a fine up to 32,500 lei (\$1,800) or between 100 and 150 hours of community service, and those punished are still obliged to enroll in civilian service.²⁵

So, according to the law, people who cannot serve in the armed forces, can choose civilian service. In reality, the situation is much more complicated, as we find in the reports of the People's Advocate from the Republic of Moldova: "The problem of people who, for religious reasons, request to perform alternative civil service in civil institutions/organizations and refuse to perform alternative service as civilian staff in military formations for religious reasons, remains still unresolved".²⁶

25 Idem.

26 REPORT ON RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF MOLDOVA IN 2020, p. 86; REPORT ON RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF MOLDOVA IN 2021, p.74.

A general perspective

According to minority religious groups, respect for religious freedom and official attitudes towards religious minorities improved during the year because a new government, which took office in August, emphasized support for religious diversity. Officials from the new government attended public events with the MOC, BOC, Catholic Church, Jewish Community, Pentecostal Church, and other minority groups. However, minority groups said the MOC continued to enjoy advantageous treatment under the law.²⁷

On the one hand, we can see through the legislation and the documentation of cases of discrimination that in the Republic of Moldova, freedom of conscience is respected and guaranteed to citizens and people who are in its territory. On the other hand, we believe that much deeper sociological research is needed in the Republic of Moldova in order to be able to compare and ascertain, especially in rural areas or among people who identify and practice certain religious beliefs.

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27 Report on International Religious Freedom: Moldova. U.S. Department of State 2021.

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