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GEORGIA: Constitutional changes to impose impermissible freedom restrictions?

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Constitutional changes already adopted in second reading would allow restrictions on freedom of religion and belief based on vague criteria, including "state [national] security or public safety", an impermissible restriction. Human rights defenders object to the proposed changes. Parliament's final reading is expected on 26 September.

Georgia's ruling Georgian Dream party appears to be moving to amend the Constitution to restrict freedom of religion and belief in ways Georgia's legally binding international human rights obligations do not allow. Unless the government changes the text before Parliament holds its third reading, the new amended Constitution would allow new restrictions on freedom of religion and belief based on the vague and undefined criteria of "state [national] security or public safety", "the prevention of crime", and "the implementation of justice".

Parliament – which is overwhelmingly dominated by ruling party deputies - could adopt the amended Constitution at its third and final reading as early as 26 September. The Council of Europe's Venice Commission is due to send to Georgia's Parliament its Draft Opinion on the latest text on 22 September (see below).

Public Defender (human rights ombudsperson) Ucha Nanuashvili, religious communities and human rights defenders are among those strongly protesting against these and other proposed Constitutional changes. The government ignored a Venice Commission legal Opinion on an earlier draft of the Constitution (see below).

Initial draft, Venice Commission Opinion

The draft amendments to the Constitution were prepared by the State Constitutional Commission. On 1 May, 108 parliamentary deputies, all of them representing the ruling party Georgian Dream, presented the draft to Parliament. At that point the text proposed in Article 16 that manifestations of freedom of religion or belief should be restricted only "if these manifestations violate the rights of others", echoing the wording of the current acting Constitution. At the same time Parliament asked the Council of Europe's Venice Commission for a legal Opinion on the entire proposed new Constitution.

Ucha Nanuashvili, the Public Defender, strongly criticised various parts of the draft amended Constitution, stating in a 25 May public letter to the Venice Commission that the proposed changes "compared to the current edition of the Constitution, weakens the human rights standard in relation to a number of other rights .. The issues of freedom of religion and secularism are particularly important." He noted that the amendments "contribute to weakening of the principles of freedom of belief and confession, and secularism".

Among his many other criticisms, Nanuashvili noted that "the current edition of the Constitution provides for freedom of thought, conscience, religion and belief for everyone" and that the proposed Constitution weakens this (see <http://www.ombudsman.ge/res/docs/2019060616113824634.pdf>).

The Venice Commission's Opinion, published on 19 June, stated that the proposed (and also the existing) limitation relating to "violation of the rights of others": "seems too narrow. This creates the risk that, in order to achieve an adequate balance between the right to freedom of belief and conscience and competitive interests, the scope of this right will be interpreted too narrowly or the restriction ground 'violation of the rights of others' will be interpreted (too) broadly"(see [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)013-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)013-e)).

The Venice Commission recommended that the draft amended Constitution should include "an explicit recognition of the 'freedom of religion'", as well as "the inclusion of other legitimate aims of restriction of the right to freedom of belief and conscience, such as those contained in Article 9 ECHR [European Convention for the Protection of Human Rights and Fundamental Freedoms] and Article 18 ICCPR [International Covenant on Civil and Political Rights]".

Article 9 of the ECHR and Article 18 of the ICCPR protect "freedom of thought, conscience and religion", and Georgia is legally obliged to ensure that everyone can fully exercise this freedom and other fundamental freedoms.

Government ignores Venice Commission, introduces impermissible restrictions

However, the government ignored the Venice Commission recommendations. On 22 June, three days after the 19 June Opinion was published, the draft amended Constitution had its first parliamentary reading. Ruling party deputies added new grounds for restricting freedom of religion and belief that international human rights law does not allow: "state [national] security or public safety", "the prevention of crime", and "the implementation of justice".

On 23 June, the draft Constitution passed its second reading with the votes of all 115 Georgian Dream deputies in the 150-seat unicameral parliament.

The European Court of Human Rights (ECtHR) has explicitly stated that such limitations – for example national security – are not permitted (see Guide to Article 9 freedom of thought, conscience and religion http://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf). Similarly, the United Nations Human Rights Committee has also explicitly stated that "restrictions are not allowed on grounds not specified there [in ICCPR Article 18], even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security" (see the interpretative General Comment 22 <https://undocs.org/CCPR/C/21/Rev.1/Add.4>).

The full limitations text in the new draft Constitution's Article 16 states that freedom of religion and belief "may be subject to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of state [national] security or public safety, for the prevention of crime, protection of health, implementation of justice or protection of the rights of others."

The government has a record of proposing legal changes with unclear and vague formulations against international law to undermine human rights. In 2016 a draft law that would have imposed fines for insulting religious feelings, was withdrawn as a result of "resistance from civil society", Giorgi Gotsiridze of the Georgian Young Lawyers' Association told Forum 18. Journalists and artists – including artist Lia Ukleba threatened with violence for her painting attacking committing violence in the name of religion - also warned of the dangers to their freedom if the Law were passed. Baptist Bishop Rusudan Gotsiridze told Forum 18 that "the Law, which contains the unclear category of 'feelings', would serve as a tool against opponents in the hands of any powerful institution". "If the government decides that politically it needs a similar proposed Law, it might initiate it again in the future", Gotsiridze of the Georgian Young Lawyers' Association noted (see F18News 23 February 2016 http://www.forum18.org/archive.php?article_id=2152).

Major Constitutional changes, opposition boycott

The entire parliamentary opposition boycotted the process of adopting the new amended Constitution as it opposes many of the planned changes. Among these are abolishing direct nationwide elections for President, and changing the parliamentary electoral system to benefit whichever party gains the largest number of votes. The opposition argues that this is intended to keep the Georgian Dream party in power permanently.

Increasing freedom of religion and belief violations

Non-Georgian Orthodox religious communities repeatedly face obstruction from local municipal councils and national state bodies such as the State Agency for Religious Issues to building new places of worship. Communities such as Muslims, Jehovah's Witnesses, Catholics and Protestants face such obstruction.

Typically, local Georgian Orthodox clergy and congregation members oppose proposals to build non-Georgian Orthodox places of worship. Then the local council finds excuses to bow to Georgian Orthodox demands, even if the demands go against a court decision, often using spurious reasons to deny the building permit application. State authorities also often tell non-Georgian Orthodox communities to stop trying to build a place of worship on their own land and find some other land to build on (see F18News 5 November 2015 http://www.forum18.org/archive.php?article_id=2118).

Non-Georgian Orthodox religious communities also face multiple obstructions from the government, including the State Agency for Religious Issues, in regaining their places of worship confiscated in Soviet times. For example, Mokhe's Muslims have not yet regained a confiscated mosque and were beaten by police in October 2014. The Georgian Orthodox Church also claims the building, despite some government commission members finding it was originally a mosque (see F18News 28 February 2017 http://www.forum18.org/archive.php?article_id=2260).

The authorities also have a long record of ineffective investigations and non-prosecution of those who prevent people exercising their freedom of religion and belief. In 2013 mobs of non-Muslims obstructed Muslims in the eastern village of Samtatskaro from praying freely, but no-one has been punished for their crimes in this or similar incidents (see F18News 4 July 2013 http://www.forum18.org/archive.php?article_id=1854).

"New risk for the unjustified restriction of religious freedom"

After Parliament's approval in the second reading of the proposed new amended Constitution, the 19 religious communities of the Council of Religions under the auspices of the Public Defender issued a 2 August public statement "that the added criteria present a new risk for the unjustified restriction of religious freedom. The addition of causes such as state security, prevention of crime, and implementation of justice raises utmost concern." They complained that these criteria "are not easily foreseeable and create a high risk for their misuse in pursuing aims unlike those necessary for the existence of a legitimate and democratic state".

The Council of Religions also noted that such reasons for restricting the exercise of freedom of religion or belief are not permitted by the European Convention for Human Rights, the International Covenant on Civil and Political Rights, "and the absolute majority of European constitutions".

The 19 religious communities pointed to their own experience of freedom of religion and belief violations. "We have been victims of abuse, intolerance and confrontations while practicing religion. If the abovementioned vague and unpredictable causes are added to the supreme law of the country, we may be faced with the legitimization of unjustified restriction of religious freedom on the basis of the Constitution" (see <http://www.ombudsman.ge/en/news/council-of-religions-address-to-the-parliament-of-georgia.page>).

Tariel Nakaidze, Chair of the Georgian Muslim Union, told Forum 18 on 11 August that he thought the state might use the new vaguely-worded restrictions to legitimise Muslims not being allowed to build a mosque or failure to investigate violent actions against Muslims. "The state might use such restrictions against those persons who are active in advocating for Muslims' freedom of religion and belief and who are speaking up about discrimination," he added.

Georgian Orthodox Church reaction

Fr Kakhaber Gogotishvili, Deputy Head of the Georgian Orthodox Patriarchate's Foreign Relations Department, commented on the government's vague and illegitimate proposed restrictions on freedom of religion and belief. "Freedom of religion is truly a freedom until it violates the rights of others," he told Forum 18 on 8 August. "If I decide to impose religion on others, this should be punishable."

Fr Gogotishvili acknowledged that people had been beaten and their places of worship desecrated, vandalised and destroyed. He stated that such cases were not only against Muslims. "There were cases against Orthodox, Muslims, Jehovah's Witnesses. That is totally unacceptable."

"If the Patriarchate sees the threat during the adoption of the law, it will definitely voice its opinion," Fr Gogotishvili told Forum 18. "If the law contains threats, it must be reviewed thoroughly, must be well advised with the society in order to take all aspects into account and not to miss anything." The Patriarchate has not yet made any formal statement on the proposed restrictions on freedom of religion and belief.

"The risk that the state will interfere in freedom of religion without any grounds is very high"

Civil society organisations, human rights defenders, and many religious communities fear that the new Constitutional restrictions will be used to legitimise freedom of religion and belief violations. "If we take into account existing and recent cases of unjustified freedom of religion and belief limitations by the state, it is definitely preferable to maintain the current Constitution's text or to exactly conform with the Venice Commission's recommendation," opposition parliamentary deputy George Tugushi, Deputy Chair of the Human Rights Committee and Georgia's member of the European Commission against Racism and Intolerance (ECRI), told Forum 18 on 9 August.

"Freedom of religion and belief is one of the most important and fundamental rights," former Supreme Court Chair and currently law professor at Ilia State University Konstantine Kublashvili told Forum 18 on 8 August. "Adding these grounds for restricting this freedom is a very negative trend." He thought that the government will use these new criteria to restrict the freedom, and that the court will have to take them into consideration as criteria for restrictions.

"The new draft leaves the impression that the authors consider freedom of religion and freedom of expression to be especially dangerous rights," law professor Konstantine Vardzelashvili of Ilia State University, former Vice-President of the Constitutional Court and member of the UN Human Rights Committee, told Forum 18 on 9 August. He noted that restricting freedom of religion and belief based on hypothetical threats is unjustifiable. "The risk that the state will interfere in freedom of religion without any grounds is very high."

Similarly, Gotsiridze of the Georgian Young Lawyers Association told Forum 18 on 8 August that "restricting freedom of religion on the basis of state security is problematic, especially as the government already sees religious minorities in this context instead of a human rights context".

Baptist Bishop Rusudan Gotsiridze also warned against the government using security as a pretext for limiting freedom of religion and belief. "The Constitutional amendments on freedom of religion and belief are a logical new step in the government's current strategy," she told Forum 18 on 8 August. "Freedom of religion and belief has been moved from being a human right into being solely a security issue since the State Agency on Religious Issues announced their strategy."

The government established the State Agency in February 2014. In 2015 the new State Agency published a draft strategy for the development of state religious policy. This identified religious or ethnic minorities living in coastal regions as posing the threat of interference by neighbouring countries into Georgia's internal affairs.

State Agency Chair Zaza Vashakmadze has not replied to Forum 18's questions on whether he realises that limiting freedom of religion and belief on the basis of "state [national] security or public safety", "the prevention of crime", and "the implementation of justice" contradicts Georgia's binding international human rights obligations.

On 2 August a coalition of human rights defender organisations, lawyers, academics and academic institutions protested against the proposed Constitutional changes. The coalition focused particularly on adding an illegitimate restriction of freedom of religion and belief based on alleged "national security". They appealed to Parliament not to pass the changes and, if adopted, to President Giorgi Margvelashvili to veto them.

The coalition also called on the Venice Commission, the UN Special Rapporteur on Freedom of Religion or Belief, the Committee of Ministers of the Council of Europe, and the European Commission against Racism and Intolerance (ECRI) to assess the current proposed Constitutional changes (see <http://www.tdi.ge/en/statement/address-civil-society-organizations-and-lawyers-limitation-freedom-religion-draft>).

"There are such restrictions in some European constitutions"?

Georgian Dream deputy Sopio Kiladze, Chair of the Human Rights and Civil Integration Committee, told Forum 18 on 8 August that she was responsible for the new restrictions. She claimed that they were the same as in Article 9 ("Freedom of thought, conscience and religion") of the ECHR. When Forum 18 pointed out that the new restrictions are not in the ECHR's Article 9 - for example that there is no "national security" limitation - she claimed: "Public safety includes both state security and public security. As for the 'prevention of crime', this is compatible with 'public order'. What else can be public order if not prevention of crime?"

Kiladze then claimed that "we have to take into consideration when the Convention was written. Also, this is the convention of many states and not of one state, and it has its own particularities too".

Her fellow-Georgian Dream deputy Irakli Sesiashvili, Chair of the Defence and Security Committee, told Forum 18 that a reason for restrictions "can be preaching of ideas that contradict the state system and might be dangerous for human life and health". He then claimed on 10 August that "there are some religious groups that are fully based on terrorist activities and there are also groups whose religion directly urges them to violence" Deputy Sesiashvili refused to name to Forum 18 any specific religious groups in Georgia he had in mind.

Asked by Forum 18 which European country restricts freedom of religion and belief based on "state [national] security or public safety", "the prevention of crime", and "the implementation of justice", Deputy Sesiashvili replied: "it is hard to say but there are such restrictions in some European Constitutions". He was unable to name a single country which imposes such restrictions.

"The special role of the Apostolic Autocephalous Orthodox Church of Georgia"

Article 9 of the draft amended Constitution has been changed from the current Constitution to bracket freedom of religion and belief with the Georgian Orthodox Church: "Together with freedom of religion and belief, the State recognises the special role of the Apostolic Autocephalous Orthodox Church of Georgia". Human rights defenders fear that, although this changes little in terms of freedom of religion and belief protection, it downgrades the protection of this freedom.

The Public Defender's 25 May letter to the Venice Commission (supported by the Tolerance Centre and the members of the Council of Religions) describes this change as a "weakening of principles of freedom of religion or belief and secularism".

Similarly, the NGO coalitions' 2 August statement notes that it can "create grounds for the assumption that the State restricted freedom of religion and belief through recognising the role of the Orthodox Church. Such formulation of the provision is a step towards a deterioration of the human rights standard."

Georgian Dream deputy Kiladze rejected these fears. "This does not affect other religions," she claimed. Similarly, Fr Gogotishvili of the Patriarchate told Forum 18 that this proposed wording is not problematic.

Despite the concerns expressed by the Public Defender and civil society, the Venice Commission did not comment in its Opinion on this proposed change. (END)

For previous reports on freedom of thought, conscience and belief in Georgia, see <http://www.forum18.org/Archive.php?query=&religion=all&country=24>.

For comments in 2005 by Georgian religious leaders and human rights defenders on how the legacy of religious violence should be overcome, see http://www.forum18.org/Archive.php?article_id=499.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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