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The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

Ensuring the collective dimension of freedom of religion or belief - WS15

This year's *OSCE ODIHR/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities*¹ open with the words "freedom of religion or belief is a fundamental right, recognized in international instruments and in OSCE commitments. International standards specify that everyone will have the right to freedom of thought, conscience and religion" (para 1). Yet participating States like Azerbaijan, Kazakhstan, and Uzbekistan impose severe jail sentences and even torture for exercising this right. For example, Muslim prisoner of conscience Khayrullo Tursunov - on a 16-year jail term after Kazakhstan illegally extradited him to Uzbekistan - has apparently been subjected to attempts by Uzbekistan to infect him with the potentially fatal disease of tuberculosis.

One of the *Joint Guidelines*' strengths is that it anchors the collective dimension of the freedom of religion or belief firmly within this wider context of the right to freedom of religion or belief and other human rights, including - as the *Joint Guidelines* state - "the freedom of expression, the freedom of assembly and association and the right to non-discrimination" (para 3). This builds on the still valid 2004 *Guidelines for Review of Legislation pertaining to Religion or Belief*.²

The *Joint Guidelines* quote the European Court of Human Rights on the importance of the collective dimension: "the autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection which the freedom of religion or belief affords" (para 18). This freedom "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief" (para 2). People in all participating States' act together based on many philosophical and religious convictions, even under harsh state repression. As former UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir noted, "when I am asked which community is persecuted most, I always reply 'human beings'".

Yet in Turkey for example, no belief community including atheists is allowed legal existence, as my colleagues Mine Yildirim from the *Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative* and Susan Kerr from *Christian Solidarity Worldwide* will discuss. Achieving the possibility of legal personality for all would not solve all problems, but it would provide a powerful tool for resolving other problems of law and official and social attitudes. What is lacking is the political will.

Human beings have an incurable and wonderful urge to meet together to act on the basis of very diverse religious and philosophical convictions in very diverse ways. The *Joint Guidelines* offer ways of facilitating this collective dimension. Flowing naturally from this, the *Joint Guidelines* note that: "State permission may not be made a condition for the exercise of the freedom of religion or belief" (para 10) and that "the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status" (para 21). Or as UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt told the 2012 HDIM, this freedom "should not be seen as an act of mercy by the state, but rather as an inalienable and non-negotiable right of all human beings that the state has to respect".

Yet despite this, Russia is revoking the possibility for groups of people to exercise this freedom without informing the state. And in Belarus, Azerbaijan, and all five Central Asian states the exercise by groups of people of freedom of religion or belief without state permission is banned. For example, in Kazakhstan permission for some people to in a limited way exercise freedom of religion or belief can only be gained via a burdensome state registration system. And even gaining registration does not stop officials trying to stop people exercising fundamental human rights. For example: in Atyrau the Anti-Terrorism Police with the Justice Department bully people into withdrawing their signatures on

¹ http://www.legislationline.org/download/action/download/id/5719/file/VC_ODIHR_Guidelines_Legal_personality_religious_communities_2014_en.pdf

² <http://www.osce.org/odihr/13993?download=true>

the Full Gospel Church's registration applications, and try to stop the Church meeting without state permission; the Din-Muhammad Mosque community in Petropavl whose Mosque has been liquidated, is still struggling against "legal" and extra-legal harassment to try to gain registration; and the registered Hare Krishna community in Kostanai has been raided by police and their leader fined, and has appealed to the UN Human Rights Committee to be able to exercise freedom of religion or belief without punishment. Many people have been given 1 to 10 day jail terms for the "offence" of refusing to pay fines imposed for meeting together for worship without state permission.

These examples illustrate the need, as the European Union's *Guidelines on the promotion and protection of freedom of religion or belief*³ state, to "challenge attempts to make the exercise of human rights conditional upon state permission" (para 42). Many OSCE participating States appear to have one overriding imperative - control. As the *Joint Guidelines* note: "States have developed a number of practices involving, for example, police control, surveillance, restrictive measures including the closing of places of worship, confiscation of property, financial sanctions, imprisonment, blocking access to chaplaincy services, restricting the dissemination or ownership of religious literature, or restricting the freedom to convince others of one's religion or belief" (para 21). Individual people as well as communities are seen as potentially dangerous, as they can be independent and out of state control. So groups of people - like Muslims in Azerbaijan and Kazakhstan - are pressured to join state-approved centralised religious organisations. When people exercise their freedom of religion or belief without state permission, dictatorships see a serious threat to their power. For these people have overcome the fear that enables unelected rulers to control society. History and current events show us both that beliefs can be a powerful source of courage under oppression, and that seemingly stable dictatorships can quickly collapse.

Police in Azerbaijan, whom Forum 18 questioned about a raid on Protestants meeting without state permission, outlined the authorities' fear of those who have overcome fear like this: "You don't need a licence to talk about chess or football, but you do about religion". Regimes like Azerbaijan and Kazakhstan deny reality, with apologists camouflaging repression and flagrant international law violations with words like "tolerance" and "secularism". Tools such as the *Joint Guidelines* provide a way of assessing such reality denials, by carefully outlining participating States' minimum obligations.

The *Joint Guidelines* also outline examples of good practices by participating States to protect the collective exercise of freedom of religion or belief. These include examples from Estonia, Germany, Ireland, Italy, the Netherlands, Poland, Spain, Sweden and the United States. Where the political will exists to implement human rights obligations, the *Joint Guidelines* offer a valuable guide to ensuring that communities who wish to acquire legal personality "have a fair opportunity to be granted legal personality and that the criteria established are applied in a non-discriminatory manner". The *Joint Guidelines* also offer valuable benchmarks for ensuring that groups of people who do not have or wish to apply for legal personality status also enjoy the right to freedom of religion or belief.

So we should make full use of the *Joint Guidelines* with other OSCE, Venice Commission, EU and UN human rights guidelines, opinions and reports, as well as other tools, to give people what the *Joint Guidelines* Introduction calls "the dignity they deserve as members of the human family".

What can constructively be done? Participating States, OSCE institutions and field operations could:

- insist that human dimension commitments are implemented in full by all participating States;
- situate freedom of religion or belief work within an all human rights for all perspective, making its aim assisting implementation of the freedoms of religion or belief and other fundamental freedoms including those of expression, assembly, and the right to be free from torture;
- mainstream work to ensure and promote freedom of religion or belief with its interlinked human rights, building on the other work of the ODIHR Human Rights and Tolerance and Non-Discrimination departments;
- use tools such as the *EU Guidelines on the promotion and protection of freedom of religion or belief*, the *OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities* and the *OSCE Guidelines on the Protection of Human Rights Defenders*.⁴

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³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf

⁴ <http://www.osce.org/gsearch?qr=Guidelines>