

## FREEDOM OF RELIGION AND BELIEF (FoRB) IN AZERBAIJAN: CURRENT LEGAL REGIME, CONTEMPORARY CHALLENGES AND SAFEGUARDS

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### **Abstract**

*This article has been dedicated to one of the significant problems of our times. It discusses several aspects of the FoRB regime in Azerbaijan Republic. First of all, the author takes a look at the historical roots of FoRB very briefly. Then, he provides analysis of the four pillars of the Azerbaijani legal FoRB regime and discusses the appropriate legal principles. Furthermore, he compiles a list of challenges for FoRB in Azerbaijan. He also reviews factors mitigating and or aggravating those challenges*

**Keywords:** *freedom of religion and belief, pillars of the Azerbaijani FoRB regime, principles of the Azerbaijani FoRB regime, challenges for the Azerbaijani FoRB regime, factors mitigating of aggravating challenges for the Azerbaijani FoRB.*

### **Introduction**

It is worth noting that this article does not pretend to be an exhaustive treatment of all FoRB-related issues in Azerbaijan. It merely intends to provide a brief overview of the legal FoRB regime in Azerbaijan Republic. However, it seems fit-for-purpose to start with a very short passage on the roots of the FoRB phenomenon.

FoRB is a relatively new legal concept, which is designed to embrace a wide range of complex and challenging realities in the religious domain in the current turbulent environments. Obviously, it has numerous ancestors each of which met the requirements of its time. For example, we may refer to Syncretism [1, 1-25] as a dominant ideology within the community of traders or the Muslim tradition of dhimmis [2, 50, § 2]. Appropriate provisions of numerous legal instruments including but not limited to the Cyrus Cylinder, the Edicts of Ashoka, the Edict of Torda, Virginia Statute for Religious Freedom etc. did also provide a certain level of legal protection for the religious freedom.

In modern ages, the constitutions and other legislative acts of almost all countries contain appropriate provisions regarding the equivalent protection of the freedom of religion [3, 191-559]. What about international law, one of the first and most significant legal instruments with global effect was the 1948 Universal Declaration of Human Rights, which recognised “*everyone’s right to freedom of thought, conscience and religion*” in its Article 18. The 1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief is another international legal document with its three potentially far-reaching non-discrimination provisions [4, 42-43].

### **The legal FoRB regime in Azerbaijan Republic**

Getting back on FoRB in Azerbaijan, I find it appropriate to underline two important issues. *First of all*, despite the fact that Azerbaijan stands today shoulder

to shoulder with the civil law countries and its legal system is based on civil law, in my humble opinion, this country can be considered as a part of a unique legal geography where material sources of law usually prevailed formal sources throughout the centuries until the XX century. In particular, material legal sources, which emerged thanks to the influential and widely respected representatives of various religions, including Zoroastrianism, Tengrism, Judaism, Christianity and Islam played an exclusive role in decision-making and socio-political life of the country in general [5, 60].

As history witnesses, this approach to law, society and state proved to be highly effective in Azerbaijan, thus contributing to the evolution of reliable governing practices and multicultural environments. Otherwise, it would be extremely difficult and almost impossible to cope with the challenges and threats of our times. Because there are a number of factors continuously affecting FORB environments in Azerbaijan. They will be discussed in the last two sections of this article.

Thanks to effective governing practices, contemporary Azerbaijani society is highly tolerant and friendly towards the representatives of all other cultures, despite the country's extremely sensitive geographical location, which makes Azerbaijan to face with a wide range of trans-border challenges, such as separatism, terrorism, regional conflicts etc. [6, 5, Articles 3.2 to 3-11], including attempts against the independence, sovereignty, territorial integrity, and constitutional order of the Republic of Azerbaijan [7, 5, Article 3.1].

Undoubtedly, it would be extremely difficult to manage those challenges without appropriate legal tools. The country possesses a valid and effective legal regime, which helps it in dealing with them. The national legal FoRB regime in Azerbaijan is constructed on the following four separate pillars.

**Constitutional pillar.** This pillar is the foundation of the legal hierarchy and pyramid, which sets forth the fundamental legal norms and principles related to the freedom of religion and belief in the most important legal instrument of the country. It is based upon the appropriate constitutional provisions [8, the last item in the Preamble and the provisions in the Article 18 of the Constitution] and can be divided into two sub-categories. The first sub-category consists of several principles. I would prefer to start the discussion of the constitutional pillar with a declarative statement in the Preamble of the Constitution. It includes in the list of the constitutionally declared aims of the Azerbaijani people: "to remain faithful to universal values, to live in friendship, peace and security with all the nations of the world, and to cooperate with them for this purpose".

I may humbly admit that humanism is the very first fundamental principle of the constitutional pillar. Furthermore, the Constitution of Azerbaijan Republic separates religion from the state while making all religions equal before the law. Thus, we may conclude that secularism constitutes the second principle of the constitutional pillar of the Azerbaijani FoRB. As it becomes obvious from the above postulate, secularism is followed by the principle of inter-religious equality. The next principle is 'tolerated' (or 'required') restriction, which allows the state authorities to prevent the dissemination of the inhuman and degrading religious

ideologies. This principle does also require that the education system must be based upon the principle of secularism, which makes Azerbaijan one of few among the members of the Council of Europe that has a direct legal constitutional reference to the secularity of public education [8, 42].

If the first subcategory of the constitutional pillar concentrates on the regulation of state-religion relationships in general, then its second subcategory aims at dealing with the human-religion-state triangle [7, Article 48 of the Constitution]. Therefore, the very first principle under the second subcategory is the principle of human freedom in determining his approach to religion. This kind of freedom encompasses the right to be free from being forced to get involved, by words or by deeds, a part of any religion.

However, here again, the state enjoys a set of exclusive legal opportunities designed to protect three fundamental values: a) public interests; b) morality; c) and the law. The realisation of any religious right that disturbs public order, is contrary to public morals, or violates the law will not be constitutionally tolerated on the territories of Azerbaijan Republic. Thus, we may just discover the second principle of the second subcategory of the constitutional pillar, which is the principle of protection.

Finally, the third principle under the second subcategory is privacy stipulating that it can never be allowed to force someone to proclaim his religion, thoughts and belief [7, Article 71].

**Legislative pillar.** Obviously, legislation is a continuous process and it is therefore a little bit more effective and flexible pillar of FoRB in any country. The reason is that the contemporary FoRB-related issues are highly dynamic and changing phenomena, which requires instant and case-by-case reaction in order to deal with its challenges properly. From this perspective, the legislative pillar creates a more practical legal regime capable of coping with a wide range of FoRB-related problems.

The importance of the legislation is also in the fact that its separate instruments (in particular, laws) contain numerous legal provisions detailing the constitutional principles on FoRB, identifying the scope and limits of their application, eliminating the gaps, and dealing with a number of other issues of practical-legal importance.

The legislative pillar of the legal Azerbaijani FoRB regime is based upon several laws and other legislative acts, the most important of which is 'the Freedom of Religious Belief' Act [9]. On the basis of Article 1 of the mentioned Law, we may take into consideration the following legislative standards applied within the FoRB regime in Azerbaijan:

- The constitutional religious freedom can be realised individually or collectively;
- Forcible propaganda of religion is prohibited;
- Dissemination of religious ideas is strictly linked to the 'nationality' principle;
- The law recognises the right of parents to educate their children in accordance with their religious belief.

**Restorative pillar.** This pillar consists of appropriate legal norms and standards too. However, this pillar is organised of 'post factum' norms and rules. They start operating from the moment of violation of the principles and norms, which form the previous two (constitutional or legislative) pillars. Their major task is to restore the pre-violation status quo to the maximum extent possible or recover damages and sufferings. Consequently, restorative norms possess a different structure than the norms forming previous pillars. As a rule, it is quite possible to locate not only hypothesis and disposition, but also a sanction – coercive element [10, 50-51] in the structure of the restorative norms. The sanction part of the norm does also define all possible variants of necessary legal action to be taken by the proper governmental authority. In my humble opinion, we may consider the following subcategories of the restorative pillar:

**a) Administrative legal pillar.** Administrative norms and standards are rules of general applicability, which both facilitate or constrain the realisation of administrative policy objectives of the government [11, 49]. In principal, those norms and standards can be found in a huge single legal instrument, usually called a code [12]. The Azerbaijani administrative legal pillar declares unlawful the following actions:

- violation of order of establishment and activity of religious structures may lead to the imposition of penalty in amount of 10-15 manats (on natural persons) and of 40-70 manats (on official persons) [12, Article 299];
- spreading the religious ideologies in violation of the 'nationality' principle (may lead to the deportation or imposition of money penalty in amount of 20-25 manats) etc [12, Article 300].

**b) Criminal legal pillar.** Apparently, this sub-pillar is not less important than the administrative legal pillar. It also consists of a set of solid legal norms and standards, which start operating as soon as the FoRB regime, established by the first (foundation pillar) and second (medium pillar) pillars, fail to operate properly. Thus, criminal legal pillar may be described as the top of the legal hierarchy and pyramid designed to protect the legal FoRB regime in Azerbaijan Republic.

Of course, there is an essential difference between the two sub-pillars of the restorative pillar. The mentioned difference is very closely linked with the differences between 'administrative violations' and 'crimes'. Obviously, all offences are socially dangerous, illegal, guilty and punishable. However, the signs like object, nature and degree of social danger, nature of illegality, and nature of results allow to differ the crime from other offences [13, 44-45].

The major legal instrument forming the criminal legal pillar in Azerbaijan is Criminal Code of Azerbaijan Republic. According to its provisions, the perpetration of any crime on the grounds of national, racial or religious hatred is one of the circumstances aggravating punishment [14, Article 61.1.6 ]. Furthermore, the Code criminalises the act of genocide [14, Article 103], discrimination [14, Article 109], violation of laws and customs of war [14, Article 115], deliberate murder on motives of national, racial, religious hatred or enmity [14, Article 120.2.12], impending implementation of religious activities [14, Article 167], forcing others to

embrace any religion [14, Article 167-1], producing or publishing, importing, selling or distributing religious literature, things or other informative materials illegally [14, Article 167-2], encroaching on the rights of others under the pretext of implementation of religious rituals [14, Article 168], and causing hatred and enmity on national, racial, social or religious grounds [14, Article 283].

### **Institutional safeguards for FoRB in Azerbaijan**

I did not cover the fourth pillar of the Azerbaijani legal FoRB regime in the previous section, as it possesses several distinctive features. First of all, the elements constituting the fourth pillar may be considered as the material sources of law, as they hold enormous practical opportunities to give birth, directly or indirectly, to new legal standards and rules. Secondly, they are 'alive' organisms acting on behalf of the state. Thirdly, the mentioned elements must always act in accordance with the requirements of the first, second and third pillars. They have no autonomy to violate already existing norms of law.

Briefly speaking, the fourth pillar encompasses appropriate public and private agencies operating to ensure the well-being of the national FoRB regime in Azerbaijan. We may put those institutions into appropriate categories, including public and private agencies, executive, legislative and judicial agencies, secular and religious institutions, governmental and non-governmental institutions etc. However, I would like to focus on the following institutional safeguards for the purposes of this article.

The Milli Majlis of Azerbaijan Republic is a key legislative body, which takes an active part in the creation and improvement of the first, second and third pillars. The Milli Majlis adopts constitutional laws, laws and resolutions concerning issues falling under its competence [7, Article 93.1]. The Milli Majlis has updated the Azerbaijani Law on the Freedom of Religious Belief 76 times [9] since its adoption in 1992.

The President of Azerbaijan Republic is the central figure not only for the improvement of the first, second and third pillars, but also for the operation of the many state agencies included in the fourth pillar. The President signs laws, constitutional laws [7, Article 110], issues decrees and orders [7, Article 113]. Besides that, Article 96 of the Constitution enables the President of Azerbaijan Republic to submit draft laws and other questions for the consideration of the Milli Majlis (the right to legislative initiative). Assistant to the President of Azerbaijan Republic for Multinational Relations, Multiculturalism, and Religious Issues fulfils important tasks by preparing appropriate reports, providing expertise, holding meetings etc.

The State Committee for Work with Religious Organizations is in charge of regulation of activities of religious organizations and ensuring freedom of religion in Azerbaijan. The Committee is a kind of bridge between the secular state system and religious communities in the country. Thus, one should not underestimate the Committee's role, as it is a central executive body responsible for the formation of the governmental policies in the given domain [15]. The Committee works in close cooperation with a number of religious organizations, which represent their

subsequent religions, including the Spiritual Board of Caucasian Muslims, the Russian Orthodox Church, the Jewish Community, the Catholic Church and many others.

Finally, it is necessary to mention the Azerbaijani law enforcement agencies successfully operating in the sphere of combatting religious extremism and radical religious ideologies. Different ministries, committees and services (Ministry of Internal Affairs, Ministry of Justice etc.) of Azerbaijan Republic join together to reveal and prevent religiously motivated acts of violation in a timely manner. Azerbaijani courts are also active guards of the third – restorative pillar widely discussed in the previous section.

Thus, the number 4 is a central, crucial and operative pillar in dealing with numerous challenges directed against the FoRB regime in Azerbaijan.

### **Challenges for FoRB**

The vast majority of those challenges are of the political, military, even geopolitical etc. character. Therefore, a detailed discussion of such elements in an article dedicated to the legal aspects of the freedom of religion does not seem fit-for-purpose. In this section, I find it appropriate to provide a short list of challenges threatening the national legal FoRB regime in Azerbaijan Republic, which includes but is not limited to the following:

- Unresolved/frozen Conflicts;
- Politically motivated radical separatism;
- Religiously motivated radical ideologies;
- Religious Extremism;
- Terrorism;
- Transnational Organized Crime.

Furthermore, I would like to draw a line between the positive and negative factors mitigating or aggravating the above challenges. So, the long history of multiculturalism (factor 1), well-established state practices of respecting multiculturalism (factor 2), and high levels of interreligious/interethnic tolerance within the civil society (factor 3) can be considered as the positive factors, whereas the last two interconnected and interrelated factors Nos. 4 and 5 - balancing national security interests of the state and surviving ‘geopolitical waves’ are factors which may have negative impacts on the legal FoRB regime in Azerbaijan Republic.

### **Conclusions**

In the current section, the previously enumerated ‘mitigating’ or ‘aggravating’ factors are to be detailed in the light of the previous section on challenges. First of all, the history of the progress of the Azerbaijani religious economy needs to be taken into account. This country has been a land of clashes and dialogues between/among several religions, particularly, various practices of heathenism (animism, shamanism etc.) and Zoroastrianism, Judaism, Christianity, Islam, ‘Imposed Atheism’ and finally Secularism throughout centuries until recently [16] [17]. In my humble opinion, this centuries-old and persistent, even though

sometimes involuntary, example of multi-religious (and multi-ethnic) co-existence has always been the major reason behind the remarkable level of multiculturalism and tolerance existing in Azerbaijan. The history of Caucasus Albania is an important proof of the hard and non-stable religious practices in the nowadays territories of the Republic of Azerbaijan due to its geographical location [18, 147-149].

Secondly, all state formations and political, religious and legal systems, once established in Azerbaijan in the course of centuries, have usually stacked to the policy of multiculturalism and done their best to preserve and respect the multicultural environments and tolerance atmosphere in the lands under their jurisdiction due to objective reasons (particularly, the need for peace, widely spread inter-religious and inter-ethnic royal/noble marriages etc.). And, of course, several exceptions [19, 46-51; 20, 87] to this general rule, which took part in the past, should not damage a generally positive image, as in the majority of cases, they were directed towards the goal of protection of the established beliefs.

Thirdly, current multi-religiosity has a two-fold impact on the religious economy of modern Azerbaijan society: first of all, the government and society has developed an admirably tolerant model and best practices of multiculturalism; moreover, it is not always an easy task to maintain the achieved status quo in the sphere of the FoRB due to the phenomena of exported religious extremism.

Fourthly, Azerbaijan is a comparatively young independent state and its national security has become a target of a number of direct threats and crime and the National Security Concept (2007) of the Republic of Azerbaijan encompasses a non-exhaustive list of those threats [6].

Fifthly, although it may seem repetitious, one should mention that regional and global geopolitical dynamics do also play here their role [21, chapters 4, 5, 6 and 7].

Finally, the existence of numerous non-legal challenges is not considered as an obstacle for the realization of the highest objective of the Azerbaijani state. Under Article 12 of the Azerbaijani Constitution, the state ensures rights and freedoms of man and citizen, and a proper standard of living to the citizens. Moreover, the rights and freedoms, including religious rights enumerated in the Constitution are applied in accordance with not only the domestic legislation, but also the norms of international law contained in international treaties to which Azerbaijan Republic is a party.

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