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Religion-State Relations and Reconciliation in the Region of Western Balkans

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ABSTRACT

The paper analyses different models of religion-state relations and aims to identify configurations and characteristic of legal order that could impact and foster the reconciliation processes among diverse religious and ethnic groups in the region of Western Balkans. The basic thesis of this paper is that religious organizations have a huge potential to facilitate and contribute to the reconciliation processes. However, the fundamental precondition for successful participation of religious organizations in the public space is the proper legal framework that regulates their legal status. Therefore, the paper aims to identify the proper model of religion-state relationship that enables religious organizations to provide an authentic and genuine contribution to the reconciliation process among nations and religions in the Western Balkans, which has always been diverse in terms of religion, with this diversity deeply rooted in its history. Furthermore, the paper analyses the key characteristics of modern church-state relations, such as state secularity, state neutrality, the protection of religious freedom and the notion of religious autonomy.

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Introduction

The protection of freedom of religion is a fundamental prerequisite for the participation of religious communities in social and public life. It is essential for fostering peaceful coexistence among diverse churches and religious communities and diverse religious and even ethnic groups. Moreover, freedom of religion constitutes one of the core human rights, safeguarded by both international and domestic law. Not to mention that the European Court of Human Rights (ECtHR) declares that: '*Freedom of thought, conscience, and religion is the foundation of democratic society*'[1]. However, each state adopts its own approach in regulating relationship with religious organizations within the limits set by the international law. Without properly regulated relations between the state and religious organizations, it would be difficult, if not impossible, for religious institutions to effectively engage in any societal activity including reconciliation processes.

This paper argues that religious organizations possess the potential to facilitate reconciliation between diverse religious and ethnic groups. In the Western Balkans, ethnic and religious identities are closely intertwined, making religious issues often carry ethnic or national implications. However, an appropriate legal framework for the protection of religious freedom is essential, as only a free religion in a free society can make an authentic and genuine contribution to the reconciliation process among nations and religions in the Western Balkans (WB). The comparative historical method will be employed to examine the history of state-religion configurations in the region of Western Balkans. Since this is mainly normative research, it will focus on analysis of legislation and legal theories in the field of law and religion.

Therefore, the paper is structured as follows: a brief historical overview of state-religion relations scrutinizes the evolution of key characteristics of those relations in Western Balkans countries (2). Next section provides basic information on modern tendencies in the field of state-religion relations in contemporary Europe (3), while the subsequent section is dedicated to the most prominent classification of state-religion relationships (4). Since all countries in the region of Western Balkans are secular, the paper aims to explore the legal interpretation of this term (5), as well as the provisions on religious freedom protection prescribed by key international human rights instruments (6). The final section of the paper scrutinizes the importance of religious autonomy as a *conditio sine qua non* for free and genuine participation of religious organizations in any type of social activities (7). The results of the analysis are summarized in the conclusion (8).

Results

Brief Historical Overview

Before the First World War religion played an extremely important role in the kingdoms of Serbia and Montenegro, as well as in the Austro-Hungarian Empire. Religious organizations participated in public life and enjoyed preferential legal status. In addition, there were strong institutional connections between the states and particular churches. In the kingdoms of Serbia and Montenegro the Orthodoxy was 'state religion', but a pure model of 'state' church has never been introduced. The 1905 Constitution of the Principality of Montenegro stipulated that state religion in Montenegro was Eastern Orthodox, while freedom was guaranteed to all other recognized religions.[2] According to the 1903 Constitution of the Kingdom of Serbia, the state religion was Eastern Orthodox, while the King was the protector of all recognized religions in Serbia.[3] In both parts of the Austro-Hungarian Monarchy, the state exercised its right to patronage towards the Roman-Catholic church, which even after the adoption of the 1868 Law Regarding Interconfessional Relationships retained some privileges. At the same time, the state exercised supervision towards the other religions and churches.[4] During the First World War, countries of the region, especially Serbia, suffered significant losses.[5] After the end of WWI almost all territories of Western Balkans were unified and a new state was established: the Kingdom of Serbians, Croats and Slovenians (since 1929 the Kingdom of Yugoslavia). After the introduction of the 1921 Constitution the system of 'state religion' was abounded. Nevertheless, the state and church were not separated. Both

[1] Clare Ovey & Robin C.A.: Jacobs and White, The European Convention on Human Rights: White. Oxford. New York. 2006. p. 300.

[2] Ustav za Knjaževinu Crnu Goru, http://srpskaenciklopedija.org/doku.php?id=устав_за_књажевину_црну_гору_1905.

[3] Ustav za Kraljevinu Srbiju, Zbornik LVIII, 552.

[4] Csaba Fazekas, 'The Super-Ego of the Empire: Church and State,' in *The Austro-Hungarian Dual Monarchy (1867-1918)*. ed. Zsuzsa Gaspar (London: New Holland, 2008), 155.

[5] Valentina Cvetković Đorđević, „Epidemija tifusa u Srbiji 1915. godine,' in *Epidemija, pravo, društvo*, ed. Natalija Lukić and Dalibor Đukić (Beograd: Centar za izdavaštvo Pravnog fakulteta Univerziteta u Beogradu, 2022), 210.

constitutions of the kingdom of Yugoslavia provided to recognized churches and religious communities the status of „privileged corporations', whose privileges were further determined by a number of laws and statutes.[6] Religious organizations remained responsible to carry out a number of state affairs (like keeping birth registers).

After the end of the Second World War the communists in the region of Western Balkans adopted the harshest form of secularism which went to the extreme of banning and repressing religion. Formally, the 1946 Constitution of the Federal People's Republic of Yugoslavia guaranteed Freedom of conscience and religion and adopted the system of separation of the state and Church.[7]In practical terms, churches and religious communities faced many difficulties in their activities. Although the church was separated from the state, the state did not separate itself from the church. The autocratic regime of Yugoslav communists continued to control and to intervene into internal issues of religious communities, such as the elections of religious leaders, changes in the internal organization of religious communities, etc.[8] In Albania, the 1976 Constitution aimed at a complete prohibition on the establishment of religious communities. Albania was the world's first officially atheist country.[9] The main characteristic of these regimes is that religion was moved from public sphere and the state authorities.

After the fall of Iron Courtin, the process of democratization commenced in the states of the WB region. During the first decade of XXI century these states made efforts to regulate the legal status of churches and religious communities in their legal systems.[10] Some of them, also, entered into agreements with churches and other religious organizations. These agreements regulate certain aspects of the legal status of religious organizations and usually provide special privileges reserved only for those religious organizations that have signed them. Therefore, these agreements are seen as useful tools for the state to maintain the separation from the church and preserve its neutrality and impartiality in religious matters, while simultaneously it deepens the cooperation with religious organizations.[11] The WB states abounded the model of strict separation between the state and religion and they aligned their legislation in the field of religious freedom with the wider central European patterns and their system of state-religion relations evolved in the direction of cooperation and state support of religion.

Classifications of Religion-State Relations

Different classifications of state-religion systems can be identified in the literature. Renae Barker provides a comprehensive overview of existing typologies of state-religion relationships.[12] They differ to such an extent that their analysis would greatly exceed the scope of this paper. However, the fact is that there are certain tendencies in the field of state-religion relations which due to their importance should be scrutinized before proceeding to analyzing a certain classification of models of state-religion relations.

Each classification has more theoretical than practical significance. When regulating the relationship between the state and the church, the legislator is not guided exclusively by the selected specific model of the relationship between the state and the church but generally takes into account a number of other factors. One gets the impression that adherence to a certain pattern is actually a rarity and that each state can be perceived as a separate model.

Most classifications are based solely on a normative approach without a broader interdisciplinary study of the relationship between the state and the church.[13] The disadvantages of such an approach are one-sidedness, the tendency to generalize and accept stereotypes, and susceptibility to misinterpretations. When speaking about

[6] Slobodan Jovanović, *Iz istorije i književnosti I,* (Beograd: BIGZ, 1991), 526-528.

[7] Art. 25 of the Constitution of the Federal People's Republic of Yugoslavia, Official Gazette of the Federal People's Republic of Yugoslavia, No. 10/1946.

[8] Marko Božić, 'Neither secular state nor laical Republic? Legal position of religious communities in Communist Yugoslavia: Legal framework analysis,' *Pravni zapisi* 10 (2019): 59.

[9] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 172.

[10] Dalibor Đukić, 'State and Religion in Post–Yugoslav States: Is There a Post–Yugoslav Model of Religion–State Relationship?,' in *Contemporary State–Church Law*, ed. Vladimir Đurić and Dalibor Đukić (Beograd-Budva: Institut za uporedno pravo, Mitropolija crnogorsko-primorska, 2023), 520.

[11] Vladimir Đurić, „Ugovorno državno-crkveno pravo,' in *Državno-crkveno pravo kroz vekove*, ed. Vladimir Čolović, Velibor Džomić, Vladimir Đurić, Miloš Stanić (Beograd-Budva: Institut za uporedno pravo, Mitropolija crnogorsko-primorska, 2019), 361.

[12] Renae Barker, 'Law and Religion in the Classroom: Teaching Church-State Relationships,' Australian Journal of Law and Religion, no. 1 (2022): 3.

[13] Russell Sandberg, 'Church-State Relations in Europe: From Legal Models to an Interdisciplinary Approach,' *Journal of Religion in Europe*, 1, 3 (2008): 329-352, doi: https://doi.org/10.1163/187489208X336560.

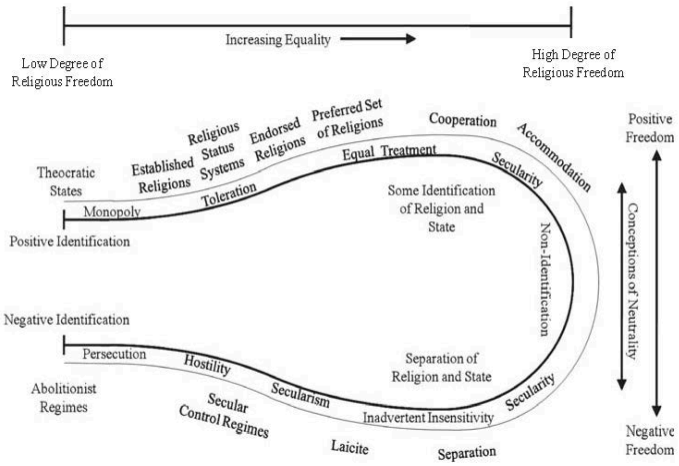
the model of the relationship between the state and the church in a certain state, it is necessary to refer to the historical, sociological, religious, cultural and demographic facts and circumstances in which the specific model is applied. Only on the basis of that broader insight, it is possible to draw concrete conclusions about the model that is being applied and, which is more important, what practical implications for the relations between the state and religion this model produces.

Another important fact that should be mentioned is that today in Europe there are no pure models, i.e. there are no states that consistently respect only one theoretically defined concept of the relationship between the state and the church. One of the reasons why pure models do not exist is the tendency of convergence of different models.[14] States that have been known for the system of the state church in recent decades recognize a certain autonomy to the established churches, while in the states that apply systems of separation there is an increasing development of the cooperation with religious organizations.

The convergence of different models progressively leads to the creation of a unique European model of state-church relations. Silvio Ferrari identifies the following characteristics of the common European model: 1. state neutrality, 2. a religious sub-sector within the public sector is a field where religious organizations have preferential or favorable position and treatment, 3. state interference with religion has been limited to the right of supervision of compliance with the rules and boundaries of the field.[15] Although there can be many objections to the idea of creating a European common model of state-religion relations, the fact is that due to international standards for the protection of religious freedom and the growth of body of substantive norms of EU community law on religion,[16] national regulations on the status of religious organizations in the European continent are brought closer.

The Models of State-Religion Systems

For the purposes of this paper the classification of state-religion models introduced by Durham and Scharff seems



to be appropriate, because it places different models in the context of religious freedom protection and state neutrality. According to their classification, possible models of state-religion relations can be presented as a loop which starts with positive identification of state and religion (those are theocratic systems), it continues through a number of different models and ends with negative identification of state and religion (persecution of religion).[17] Some of those models can disrupt the reconciliation efforts of religions in general. This is especially noticeable in the regimes with state persecution of religion. Furthermore, theocracies can also limit the reconciliation potentials of religion because of the extensive influence of the state on religion. So, the optimal solution should be somewhere between those extremes. The diagram indicates that state-religion models is intertwined with religious freedom that is *condictio sine qua non* for the participation of religion in social processes, including the process of reconciliation between different nations and religious groups.

Theocratic states are quite rare. The absolute identification of the state and religion could be found in previous Taliban state. This model has been abounded from almost all countries in the world that implemented it in the past. However, absolute theocracies are associated with Muslim theory and practice, but also during history Christian, Buddhist and Hindu beliefs succeeded to keep

[14] Sima Avramović, *Prilozi nastanku srpskog državno-crkvenog prava*, (Beograd: Pravni fakultet Univerziteta u Beogradu, 2007), 108.

[15] Silvio Ferrari, 'The New Wine and the Old Cask. Tolerance, Religion and the Law in Contemporary Europe,' Ratio Juris 10, no. 1 (March 1997): 77.

[16] Norman Doe, *Law and Religion in Europe: A Comparative Introduction*, (Oxford: Oxford University Press, 2011), 237.

[17] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 122.

monopolistic positions in different regions and countries.[18] In the WB region, this model of state-religion relationship was dominant during the Ottoman rule, and also in a less strict form in Montenegro during the rule of orthodox bishops.

Next model that should not relate to theocracies is the system of established churches or established religions. Examples can be found in contemporary Europe. United Kingdom is a country with two established churches: the Church of England and Church of Scotland. Orthodox Church is established church in Greece. This model provides various privileges for established churches, which remain a part of the state organization. Usually, the parliament approves internal ecclesiastical rules and legislative acts and appoints religious leaders.[19] Although there is a difference between the legal status of established churches and other non-established religious organizations, that difference does not constitute discrimination against non-established religious organizations. The reason is the fact that despite the different legal status in those systems all religions enjoy a high level of religious freedom and equal treatment is guaranteed.[20] This system, with some modifications, was applied in the kingdoms of Serbia and Montenegro during the 2nd half of XIX century.

Next model is the 'religious status system'. The states that belong to this model recognize the validity of religious legal systems. The state recognizes religious matrimonial law, family law and in some cases the religious personal law. In many states there are still dual systems of marriage laws, like in India and Israel.[21] In the Kingdom of Yugoslavia matrimonial law was under the jurisdiction of religious organizations. Exceptionally, in the matters of inheritance law of Muslims the 'Sharia Law' was officially recognized.

Next model entitled as 'historically favored or endorsed systems' could be described as a soft version of established church. In the states that belong to this model one church or religious organization is not recognized as established, but the constitution or other legislation acknowledge the special importance of one religious' organization for country's history and traditions.[22] This system is typical for countries with Roman Catholic majority. There are countries in which this favored and preferential status is note reserved for a single religious organization, but for a certain set of religions. It is the 'preferred set of religions' models that is usually linked with the recognition of traditional religious organizations and multi-tiered systems of recognition.[23] In this system, there is a top tier reserved for a few religious organizations that enjoy the most favored treatment. They have access to public institutions and funding; they enjoy tax exemptions and other privileges. There is a second tier or intermediate category of religious organizations with recognized legal personality and with the ability to obtain some privileges but not to the same extent as the religious organizations that belong to the highest tier. Finally, there is the lowest tier that provides a basic legal personality but with no possibility of acquiring any state-provided privileges or benefits.[24] Usually, religious organizations are free to choose in which tier they want to belong, but the requirements for registration in higher tiers are extremely difficult to attain, so most small and newly established religious organizations cannot fulfill them. Some elements of this system could be found in most of WB countries, while Serbia is a typical example.

The dominant model in Central and Eastern Europe (CEE) is the cooperationist model. According to the Durham and Torron's definition 'cooperation systems respect fundamental baselines of protecting individual religious freedom for all and the fundamental commitment to neutrality and equality in religious affairs but, understanding those notions in a way that allows the state flexibility to cooperate in a variety of ways with religious communities'.[25] In this system, the state supports religious organizations and their activities in various ways. The

[18] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 125.

[19] Javier Martinez Torron and Cole W. Durham, 'Religion and the Secular State,' in *Religion and the Secular State*, 2nd ed., ed. Donlu D. Thayer (Madrid: Universidad Complutense de Madrid, 2015), 10-11.

[20] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 126.

[21] Javier Martinez Torron and Cole W. Durham, 'Religion and the Secular State,' in *Religion and the Secular State*, 2nd ed., ed. Donlu D. Thayer (Madrid: Universidad Complutense de Madrid, 2015), 11.

[22] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 126.

[23] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 126.

[24] Paul Coleman, 'Freedom of Religion and Freedom of Association' in *A 'Precious Asset'? Analyzing Religious Freedom Protections in Europe*, ed. Adina Portaru (Vienna: Kairos Publications, 2016), 126.

[25] Javier Martinez Torron and Cole W. Durham, 'Religion and the Secular State,' in *Religion and the Secular State*, 2nd ed., ed. Donlu D. Thayer (Madrid: Universidad Complutense de Madrid, 2015), 13.

benefits provided to certain number of religious organizations are usually regulated by special agreements, sometimes called concordats.[26] Most WB states implement the cooperationist model of state-religion relationship.

Accommodationist regimes are those that have adopted the separation of state and religion, but the state maintains 'a posture of benevolent neutrality towards religion'.[27] The state avoids any funding of religious activities but provides other benefits like tax exemptions and generally recognizes the importance of religion for national culture and tradition.[28] In the region of Central and Eastern Europe, Slovenia follows this pattern.

The next system on the loop is the model of separation of the state and religion. Separation of church and state is one of main characteristics of many different models. However, separationist regimes adopt rigid model of separation that attempts to remove religion not only from the narrower state sphere, but also from the broader public sphere.[29] There are states that declare in their constitutions that they are secular or *laïque* and they prohibit the establishment of state religions. The Republic of Serbia is an example of that kind of states in the WB region.

Configuration of state-religion relations that is more hostile towards religious organizations is named 'secular control regimes. Paradoxically, this system shares common features with the system of established religions. The state provides financial support to religious organizations and influences the appointments of religious leaders. However, the aim of the state is to utilize religion for achieving its own goals.[30] There are two versions of this model. In the first one, the secular rulers utilize religion to get political support or to achieve their goals. The second one is more radical and emphasizes the freedom *from* religion for ideological reasons or because of the fear that religion could become a competitive source of legitimacy in society. One of the examples is the Soviet regime which terrorized religion for ideological reasons and because of the fear of counterrevolution.[31] Religious organizations in WB had experienced this model of state-religion relations after WW2.

At the negative end of identification continuum is the most extreme model found in abolitionist states. The state tends to eliminate religion and religious organizations as a social factor.[32] The best example of this model was Albania during the Soviet era.

There are many other possible configurations and combinations of different models that can be operating in different countries. It could be said that there are as many different models as there are states. It should be noted that there is no universally applicable optimal type of relationship between the state and religion. There are no ready-made solutions in this field. Each country should develop its own model which emerges from its social relations, history, political conditions, etc. For example, a cooperation model is not only proper but also necessary in the countries of Eastern Europe, because of the decades of persecution of religion during the communist rule. This model can help churches and religious communities to revitalize their social role after the decades of decadency. That is the reason why this model is actually operating in most WB countries. The optimal model should preserve the neutrality of the state in religious matters and the equality of the religious organizations in the secular state.

Defining the Term Secular

All countries in the WB region are secular. The extreme secularization of state and society during the second half of the 20th century was an irreversible process. There is no universally agreed-upon definition of the term 'secular' in the context of secular state. Many scholars employ a comparative approach, attempting to identify patterns by examining examples from several secular states in order to clarify and define the concept of secularity. Even though terms secular and secularity can be found in numerous legal instruments, a scarcity of judicial interpretations of

[26] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 126.
[27] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 127.
[28] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 127.
[29] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 127.
[30] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 128.
[31] Javier Martinez Torron and Cole W. Durham, 'Religion and the Secular State,' in *Religion and the Secular State*, 2nd ed., ed. Donlu D. Thayer (Madrid: Universidad Complutense de Madrid, 2015), 16.
[32] Cole W. Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives*, Second Edition, (Frederick: Aspen Publishing, 2019), 128.

these terms makes the process of their legal determination even more complex. Also, the concept has become a central 'golden thread'[33] in religious freedom and discrimination rulings by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), extending its influence across both the public sphere and the private employment sector.[34]

Some argue that the concept of a secular state, due to its ambiguity and the challenge of establishing a precise meaning, should not be included in constitutional provisions. Nevertheless, more than 30 states expressly employ in their constitution terms like secular or secularity.[35] Furthermore, non-establishment clauses and constitutional provisions requiring the state to maintain neutrality towards religion can be interpreted as implicitly affirming the principle of state secularity.

In order to understand better the issue, it would be useful to explore the terminological difference between the secular, secularity, and secularism. José Casanova explains that in its genuine theological meaning to secularize meant 'to 'make worldly', to convert religious persons or things into secular ones'. He has also pointed out that the secular has emerged 'as a theological category of Western Christendom' and therefore it has no equivalent in other religions.[36] However, states around the globe claim to be secular. The exact meaning of this term in different cultures and regions depends on their peculiarities. Therefore, Georgina Clarke and Renae Barker conclude that 'the secular is multifaceted and has a multiplicity of meanings and usages. Therefore, in applying the term secular to a particular jurisdiction, the circumstances of that jurisdiction should be considered-there is not a 'one size fits all' definition'.[37]

Furthermore, the difference between the terms secularity and secularism should not be overlooked. Brett Scharffs explains this distinction: 'Both secularity and secularism are linked to the general historical process of secularization, but as I use the terms, they have significantly different meanings and practical implications. By 'secularity' I mean an approach to religion-state relations that avoids identification of the state with any particular religion or ideology (including secularism itself) and that endeavors to provide a neutral framework capable of accommodating a wide range of religions and beliefs. By 'secularism', in contrast, I mean an ideological position that is committed to promoting a secular order'.[38] The Roman Catholic doctrine also distinguishes between secularity as 'a healthy cooperation between Church and state', while secularism is perceived as a 'negative conception of separation between Church and state, in which the Church is persecuted or denied its basic rights'.[39]

Analyzing all different definitions of secularity and secularism falls beyond the scope of this paper. This paper argues that secularity of the state does not imply that the state identifies with secularism as an ideology. In a secular state, secularism can only be one of many competing ideologies. This means that the manifestation of religious beliefs in the public sphere is not unwelcome in secular states. The presence of religion and religious organizations in the public sphere is desirable because it is a natural space for acting of religion and a space in which, through confrontation with competing ideologies, it gives its contribution to the development of a democratic and pluralistic society. If they are limited only to the private sphere, in the context of WB societies, that would be a reminder of the negative experiences from the past. In that case, their efforts would be focused on self-protection, and not on contributing to reconciliation between different nations and religions.

The idea of a neutral state, the concept of neutrality

Religious neutrality is an important issue that engages constitutional lawyers, as religious diversity is a significant

[33] Myriam Hunter-Henin: 2022. p. 1.

[34] Myriam Hunter-Henin: 2022. p. 1

[35] E.g. see constitutions of Angola, the Republic of Benin, the Republic of Burundi, Cameroon, Chad, Congo, the Republic of Côte d'Ivoire, the Republic of Gabon, the Republic of Guinea, the Republic of Guinea-Bissau, the Republic of Mali, the Republic of Namibia, the Republic of Rwanda, the Republic of Senegal, the Republic of the Azerbaijan, India, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Togo, Turkmenistan, the Co-operative Republic of Guyana, the Russian Federation, the Republic of Serbia, the Republic of Turkey, Nepal, the Republic of Fiji, the Republic of Ecuador, etc. Georgina Clarke and Renae Barker, 'The Challenge of Defining the Secular,' *Laws*, 13 (2024): 2.

[36] José Casanova, 'The Secular, Secularizations, Secularisms,' in *Rethinking Secularism*, eds. Mark Juergensmeyer and Jonathan Van Atwerpen, (Oxford: Oxford University Press, 2011), 56.

[37] Georgina Clarke and Renae Barker, 'The Challenge of Defining the Secular,' *Laws*, 13 (2024): 16.

[38] Brett G. Scharffs, 'Four Views of the Citadel: The Consequential Distinction between Secularity and Secularism,' Religion and Human Rights, no. 6 (2011): 110.

[39] Evaldo Xavier Gomes, 'Church-State Relations from a Catholic Perspective: General Considerations on Nicolas Sarkozy's New Concept of Laïcité Positive,' *Journal of Catholic Legal Studies*, No. 48, (2009): 211.

phenomenon across Europe. While the religious background and history of each nation deeply define their identity, they also represent their national and cultural heritage. 'One often-affirmed element of the liberal secular ideal is the view that the state should not take a position on the truth of any particular religion.'[40] However, as Schanda expresses: 'the freedom of religion and the relation between the state and church is still a relevant question relating to the identity of state'[41]. We could also reference Giovanni Bonello's concurring opinion in the Lautsi v. Italy case, where the Maltese judge of the ECtHR remarked: 'A court of human rights cannot allow itself to suffer from historical Alzheimer's'[42]. If we examine the Constitutional Courts' practices in the CEE region, we find that in Hungary, an important case already defined the relationship between the state and the churches during the Sólyom era[43], the well-known 4/1993 CC Decision, which stated that: 'From the fact that the state itself is neutral, negative religious freedom does not follow, and even less so the support of religious indifference.'[44]

The reason why it is an important topic, is to understand the position of the CEE and WB countries, and the effect they got for over 40 years, as Katarzyna Zielińska said: 'To the West, human rights are inherent in the individual person; it is the duty of the State to sustain them, and only to impose such limitations as are necessary in order to safeguard the equal rights of others. To the communist East, it was fundamentally wrong, since it makes the individual supreme in significance, and the State secondary.'[45]

Freedom of Religion and Religious Autonomy

Freedom of conscience and religion is one of the basic human rights which are guaranteed by universal and regional human rights instruments. The guarantees contained in international documents have been received and incorporated into domestic law of most, if not all, European countries. The 1948 Universal Declaration on Human Rights of states that '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 teaching, practice, worship and observance'.[46]

A more complete definition of religious freedom provides the 1966 International Covenant on Civil and Political Rights (ICCPR):

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.[47]

Regional human rights instruments also include similar guarantees of religious freedom. Article 9 of the European Convention on Human Rights provides that:

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.

[40] Henrik Friberg-Fernros: Against the Religious Neutrality Requirement. Ratio Juris. Vol. 35 No. 4 December 2022. p. 383.

[41] Balázs, Schanda: In. András, Jakab, László, Trócsányi: Az Alkotmány Kommentárja. Századvég kiadó. p. 2195.

[42] Lautsi and others v. Italy. Available: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2230814/06%22],%22itemid%22:[%22001-104040%22]}

[43] The era is named after the first President of the Constitutional Court of Hungary following the regime change.

[44] 4/1193. (II. 12.) CC Decision. Available: https://njt.hu/jogszabaly/1993-4-30-75

[45] Katarzyna Zielińska: The Roman Catholic Church and Human Rights in Poland. In: Hans-Georg Ziebertz, Gordan Črpić: Religion and Human Rights An International Perspective. Springer. 2015. p. 138.

[46] https://www.un.org/en/about-us/universal-declaration-of-human-rights

[47] https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

2. 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.[48]

The provisions of international treaties show that freedom of religion is a specific right that has a few different dimensions that are interconnected: individual, internal, collective, and external. All of them are extremely important for religious organizations and their religious mission. The very essence of this right is the right of individuals to hold, keep and change their convictions or beliefs. This is the inner area of religious freedom (referred also as *forum internum*), that enjoys absolute protection.[49] The state cannot justify any attempt of indoctrination of individuals or interference with personal beliefs. Protection of individual freedom of religion is linked with the *forum internum*. Most of the international instruments of human rights explicitly protect the right of individuals to manifest their religion 'either alone or in community' (referred also as *forum externum*). International law also protects the collective aspect of religious freedom, which is essential for religious communities, as communities of adherents of certain religions. Religious communities should be free to structure their internal organization, organize worship and observance and define their teachings without state interference. Contrary to the inner aspect of freedom of religion which cannot be limited, the manifestation of religion (*forum externum*) can be limited under certain conditions. According to international conventions such on the manifestation of religion should be prescribed by law, necessary in a democratic society and pursue a legitimate aim (those conditions are applicable to other human rights).

The participation of religion in the process of reconciliation actually depends on religious communities. They are able to contribute to these processes by their teachings, religious practices and the right theological interpretation of religious doctrine. Although, they should be free to do it and protected from any unjustified and arbitrary state interference with the collective manifestation of religion or belief. That is the reason why international protection of religious freedom can play an important role in providing conditions for the participation of religious communities in the process of reconciliation.

One of the most vital elements of freedom of religion is religious autonomy. According to Cole Durham, 'there cannot be religious freedom for the communal side of religion unless the religious community *qua* community has autonomy'.[50] If beliefs and teachings of religious communities can be manipulated or coerced by external sources then they cannot be 'fully and authentically themselves'. The idea that secular and religious orders should be separate could be found even in the New Testament in Jesus' words: 'Render unto Caesar the things which are Caesar's, and unto God the things that are God's'.[51] This separation between the spiritual and the temporal implies the independence of religion from any state or external interference.

Mark Chopko defines religious autonomy as 'the right of religious communities (hierarchical, connectional, and congregational) to decide upon and administer their own internal religious affairs without interference by the institutions of government'.[52] Perry Dane defines religious autonomy as the 'effort by secular law to make sense of religious self-governance, particularly institutional or communal self-governance'.[53] In German Law religious autonomy is linked to the right of self-determination of religious organizations. According to von Campenhausen 'the self-determination right covers matters that are the religious organization's *own*'.[54]

Overall, religious autonomy includes the right of religious organizations to independently structure their internal order and organization, to independently decide on their religious identity and their internal affairs, the right to obtain legal personality and to provide and terminate the capacity of legal person to their organizational units, to perform their internal and public affairs autonomously, the right to implement their autonomous legal regulations, the right to spread their cultural and spiritual experiences, the right to organize and conduct religious education, the right

[48] https://www.echr.coe.int/documents/d/echr/convention_ENG

[49] Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice*, (Cambridge: Cambridge University Press, 2006), 115.

[50] Cole Durham, 'The Right to Autonomy in Religious Affairs: A Comparative View', in *Church Autonomy: A Comparative Survey*, ed. G. Robbers (Frankfurt am Main: Peter Lang, 2001), 690.

[51] Matthew 22:21.

[52] Mark E. Chopko, 'Constitutional Protection for Church Autonomy: A Practitioner's View', in *Church Autonomy: A Comparative Perspective*, ed. Gerhard Robbers, (Frankfurt am Main: Peter Lang, 2001).

[53] Perry Dane, 'The Varieties of Religious Autonomy', in *Church Autonomy: A Comparative Perspective*, ed. Gerhard Robbers, (Frankfurt am Main: Peter Lang, 2001).

[54] Cole Durham, 'The Right to Autonomy in Religious Affairs: A Comparative View', in *Church Autonomy: A Comparative Survey*, ed. G. Robbers (Frankfurt am Main: Peter Lang, 2001), 692.

to independently manage their property and incomes in accordance with their own autonomous regulations etc.

The protection of the autonomy of religious organizations is the quintessence of religious freedom. Without autonomy in their internal affairs, and especially in matters of religious identity, it is difficult or even impossible for religious organizations to provide their authentic and genuine contribution to the wider community and to participate in the process of reconciliation between different religious groups.

Conclusion

The brief hysterical overview indicates that WB states have experienced different and extreme models of state-religion relations. From the positive identification before WW2 including the establishment of state churches, through the negative identification after WW2 that resulted in state persecution and banning of religion. In the first decade of the 21st century WB countries finally succeeded in adopting models of state-religion relationship that allow to religious organizations to recover from decades of persecution and to participate in various social activities.

The model of religion-state relations that is operating in WB countries is the mixture of two very close configurations of religion-state relations. The first of them is the preferred set religions. Some WB countries distinguish a number of religions (sometimes called traditional religions) and give them special status and privileges. For example, in Bosnia and Herzegovina, the law especially regulates the status of four churches and religious communities, from which two have signed a basic agreement with the state. In Serbia, there are seven traditional churches and religious communities which have been recognized *ex officio,* and they enjoy numerous advantages. In other states, there are also different tiers of religious organizations, like those who have entered into agreements with the state and those who have not.

The second configuration which is operating in WB states is the cooperation model. There are countless ways that cooperation between state and religion can be structured. For example, in almost all WB countries, with only a few exceptions, religious organizations have access to state financial support; they enjoy tax-exempts, they conduct religious instruction in public schools etc. The state remains neutral in religious matters, although neutrality is not hostile but friendly and cooperative. This mixture of 'multi-tier' regimes of recognition of religious organizations and cooperationist regime helps religious communities to revitalize after the decades of stagnation and decadency during the rule of the communist regime. It is, also, the optimal model that can encourage religions to participate in the reconciliation process in WB countries.

All countries of WB are secular, although they have a positive posture towards religion. Secularity has been understood as an opportunity for cooperation between the state and religion in matters of common interest. There are two main characteristics of the secular state. The first one is the separation of religion and state, and the second one is the protection of religious freedom. The state and religion have been separated in WB countries, although we can identify attempts of politicians to intervene in religious matters. However, the separation of state and religion and a high degree of religious freedom with protection of religious autonomy are the preconditions for the development of the social role of religion. Only free religion in a free state can provide its authentic and genuine contribution to the process of reconciliation between the nations and religions in the region of Western Balkans.

COMPETING INTERESTS

The author has no competing interests to declare.

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