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**The Principle of Secularism and the Right to Religious Education:
European standards vs. the case of the Republic of Macedonia**

Abstract

Recently, several debates on secularism in politics and legal theory have infected the constitutional law and the comparative constitutionalism. With regard to the constitutional status of secularism, we can discern three distinct positions all of which agree that in most liberal democracies secularism is not explicitly recognized in the constitutions or in the jurisprudence. They also agree that the position of secularism among the constitutional values is specific - either it is not clear to which established constitutional category secularism belongs, or what is the underlying value behind it.

This paper aims to analyze the European standards and experiences related to the principle of secularism. It concerns few European countries where religious education is taught in public schools, as well as the standards deriving from the European and international documents referring to the human rights in this field. This paper takes into consideration the mandatory documents, as well as the documents qualified as recommendations. It analyses both the constitutional and the legal foundations of secularism and religious education in the Republic of Macedonia in the context of the decisions of the Constitutional Court of the Republic of Macedonia which cancelled the religious education in the country.

Key words: institutional secularity, *laïcité*, non-discrimination, religion, religious education, secularism.

1. European standards in Religious Education and the Principle of Secularism

Article 2 of the First Protocol of the European Convention on Human Rights which is, inter alia, a part of the legal system of the Republic of Macedonia, stipulates that: "The right to education cannot be denied to anyone. The state, when executing its obligations in the field of education, shall respect the right of the parents to provide education for their children in accordance with their religious and philosophical beliefs."²

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² See: European Convention for Human Rights amended with Protocols 1-14, published by the Council of Europe, p. 48.; F. Tulken, 'The European Convention on Human Rights and Church-State Relations: Pluralism vs. Pluralism,' *Cardozo Law Review*, No. 6, (2009), pp. 2572-2591 and I. Leigh, "The European Court of Human Rights and Religious Neutrality", unpublished paper presented at a Conference in Bristol, May 18, 2010.

Hence, the state has an obligation not only to provide the right to education for everyone, but also to provide the right to religious education for everyone. By providing this right in schools, the state, in fact, performs its duty toward the citizens and not toward the church, the religious communities or the religious groups.

The state ought to take care about the expanding its citizens' knowledge by introducing a broad list of optional subjects. Thus, it would enable the parents to choose one or two subjects for their children, depending on their religious or philosophical beliefs.

This does not violate the principle of secularity within the state, as it does not concern the relations between the state and the religious communities, but enables undisturbed realization of the citizens' right to education.

The right to introduction to religion, the right to study about different religions, as well as about one's own religion, its history and development is a universal and civil right which stands much higher than the church or the other religious communities and groups.

Religion is not represented only by the church or by the other religious institutions. Practicing religious ceremonies can also be performed privately. Belief in one's religion is a personal right of every individual and the choice of the place where this right will be exercised and whether it will be exercised at all is a private right of every individual.

In this context, the state should focus only on the protection of the principle of non-discrimination. It should provide conditions for education of students in one of the numerous confessions, or in the history of the religion as a whole, or allow them to choose one of the optional subjects.

In this context, the opinion of the Italian Constitutional Court is quite interesting.

According to its Constitution, the Republic of Italy is a secular state. According to its Constitutional Court, the principle of secularity is a supreme principle of the national constitutional order. Yet, when it comes to the right to religious education of the children as an alternative subject, the Constitutional Court does not question the principle of secularity. The child's parents have right to choose one among the two optional subjects offered to them, in accordance with Article 2 of the First Protocol of the ECHR.

In fact, what the Italian Constitutional Court focused on is the issue of constitutional legitimacy in cases when having an alternative is mandatory for those children which do not follow religious education. The Court came to the conclusion that every obligatory alternative education for the children is discriminatory for the children whose parents did not choose any among the offered alternative subjects and they cannot be put in a less favourable position compared to the children which did attend religious education classes.

The most important part of the opinion issued by the Italian Constitutional Court concerns the statement that **the Court justifies the right to religious education in a secular state like Italy and it does not consider it contrary to the Constitution.** Quite the opposite, the court believed that the religious education is an added

value in any plural society and that religion is a part of the national history of Italy.³

In the same context, the **Parliamentary Assembly of the Council of Europe⁴ Recommendation No. 1804 from 2007** says that: **"education is the key aspect in the fight against ignorance, stereotypes and non-understanding of religions and their leaders."**⁵

The education should have a central role in the development of the democratic society. It should provide plurality and an opportunity of choice among several subjects treating religion and history of religions in an objective and impartial manner.

On the other hand, in its **Recommendation No. 1720/2005** about the education and religion, the Parliamentary Assembly of the Council of Europe says: "Every person has a right to freedom in his/her religion, freedom in the choice of his/her religion, including the freedom not to have a religion as an exceptional personal right."

The Assembly says that in the interest of the protection of the freedom of expression of thought and the freedom of religion, **the European Court for Human Rights recognizes the right of every state to individually organize and apply its legislation with regard to the relations between the state and the church, in accordance with the provisions of the European Convention for Human Rights**, indicating that each member state of the Council of Europe has a different degree of separation between the political authorities and the religious institutions.

The freedom of religion is protected by Article 9 of the ECHR and Article 18 of the **Universal Declaration of Human Rights**.

This freedom is not unlimited in the sense that a religion whose doctrine or practice can harm other basic human rights cannot be qualified as acceptable. In any case, restrictions that could be made in the segment of the freedom of religion are those that are "stipulated in a law and which are necessary for the protection of the public safety, protection of the public order, health and morality, or for protection of the rights and freedoms of the others " (Article 9.2 of the

³ See: Barbara Randazzo "Pluralism in Education and democratic society: Teaching Religion in the state Schools." <http://www.europeanrights.eu/petFile.php?name=public./commenti/comentoBrandozzo-1.doc>

⁴ See: Parliamentary Assembly Recommendation 1804 (2007) "State, religion, secularity and human rights" <http://assembly.coe.int/documents/adoptedtext/ta07/EREC1804.htm>

⁵ Recommendation no. 1804/2007 further says: "the schools are the central forum for intercultural dialogue as well as creators of the foundations for tolerant behaviour. They can very effectively be put in defence against the fanaticism by teaching the students about the history and philosophy of the main religions in an objective and impartial manner. The media and the families also play an important role in this field. Familiarity with the religions represents an integral part of knowing the human history and civilisations. It is a different matter from believing and practicing certain religion. Even those countries where one religion is dominant, have an obligation to teach the people about the origin of the other, i.e. of all religions."

ECHR). On the other hand, the state cannot allow spreading of religious principles which, if practiced, can harm other human rights.

2. The Principle of Secularism in the Constitution of the Republic of Macedonia vs. the European Experiences

The principle of secularism or the separation of the state from the church (churches), religious communities and religious groups in the **Amendment 7 of the Constitution of the Republic of Macedonia is set institutionally**. That means that the state and the churches, religious communities and the religious groups are separated from each another, without a possibility for the state to interfere in the church activities or in the activities of the religious communities and groups, or vice versa, the church, religious communities or the religious groups cannot interfere in the state, i.e. political activities.

If we look at the secularism issue in a pragmatic way, we may reach the conclusion that the state is secular when its legislation does not establish de facto discrimination among the citizens based on their beliefs, including their religious beliefs.

The categorization of the European countries according to this principle varies.

In accordance to the spirit of the Universal Declaration and the ECHR, a number of states aim to provide "religious freedom and religious education" and in order to achieve them, they apply different systems. In the multi-confessional states, these measures are necessary in order to guarantee peace and tolerance among the people who with different religions. In the EU, the concept of laicism is more and more present and it is applied at two levels:

- the first level is development of secular society, however
- the second level refers to the right to free expression of thought and the freedom of religion.

In our Constitution, the institutional separation or the institutional secularism is clearly determined in Item 1 of the Amendment 7 which states that: "The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelist-Methodist Church, the Jewish Community and the other religious communities and religious groups **are separated from the state** and equal before the law."

Amendment 7 of the Constitution of the Republic of Macedonia does not define, nor does it elaborate further any levels, degrees or forms of secularism. However, it separates the religious institutional forms from the state and its institutional forms and vice versa in a very general manner. There is a list of different types of separation of the church from the state which have been discussed and applied throughout the world, such as:

- o Legal and financial separation: the state should not officially establish a national religion;
- o The state should not officially finance religious activities;
- o The state should not, officially or unofficially, finance religious activities;
- o The state should not finance non-religious activities sponsored by religious organizations;

- The state should not define or amend religious beliefs;
- The state must not make attempts to favour or criticise any religious belief or practice;
- The state must not interfere in the religious hierarchy, nor it can interfere in matters that are strictly related to the citizens' participation in a certain religious community or a group;
- State activities must not influence or interfere with the practicing of religion;
- State activities, in their primary role, must not restrict practicing of religion;
- The state should not express any religious beliefs, nor it should imply state authority of any type of religious authority;
- The political leaders should not express their religious beliefs and choice in order to fulfil their state duties;
- No religion can determine, define or amend the civic laws;
- Religion should not use civil institutions to provide religious services.

Different states have different levels of separation of the government from the religious institutions. While the **U.S.A.** are well known as the first country which fully separated its government from any religion in its Constitution, many other countries did the same following the U.S.A. example.⁶ Still, the level of separation varies.

In some countries, the two institutions remain strongly connected with each other, especially in the countries from the post-communist world. There are various forms of separation in countries which otherwise have a high degree of practicing the freedom of religion and tolerance, combined with a strong secular political culture.

In the **United Kingdom**, for example, there is a "constitutionally" defined state religion. In **Norway** the king is also the Head of the State Church and the Constitution of Norway requires more than one-half of the members of the Norwegian State Council to be members of the state church. In this country there is an officially recognised church, studying religion in schools is obligatory, but in a cultural and not in confessional sense.

According to the agreement between the church and the state, the Catholic religion is taught in all state schools, although the students have the right to choose whether they will go to the classes or not. The teachers of religion are paid by the state, albeit they are appointed and controlled by the church.

On the other hand, there are two similar cases of separation of the church from the state, i.e. the examples of **France and Turkey**.

The **French version is known as laicism**. This model of the secular state protects the religious institutions from any form of state interference and influence by restricting to a certain level the public expression of religious belief. This is supposed to protect the public

⁶ See: Douglas Laycock, 'Church and State in the United States: Competing Conceptions and Historic Changes,' 13 *Ind. J. Global Legal Studies*, 503, 504 (2006) and Elisabeth Zoller, 'Laïcité in the United States or the Separation of Church and State in a Pluralist Society', 13 *Ind. J. Global Legal Studies*, 561, 561 (2006).

authority from influence coming from the religious institutions, especially in the public services.

On the other hand, **Turkey** has been a rather mono-religious country since the 1920's and it is still today.⁷ Kemalism, at least nowadays, becomes more and more of a threat both to the freedom of religion and to the non-dirigist democracy: on three occasions the authoritarian Kemalist military elites have organized military coups against the democratically elected governments and the Kemalist judicial elites defended their version of 'secular democracy' by banning democratic parties. The Kemalist political and constitutional order did not live up to a minimalist understanding both of liberal constitutionalism and democratic constitutionalism. Turkish 'political Islam', particularly the AK Party, now defends – at least officially – the liberal understanding of freedom of religion and the non-elitist concept of democracy.⁸

The **Constitutions of the Turkish Republic since 1937** officially declare the state as 'secular' as well as 'national, democratic and social' (1961 Article 2; 1982 Article 2) forbidding any amendments. The so-called Kemalist-Turkish varieties of 'secularism', like the French one, are aggressively secular in all regards when it comes to 'strict separation' of the state and the public institutions from the religion (legitimate legal pluralism, education, working hours in public administration etc.), but they do not respect the relative autonomy of the religions (particularly Islam) from the state, thus defending a rather myopic variety of the 'two autonomies'.⁹

⁷ See: A. Kuru, 'Passive and Assertive Secularism. Historical Conditions, Ideological Struggles, and State Policies toward Religion,' *World Politics* 59, (2007), pp. 568-594.

⁸ See: A. Bali, "Cultural Revolution as Nation-Building: Turkish state formation and its enduring pathologies", Conference paper, Istanbul, September (2009).

⁹ Since its establishment in 1962, the Turkish Constitutional Court has banned 24 parties 5 of which for violating the principle of secularism. In European 'militant democracy' after the Second World War only 3 parties have been closed down.

Table: 12 distinct forms of secularism

varieties of secularism	normative problems
Secularism 1: ‘Secularity’ of the state or the relational autonomy of state from (organized) religions	Opposition to ‘theocracy’ and ‘religious law’; ‘secularity’ ≠ normative secularism
Secularism 2: associational freedoms of religion (collective tolerance) (liberal 1); second autonomy	Often violated by ‘modernizing’ and by ‘modern’ secularist states
Secularism 3: freedom of conscience and individual religious freedoms (liberal 2)	Tension between associational and individual freedoms (inherent in liberal constitutions)
Secularism 4: protection of religious minorities against religious (and secular) majorities	‘Liberal’/limited government in tension with ‘democracy’ (LDC a historical/theoretical compromise)
Secularism 5: ‘democracy’ or ‘political secularism’; popular sovereignty + equal political status/rights of all	‘Democratic secularity’; freedoms of political communication often in tension with ‘secularism’
Secularism 6: freedoms of political communication: inclusive or exclusive secularism (secular reasons)	Legitimate restrictions (incitement to violence/hate speech) vs. ‘public reasons restraints’;
Secularism 7: a ‘social’ or ‘socialist’ state = a secular state?	Basic subsistence rights of all ≠ charity; faith-based provision and mixed welfare regimes vs. state monopoly;
Secularism 8: ‘strict neutrality’ versus relational neutrality, principled distance, even-handedness	Aggressive, hostile, strong secularism versus friendly, passive, ameliorative, weak secularism
Secularism 9: ‘strict separationism’ or what? (institutional arrangements; limited legal pluralism)	Minimal threshold of differentiation; varieties of selective cooperation; ‘one law for all’ or limited legal pluralism?
Secularism 10: ethical secularism as a supreme way of life (‘comprehensive moral liberalism’)	‘Political liberalism’ and moderate liberal anti-perfectionism
Secularism 11: justificatory or ‘foundational secularism’ (humanist or secularist)	‘Common ground’ (from Ashoka to Ghandi) or ‘overlapping consensus’ (narrow or wide/deep)
Secularism 12: as a ‘meta-narrative’ or a competing symbolic universe	Incompatible with religious freedoms and the open character of ‘pluralist democracy’

Source: Veit Bader, Constitutionalizing secularism, alternative secularisms or liberal-democratic constitutionalism? A critical

reading of some Turkish, ECtHR and Indian Supreme Court cases on 'secularism',¹⁰

3. Laïcité in France – Contemporary Issues

The term "laicism" cannot be translated precisely into English. The majority of authors equalises this term with the term "secularism", although the latter neither covers completely the anti-clerical, nor even the anti-religious connotation of the laicism. If we take a look from the historical perspective, the term laicism was a militant concept. Today, fortunately, this understanding of the laicism is either forgotten or ignored. Thus, for many French, laicism is a neutral doctrine which unifies the French society.¹¹

The laicism can be explained from several perspectives. First of all is legal laicism, whose principles originated from the French legal acts, such as **Article 2 of the French Constitution of 1958** which reads that "France is an indivisible, secular (laïc), democratic and social republic. It ensures equality before the law for all of its citizens, without distinction as to origin, race, or religion. It respects all beliefs." Another legal act is the 1905 Law separating the state from the church. Even though these acts do not define the laicism as a term, they determine the legal basis for it.

What is interesting about these documents is the fact that they contain serious flaws which have never been a subject to revision until now. For example, the 1905 Law reads that the Republic does not recognise, finance or support the activities of any religious group. On the other hand, it says that the French Government is much more concerned about religious issues than any other government in the world.

For example, the French interior minister has within the Ministry a special office responsible to formulate the directions when a decision concerning religious associations needs to be adopted. In this context, the French Interior Ministry consults Vatican about the appointment of the Catholic clergy. And despite the concrete legal limitations, the French government gives significant benefits to the religion. For example, the government owns and pays for all buildings having religious content, including the large cathedrals and the numerous small churches, mainly Catholic, throughout France. The religious bodies can use these buildings only with the consent of the government. The government supports the private religious schools and provides salary for the people who provide religious teaching; it even finances religious programmes on the national TV channels.

This inconsistency can be understood as a product of the French history, but no matter what is the cause, it is quite clear that the

¹⁰ The article is published in the *Utrecht Law Review*, Volume 6, Issue 3 (November), 2010.

¹¹ See: 'Laïcité in France - Contemporary Issues Panel Discussion,' 49 *J. Cath. Legal Studies*, 53 (2010); Laïcité in Comparative Perspective Panel Discussion, 49 *J. Cath. Legal Studies*, 101 (2010) and T. Jeremy Gunn, 'Religion and Law in France: Secularism, Separation and State Intervention,' 57 *Drake Law Review*, 949, 954, No. 31, (2009).

legal laicism is a very complex matter. The legal laicism must be distinguished from the philosophical or the political laicism, the laicism as a theory about the place of the religion in the French society.

For example, the State Council of France has concluded that as a legal category laicism envisages neither a direct ban for the religious symbols that the students wear in the public schools, nor a direct ban for the burqa in the public institutions. The analysts often assume that the political laicism means rigid secularism, as the examples with the prohibition of wearing religious symbols, including the burqa, suggest.

However, it turns out that the political laicism is as complicated and preconditioned as the legal laicism. In order to be certain, many French view the laicism as pure secularism. However, not all of them share this view. The strong secularists stand against those, like President Sarkozy for example, who speak about positive laicism or "open secularism", i.e. a softer version of the doctrine which does not view the religion as a direct threat to the values of the Republic, even though one must note that it was the Sarkozy government which put a weight on the burqa ban.

The third group, favouring 'laicism in motion', stands somewhere in the middle. The key aspect of this theory is the notion that the political laicism, equally as the legal laicism is in a state of constant development.

As John Bowen says, there has never been an agreement about the role the religion should play in the public life of France. There was merely a series of debates, laws and a number of efforts to define its place in the public sphere.

Second, in France, like in some other countries, most of the debate about the religion in the public sphere is led in the public schools. Both the supporters and those which oppose the religious teaching view the public schools as a key place for determining the future of the citizens. Here, the stakes are high. Particularly in France, where the public schools are traditionally viewed as places where the national identity is formed, which is then reflected on the religious differences and where the rational values versus the values of the *Enlightenment* are accepted.

Third, the discussion inevitably reveals the importance of the national history. For example, France and the U.S.A. share the common commitment to religious freedom. Both countries have political regimes that originate from the same period. Both are heirs of the Enlightenment. Still, when one compares the ways in which the religious freedoms are applied in the two countries, serious differences emerge. Some habits which are common in one country can be considered as inappropriate in the other. How can we explain this? How is it possible that two countries that share common roots apply the same principles differently?

The answers lie to a great extent in the different history of the two countries. Unlike France, the U.S.A. never had an old, inherited regime. There were religious authorities during the Colonial period and even after it in some areas in which the protestant doctrine dominated. However, the U.S.A. never faced deeply enrooted clergy or a Gaelic church that needed to be eliminated. Since the very

beginning, the American society was pluralistic regarding the religion. As a result, the Americans do not view the religion as an enemy of the freedom. On the contrary, throughout history most of the Americans viewed the religion as a constructive contributor to their political freedom.

This historical difference helps us understand the differences. For example, the fact that in accordance to the 1905 Law, the French government provides buildings that the religious communities can use, indicates the need of the authorities to control or at least have an insight into the work of these communities. The financial support that the state provides for these activities, as well as for the education staff composed of priests is understood as an attempt for maintaining a *modus vivendi* between the two sides.

During his visit to Vatican,¹² right after he received his mandate as President, Sarkozy stressed the importance of the French "Christian roots" (mainly Catholic), while highlighting again the importance of the "positive version of the laicism." Many French believe that this approach of President Sarkozy had deeply offended the very essence of laicism. Where does this need for underlining the role and importance of the French Catholic roots comes from, without a word being said about the difficult heritage that the Catholic discrimination had left on the French society and the banishment of the Protestants, Jews and the free thinkers before 1789? And why did Sarkozy completely forget about the importance of the heritage that the Enlightenment had left behind? Many French believe that the laicism could suffer if Sarkozy remains on this line.

As a concept, the laicism implies a neutral position of the state vis-à-vis the religious matters, i.e. giving support to any concrete religion. The principle of laicism means that all religions are equal before the constitution and the law. The freedom of belief and the freedom of religion must be in accordance with the respect of the individual rights, particularly the right to believe or not to believe in what constitutes our choice and right to thought.

What does the right to freedom of thought mean? It means that the state, through the public schools, intends to strengthen the emancipation of each citizen and his ability to think freely without being imprisoned in the ideas of his/her social group. The public schools must provide a system that would enable every individual to confront the different systems of thinking, the different cultural references and in that way it would enable the individuals to have a free choice. However, it seems that the freedom of choice and the freedom of belief are directly harmed by the report of *the Bernard Stasi Commission* which explored the application of the laicism in France and resulted in adopting the 2004 Law which put a ban on the wearing of religious or political symbols in the schools, such as Islamic covers, Jewish hats or Christian crosses. These legal measures are taken as extremely uncommon and inapplicable in other countries.

The French believed that, in order to get a true laic state, they simply needed to pass a law, such as the one from 1905, known as the

¹² In front of the highest Roman Catholic Clergy, the French President emphasized the importance of the French "Christian roots" (mainly Catholic), while he also pleaded for a positive version of laicism.

Law on separating the church from the state. In fact, according to many authors, this law favours the Roman-Catholic Church. In that way, this political and legal framework could not serve as a guarantee for the secularity of the state. In fact, the institutional secularity that this law has established referred only to the relations between the state and the church. The state is secular only if it does not maintain any special relations with any church.

4. Relations between the Constitutional Principle of Secularity and the Right to Religious Education in the Republic of Macedonia

Having in mind the constitutional establishment of the secularity principle, it becomes clear that it does not leave any room for the religious education of students in state education facilities, as they, i.e. the clergy should not be organisers, not to mention direct implementing factors of religious education in state schools, nor they can be in any other way directly involved in the education process.

Therefore, the religious education in the elementary schools cannot be viewed in the context of the state from one and the church, the religious communities and the religious groups from the other side, because it is not at all a part of the institutionally established secularity in the Republic of Macedonia.

The issue of religious education of students in the state education facilities ought to be viewed solely in context of the relations between the state and the citizens' right to education. That means that this right does not concern at all the domain of the church, the religious communities or the religious groups, i.e. it remains within the scope of the state activities and its institutional apparatus.

Therefore, the right to religious education of the students in the Republic of Macedonia is not a right belonging to the religious institutions in the country, but it is a personal and undeniable right of every person which the state is obliged to provide, together with conditions for its realization.

5. Conclusion

Every person has a right to religion, freedom of choice of religion, including the freedom not to have a religion, as an exceptional personal right. In the interest of the protection of these freedoms, the European Court of Human Rights recognised the right of every state to regulate individually the principle of secularity, in accordance with the provisions of the European Convention for Human Rights. In this context, the Court has said that every state can have different level of separation of the political government from the religious institutions, in accordance with the Convention, having in mind the inter-religious dialogue and tolerance among the citizens. In this sense, education plays the most important role in nurturing these values, as the education is the key in the fight against ignorance, stereotypes and civic intolerance.

The schools act as central forums for the inter-cultural dialogue and as creators of the foundations of the tolerant behaviour among the people. They could be efficiently employed in defence

against all forms of fanaticism, thus enabling the young people to obtain education about the history and philosophy of the main religions in an objective and impartial manner. Namely, by recognising different religions, the youth can obtain information about the human history and civilization. This is different from religious beliefs or practicing a certain religion. Even in the countries where one religion is dominant, there is a commitment to education of the citizens about the significance of the other religions.

The Freedom of religion is protected with the Article 9 of the ECHR and the Article 18 of the Universal Declaration of Human Rights. In that context, one should point out that this freedom is not unlimited, meaning that the religion whose doctrine or practice can harm other elementary human rights cannot be acceptable. Restrictions that can be made regarding the freedom of religion are a legal matter and they are extorted when public security, public peace and order, citizens' health or moral ought to be protected, or when the rights and freedoms of the other people need protection.

In the European countries, the principle of secularity is understood differently and raises different types of issues, depending on the criteria on how secularity is defined. According to the formulation drafted by Victor Hugo: "The laic country...is a country in which the church is separated and has its own space, same as the country, which has its own space separated from the church."

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