Tanja Karakamisheva Jovanovska[*]
Aleksandar Spasenovski[**]

THE CONSTITUTIONAL CULTURE "ENLIGHTENMENT APPROACH" IN THE "POST-SECULAR AGE"- A FEW CONTEMPORARY WESTERN BALKAN INSIGHTS

Abstract

The constitutions of the modern democratic countries basically contain two elements in their structure. On one hand, there are the **functional elements** that cover the most important issues related with the organisation and with the work of the legal and political system in the country, especially those issues that concern the organisation of the power, the political institutions and the state bodies, and they also define the boundaries to protect the human rights and freedoms.

On the other hand, there are the so-called **inspirational constitutional elements** which reflect and cover the cultural elements as a separate dimension within the Constitution, and which regulate the most important spiritual and cultural principles and values that serve as a foundation for the society and the country as a whole. It is the inspirational elements that are considered to hold the key role in the defining of the constitutional philosophy, as well as the philosophy of ruling with the state. These inspirational constitutional elements also define the constitutional culture in one country, which is the reason why they are considered as pillars of the spiritual dimension of the order, and also of the system of values within the country.

This paper analyses the basic elements of the constitutional culture in general, particularly the constitutional culture of the Balkan countries. The paper emphasizes the analysis of the **religion as a very important inspirational constitutional element**, how the religion (has) influenced on the constitutional culture of the countries from the Balkan region and which are the effects from that influence.

Keywords: *religion, secularism, post-secularism, culture, constitution, Balkans*

[*] Tanja Karakamisheva Jovanovska, PhD., Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Law Faculty, Department of Constitutional Law and Political System, and former member of the Venice Commission representing the Republic of Macedonia. e-mail: t.karakamisheva@pf.ukim.edu.mk

[**] Aleksandar Spasenovski, PhD., Associate Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Law Faculty, Department of Constitutional Law and Political System. e-mail: a.spasenovski@pf.ukim.edu.mk

I. INTRODUCTION OF THE CONSTITUTIONAL CULTURE NOTION

Constitutions are defined as documents whose content covers numerous cultural elements important for the people, which are part of their historical and legal growth.

It is the constitutions where people's cultural self-identity and self-representation is best reflected.

Still, this does not mean that the constitutional culture exists only in the countries which have codified constitutions or constitutions in a formal legal sense, but they also exist in a material sense of the word.

The constitutional culture of one nation influences on the process of creation of its constitution. The constitutional culture is considered one of the main ingredients of the political culture in any country, while the diversity of opinions, perceptions, persuasions of the citizens with regard to the social relations and processes, the national emotions, the commonly accepted systems of values, orientations, information, skills, positions on various issues in the social system etc. are considered its main elements.

Therefore, **we may say that the constitutional culture is not only a psychological category that pulses within the political system, but it is, first of all, a "behavioral component into constitutionalism"**.[1]

Constitutional culture is an important element of the entire intellectual and cultural heritage of a nation, and its collective memory.[2]

This is why the constitutional culture is considered not only a part of the political culture but also a part of the constitutionalism in a broader sense of the word.[3]

The relations between the culture, the constitutional culture, on one, and constitutionalism, on the other hand, were best explored by Prof. Peter Häberle in his work: "The rationale of constitutions from a cultural science viewpoint", where he emphasizes the "European legal culture".

According to professor Häberle thoughts, the constitutions are strongly enrooted in people's culture, they practically emerge from it. From this theory comes the conclusion that we should no longer think about "constitutions and culture" as separate categories and values, but we should see them as a symbiosis of "constitutions as culture".[4]

The constitutional culture is not an abstract term.

It finds its place in all walks of social life through the existence and application of a number of spiritual and material values, as well as social ideals.

At the same time, it is worthwhile to mention the pragmatic understanding of professor Lex Garlickii (Лех Гарлицкий).

According to him, every national constitution proclaims a specific collection of values that determine the meaning and the value of its constitutional articles. Since no clear distinction

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[1] This problem was discussed at the XI Congress of Polish Historians in 1974 by Prof. Rett R. Ludwikowski, "Mixed" Constitutions-Product of an East-Central European Constitutional Melting Pot, 16 B.U.Int'L.J.1, 68 (1998).

[2] http://www.concourt.am/armenian/library/cclibrary/2009/ConstCulture.pdf. p.8.

[3] In a narrow sense, constitutionalism is understood as a set of opinions and doctrines about and for the constitutional order where constitutionalism is seen as a component of the constitutional culture. And in the wider sense, constitutionalism grows out of the cultural environment, and vice versa.

[4] See: Constitutions as culture: Two insights from Peter Häberle's "The rationale of constitutions from a cultural science viewpoint", https://ukconstitutionallaw.org/2015/04/07/stefan-theil-constitutions-as-culture-two-insights-from-peter-haberles-the-rationale-of-constitutions-from-a-cultural-science-viewpoint/

between values, principles and norms exists, all constitutions contain a number of fairly general notions, which may serve as a basis in the process of interpreting its provisions.[5]

This practically means that the main characteristics and values of the constitutional culture are most often incorporated in the highest legal act of each of the countries, as a guarantee for its continuous, stable and consistent protection by the state.

The characteristics and the values of the constitutional culture are developed from generation to generation and each generation incorporates itself in this systematic mosaic of values.

Every national constitution, more or less, incorporates the system of values of the constitutional culture of the people who live in the given country. In this context, the constitutions are defined as a social response that contains the fundamental values of the overall social behavior of the state and its citizens.

In the modern world, the dialectical bond between the real social life on one, and the Constitution of the country, on the other side, is reflected through the prism of the relevant characteristics of the constitutionalism in the specific society.

We need to highlight that the factual existence of the Constitution in one country does not entirely determine the level of constitutionalism in that society, nor it defines its quality content.

It is commonly known that the constitutionalism is much more than a constitution.

It incorporates all constitutional values that exist in real social life, including the values of the constitutional culture.

Professor Bondar gives the best explanation for this: "...the value judgments on the constitution that prevail in the social conscience, the level of constitutional culture in the society and the state, the potency of ideas of constitutionalism are predominantly determined not by the fact *per se* of the existence or absence in a society of a legal constitution (basic law), neither, for that matter, by its "age": there exist far more important and profound, that is: socio-cultural origins of constitutionalism".[6]

Therefore, the essence of the constitutionalism is explained through the prism of the main principles of the constitutional law, but first of all, as a fundamental principle of the law.

Any deformation of the constitutionalism leads to obstruction of the fundamental constitutional values in the society and by that it pushes further away from the social agreement within which the system of co-existence of the social and cultural values in the country ought to function.

The foundation of the contemporary constitutionalism and the constitutional culture lies in the realisation of the principle of "rule of law state".

Under this principle, the constitutional culture represents a system of values which contains all beliefs, perceptions, orientations, positions, views, legal awareness and conscience etc., and which derive from the experience of the different generations that live in a specific country, as well as from the civilisation overall.

These elements of the system of values are considered a foundation for the key rules for management with a democratic society. This is best reflected in the Latin saying: "ubi societas ibi ius" (if there is a society, law will be there), or, "where there is constitutionalism, there will be a rule of law state".

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[5] See: Лех Гарлицкий, „Конституционие ценности" и Страсбургский суд, A collection of communications "Конституциониъе цениости в теории и судебной практике"-М, 2009, p.221.

[6] See: Бондаръ Н.С., Судебнъй конституционализм в России в свете конституциониого правосуия-М:Норма, ИНФРА, 2011, p.24.

II. SOME HISTORICAL INSIGHTS OF THE ROLE OF RELIGION IN THE CREATION OF CONSTITUTIONAL CULTURE IN THE WESTERN BALKAN

In the 80'es and the 90'ties of the last century, the Western Balkan countries[7] went through a turmoil of serous transformations of their constitutional and political systems.

The development of the constitutional culture saw a true "Enlightenment" in these countries, both with regard to the altering of the political philosophy and discourse of the organisation of the power, as well as in the overall political environment.

Thousands of pages have been written about the process of the political transition of the former socialist systems into democratic ones as well as about the process of their social changes, many similarities and differences have been found in the processes in the different countries, and many conclusions have been made that despite the similarities, especially in the case of the Balkan countries, they are not sufficient to justify the thesis for the existence of a common "cultural fabric" or core of the group.

The countries from the region demonstrated more differences than common traits.

This reflection brings the question of whether there is such a thing as a Western Balkan's constitutional culture.

Despite the fact that they have shared some common recent history, the countries of Western Balkan still have different roots for their constitutional experiences. Some of them have mature constitutional traditions and some saw their first constitutions in the XX century.

They share similarities which distinguished them from traditional Western countries, but, on the other hand, they show so many different features that placing them within one single classifying category is problematic, if not impossible.

Searching for common cultural characteristics of those new democracies is even more difficult.

One should have in mind that the constitutional culture of each state is a fluid and flexible subject of examination especially if it is a subject of comparative analysis. On the other hand, culture itself in each country has many stable components, such as constitutional tradition, historical models of relevant constitutions etc. When comparing specific cultural phenomena of more than a dozen countries, one should directly compare tendencies, similarities, trends, differences rather than models, paradigms, or patterns.

And the second very important reflection regarding the content of the constitutional culture in Western Balkan's countries addressed the problem of creating and evaluating their political culture.

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[7] Western Balkan is a geopolitical term that refers to countries: Albania, Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Kosovo. The term Western Balkan has been used for the first time at the beginning of the 1990s and is often explained as Former Federation of Yugoslavia minus Slovenia and Croatia, after its plus Albania. Western Balkan countries are also in a political and economic context described as a "black hole" of Europe as a result of lacking cooperation with the rest of Europe and slow reform process toward modernization and democratization of their societies. EU and Western Balkans countries agreed to proceed with the "Stabilizations and Association Process" as a mean to prepare the region for sustainable reform and possible candidate status. The prospect of potential candidacy was offered in return of the commitment by the Western Balkans countries to undertake a set of reforms. EU's commitment to assist the Southeast European states in their preparations for membership was reaffirmed at the Thessalonica European Council held in June 2003, under the Greek presidency. The new agenda for the Western Balkans' enriching the Sap by including the establishment of new European Partnerships which would build upon previously negotiated Stabilization and Accession Agreements and would target assistance towards each country's specific need.

In discussing constitutional transformations of the Western Balkan's countries many questions naturally arise, such as, are there parallels between the traditional Western's and constitutional histories of the Western Balkan's countries, do the Western Balkan countries have any liberal or democratic traditions upon which to draw, do these countries have "progressive" or "backward" political cultures?[8]

In this sense, the specific topic of analyzing is the role and the impact of the religion in creating a certain model of the constitutional and political culture in the Western Balkan's countries.

Religion in their socialist past time was under strong state repression although in all of them the Christian churches and other religions were continuing their work and life, and in none of Western Balkan's countries, the churches were abolished or prohibited.

One of the reasons for this situation is the fact that all socialist countries in their past Constitutions have been adopted articles for guaranteeing the right to the religious life of the citizen's and the freedom of the church activities.

Those constitutional guarantees revealed, on the one hand, the general spirit and attitude towards the phenomenon of religion in every aspect, and on the other, the qualitatively different understanding of the existing religious problems.

It should be emphasized that almost in all former socialist countries the activities and influence of the larger churches have been substantially limited in comparison with the conditions prevailing before the change of social structures.

With the democratic transformation of the political systems of those countries, it seems that only the smaller churches and denominations benefited because they received legal equality with the larger ones. Under previous regimes, the smaller churches were either only tolerated or even persecuted. As can be expected, the smaller churches acknowledged the new state of affairs as a positive event for their needs.

On the other side, the bigger churches in the previous socialist regime found the restrictions of their activities in the field of education, health, and social care difficult to accept. Especially hard for them was the situation of the loss of property (mostly through the well-known process of nationalization of their land property), loss of economic privileges, and direct political influence by the Communist Party.

The Communist parties have always pointed back to the prerevolutionary situation and argued that at the time when the big churches had enjoyed their privileged position, due attention was not devoted to social rights, that they did not oppose exploitative business actions nor did they resist the repressive power of the administration.

On the contrary, they justified the willful decisions of those in power.

In managing their property, the main churches pursued profit interests as persistently as any other secular organization. Therefore it was only just that the churches should be deprived of their economic power and influence which had not been used for the needs of the masses of bumble and deprived people.

Some Christians in the socialist countries try to convince their critics that charity and social services had been offered to the needy by the Church, at a time when no one else had cared for them. This may be true, but in comparison with the developed health services, social and housing

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[8] See: George Schőpflin, The Political Traditions of Eastern Europe, DAEDALUS, Winter, 1990, at 55, 55, stating that "The Western political tradition always emphasized pluralism and the fragmentation of power. In Eastern and Central-Eastern countries, which were politically backward, the state played a much more dominant role as the principal agent of change. This resulted in a politically preeminent bureaucracy and a weak society".

projects, education facilities, and work opportunities offered by the well-organized socialist state to all its citizens the old system has little to be proud of.

It is a common fact that Christianity has influenced the life of the nations from this part of Europe for more than 1000 years. It determined their culture (literature, moral values, legal systems, national traditions) and was always closely connected with the political and economic elites.

The socialism, i.e. the criticism of and even more, the revolt against capitalism was introduced in all these countries in the 20th century. The supporters of socialism, although they were primarily concerned with the issues of social change, discovered that one of the biggest obstacles to their reform and revolutionary idea was the resistance against the religion of any kind.

Along with the economic and political deliberations they were forced to respond to the challenges of religious conservatism. At the same time, however, some religious people did not have a negative attitude to socialist ideas, who joined the socialist movements in the belief that in them they had discovered some fundamental values of their religious traditions.

It was these Christian socialists who introduced the dialogue on such problems into the life and theological reflection of their churches. As for the official stand of the major Christian churches, not one of them was ready to welcome or accept the rise of socialism.

Another element that has to be kept in mind is the character of the political and economic system and the role of the churches before the introduction of democratic structures. All the countries of Western Balkan Europe have traces of diminishing feudal traditions. Democratic structures were non-existent.

These facts should help us to understand that there are differences in the way in which the old regimes should be evaluated and to understand the reasons for how the concepts for the future are defined. This, of course, also includes an understanding of the role of the churches.[9]

The Orthodox churches in the Balkan's countries were closely connected with the national aspirations in the then USSR, today the Russian Federation, such was the case with the orthodox population living in Albania, on one side, but also we could underline the existence of the so-called neutral state and religion position of the former republics which were a part of the Socialist Republic of Yugoslavia, on the other side.

In almost all Eastern post-socialist countries like Poland, Hungary and Czechoslovakia, the Roman Catholic Church played the most influential role for centuries (like in Croatia and Slovenia in the previous and the contemporary period). It should be noted that Orthodox churches kept up close national and cultural secrets and confidential ties in those countries.

Also, the Catholicism and Islam had their power centres in the socialist Balkan countries. Those trends were specifically visible in the religiously mixed societies like ones in Bosnia and Herzegovina, Macedonia, and Montenegro.

In those countries, all the bigger churches and mosques which were interconnected with the power structure of the ruling Communist Party and with the economic interests of the prosperous classes played their own political game.

They resisted socialism because it threatened their privileged position in society and not because it offered an alternative and more beneficial scheme for the deprived masses. They resented the

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[9] Lubomir Mirejovsky Comenius Theological Seminary, Prague, General Problems of Christianity in Socialist Countries, Occasional Papers on Religion in Eastern Europe, Volume 7, Issue 3, Article 3, 6-1987 http://digitalcommons.georgefox.edu/cgi/viewcontent.cgi?article=1301&context=ree.

anti-clerical, atheist, and secular views of the socialists and warned of the danger of the moral destruction of society if the socialists ruled temporarily.

After the so-called people's revolutions, the rich and the middle classes sought refuge in the churches and the mosques tried to make them a platform for their vested interests on the pretext of defending religion against the tide of secularism. This fact does not exclude the other fact that there were Christians and Christian groups who participated actively in the first stages of the formation of the socialist society in the belief that stripping the churches of their power and wealth would only help to free the church work to enable it to become genuine in respect to the fundamental Christian views.

III. "ENLIGHTENMENT APPROACH" OF DEFINING THE ROLE OF RELIGION IN THE WESTERN BALKAN CONSTITUTIONAL CULTURE

The second problem of Christians and Muslims in the socialist countries and the most challenging one was the relationship between people's faith, on one, and atheism, on the other side. **The problem was known as a dilemma of faith and science and as a never-ending dilemma between the state and religion.**

The first dilemma was not new in the history of human thought.

In the previous system of all Western Balkan countries, the whole educational and cultural systems, as well as the cultural values, were being theoretically reinforced by Marxist-Leninist philosophy.

Nowadays, the contemporary dilemma is more oriented toward existing and explaining the principle of secularism. The process of political transformation of the systems from socialist into the democratic ones has also changed the philosophy of religion and its substantive part of the constitutional culture in Western Balkan countries.

In all of them, after the process of transition from socialism to democracy, the principle of secularism is defined as a constitutional value principle which exists not only as a substantive part of each national but also as a part of the European cultural heritage.

The acceptance of this new democratic philosophy had also very strong impact of shaping and transforming of their national constitutional culture.

In the general sense, the Western Balkan countries have accepted the notion of secularism where the political and the religious institutions are strongly separated, and the political authority is defined as a neutral subject towards all religions and faiths as well as toward non-religion.

It should be emphasized that the principle of secularism in the Western Balkan's countries is enshrined in their democratic constitutions in different ways.

For example, in the **1991 Macedonian Constitution, according to Article 19[10]**, "The freedom of religious confession is guaranteed. The right to express one's faith freely and publicly, individually or with others is guaranteed.

"The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical-Methodist Church, the Jewish Community and other Religious communities and **groups are separate from the state and equal before the law**. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical-Methodist Church, the Jewish Community and other Religious

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[10] http://www.wipo.int/edocs/lexdocs/laws/en/mk/mk014en.pdf.

communities and groups, are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law".[11]

According to Article 44 of the 2006 Serbian Constitution, "the Churches and religious communities are equal and separated from the state. Churches and religious communities shall be equal and free to organize independently their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law. Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of the child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

Additionally, we would like to emphasize the importance of two other articles of the Serbian Constitution, Article 48, Promotion of respect for diversity where it is stipulated that "Republic of Serbia shall promote understanding, recognition and respect of diversity arising from the specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information, as well as **Article 49**, Prohibition of inciting racial, ethnic and religious hatred, that any inciting of racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable.

In the 2007 Constitution of Montenegro[12], in Article 14, Separation of the religious communities from the State, Religious communities shall be separated from the state. Religious communities shall be equal and free in the exercise of religious rites and religious affairs. **Article 46 titled as Freedom of thought, conscience and religion** stipulated that "Everyone shall be guaranteed the right to freedom of thought, conscience and religion, as well as the right to change the religion or belief and the freedom to, individually or collectively with others, publicly or privately, express the religion or belief by prayer, preaches, customs or rites. No one shall be obliged to declare their own religious and other beliefs. Freedom to express religious beliefs may be restricted only if so required to protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution.

In 2016 Albanian Constitution[13], in Article 10 it is envisaged that:

1) In the Republic of Albania, there is no official religion.
2) The state is neutral in questions of belief and conscience, and also, it guarantees the freedom of their expression in public life.
3) The state recognizes the equality of religious communities.
4) The state and the religious communities mutually respect the independence of one another and work together for the good of each of them and all.
5) Relations between the state and religious communities are regulated based on agreements achieved between their representatives and the Council of Ministers. These agreements are ratified by the Assembly.
6) Religious communities are legal entities. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that the interests of third parties are not infringed.

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[11] http://www.legislationline.org/documents/id/16819.
[12] http://www.wipo.int/edocs/lexdocs/laws/en/me/me004en.pdf.
[13] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e.

According to Article 24, 1. Freedom of conscience and religion is guaranteed. 2. Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals. 3. No one may be compelled or prohibited to take part in a religious community or religious practices or to make his beliefs or faith public".

In the 2015 Republic of Kosovo Constitution[14], in Article 8 titled as Secular State, "The Republic of Kosovo is defined as a secular state and neutral in matters of religious beliefs". **In Article 9** related to the Cultural and Religious Heritage is stipulated that the Republic of Kosovo ensures the preservation and protection of its cultural and religious heritage.

The common feature of the abovementioned democratic constitutions of the Western Balkans Countries is the principle of secularism which in its essence has defined religion and politics separately. This separation is the main definition of secularism. Constitutions have also emphasized the "neutrality" aspect of secularism referring to "freedom of conscience" alongside with a principle of secularism.

According to the Charles Taylor's views secularism could be defined in political and in social terms. **In a political sense, secularism means a separation of the church institutions from the state organs and institutions, consigning religious institutions to the private realm.**

In social terms, secularism represents a decline of collective religious belief and practices within the private realm. Those views are also present in the content of the Western Balkan countries. As a societal concept, secularism refers to a world "in which faith is one human possibility among others," "in which unbelief has become for many the major default option," and in which "a purely self-sufficient humanism has come to be a widely available option".[15]

On the other side, **social modernism has produced a new concept known as 'post-secularism' which comes from the later works of Jurgen Habermas**[16] and his debates with John Rawls about the place of religion in the modern public sphere.

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[14] http://www.gjk-ks.org/repository/docs/gjkk_kushtetuta_e_republikes_se_kosoves_me_amendamentet_I-XXV_ang.pdf.

[15] Taylor, Charles, (2007) A Secular Age, Cambridge, MA: Belknap Press, "The U.S. Religious Landscape Survey: Summary of Key Findings," The New Forum on Religion & Public Life, 2008, available at http://religions.pewforum.org/reports/summaryofkeyfindings.

[16] The notions like "post-secular" or "post-secularism" have become a real hit in the recent political, sociological and especially in the philosophical debates. For instance, in political theory, the term "post-secular" is commonly used mostly by scholars who want to show that they are somewhat open to the topic of religion. Over the last twenty years, we have witnessed it a popular trend of so-called "return of the religion". **What is meant by this trend is that religion is claiming a role and a voice in a public sphere which the mainstream of modern social and political theory used to conceptualize as empty from religion, neutral, independent. As most of the sociologists and political scientists have agreed, the religion in the past was somewhere else, in the private sphere, in the individuals' consciousness**. **This kind of individualistic sense of understanding of the religion was embedded in a larger narrative which told the story of modernization as a story of democratization, individualization, functional differentiation and secularization.** And modernity itself was thought to rest on these four pillars. Vice-versa, if one of these factors went missing, the suspicion was that we are no longer really talking about modernity.

The "return of religion" was therefore interpreted as an attack on modernity, as a falling back into pre-modernity. This is precisely the meaning of the term "de-secularization". This term was used in the early nineties by prof. Peter Berger, who not only had been a strong advocate of the secularization thesis but also he was one of the first to admit that he had been wrong: "The world is as furiously religious as it has always been".

Berger's religion is first and foremost a fundamentalist religion. He is worried about the attack of fundamentalist religion on the modern order, **the return of pre-modernity into our contemporary world. In this sense, Berger speaks about "de-secularization". Within the social and political sciences, this understanding of the return of religion was soon perceived as too narrow.** Was religion really incompatible with modernity? Most sociological

The idea affirms that nowadays secular and religious awareness has formed a new type of inter-relationship which is different from the one in the epoch of secularization. The determining **characteristic of this new type of relationship is its rejection of the so-called secularization's leading strategy**, directed toward the displacement and elimination of religion from the social and cultural life of the people's, supposing that such elimination would become total or nearly total in the future.

It should be emphasized that in the Western Balkan region, the religion and the principle of secularism have entered in the new era of constitutional culture-building just after starting the processes of democratization of the states and their civil societies.

When the region entered into an era of extensive constitutional transformation, it became clear that the new democracies would break with their communist past and adopt constitutions that would be marked as "entirely new."

On the other hand, the drafters of the new acts had not disregarded the post-socialist societies' sentiments for their socialist past. In the first years of the systematic transformation, the people in the post-socialist countries exposed to Western political, legal, and social culture.

The process of the so-called "blending and mixing" of their new and old systems values and principles became a significant feature of the constitutional culture of Western Balkan countries. The style stemmed from public attitudes and emotions and aggressive Western lecturing about the universal values of liberal constitutionalism.[17]

But, no matter how strong or weak those new democratic elements were in the new political, economic, and legal systems in the Western Balkan countries, the tradition is seen as an important and the most stable component of their political culture.

In the past years was proof that the cultural memories and religious traditions could not be deleted or replaced overnight and that those traditional and cultural elements are the core of the new democratic constitutional culture of the people.

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studies did not suggest that at all. How to understand the "return of religion" then? This is the point where the term "post-secular" enters the debate. The prefix 'post' suggests a completely different geometry than the 'de'.

'Post' indicates a movement on the vertical as well as on the horizontal axis. It describes that the **religion in post-secular society is not the same as the one in pre-secular society. The return of religion is not a falling-back into something that was there before.** When we think about the post- as a parable, we see that the religion that is presumably "returning" has meanwhile changed as well. This new image has an impact on the modernization narrative. It no longer suggests that the fourth pillar of modernity – secularization – (besides functional differentiation, individualization and democratization) is breaking away, but it acknowledges that it is changing form. **Religion and modernity might, after all, be compatible. Therefore, to conclude on the distinction between 'de' and 'post': the first perceive religion and modernity as incompatible, the second as compatible. The success of the term "post-secular" in the public discourse and also in academia seems to be related to this very simple distinction.**
See more details on: http://synergia-isa.ru/wp-content/uploads/2012/02/stoeckl_en.pdf.
[17] World Religions in the Context of the Contemporary Culture: New Perspectives of Dialogue and Mutual Understanding, Christianity and Islam in the Context of Contemporary Culture: New Prospects of Dialogue and Mutual Understanding in the Russian Federation and Eastern Europe, in Central Asia and the Caucasus, United Nations Educational, Scientific, and Cultural Organization, Published in cooperation with the UNESCO Office in Moscow, Armenia, Azerbaijan, Republic of Moldova, and Russian Federation, and with UNESCO Office in Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, St. Petersburg Branch of the Russian Institute for Cultural Research, St. Petersburg, 2011.

IV. THE WESTERN BALKANS AND THE RELIGION – FROM RELIGIOUS HATRED TO RELIGIOUS TOLERANCE

The Balkan countries today are a true treasure chest for inter-religious respect, for religious tolerance, religious co-living and for the building of inter-religious bridges that connect the people who live in this region.

Although in the past the region underwent a number of traumatic religious conflicts and clashes, today we can conclude that this part of Europe has learned to deal with the religious differences and has learned to find points that connect the people, rather than being tumbling stones based on religion.

In this context, the conclusion that Macedonia, Bosnia and Herzegovina, Serbia and Montenegro, as part of the Western Balkan region, are considered countries that serve as an example for the century-long influence of the Orthodox Christian Church on the building of their cultural tradition is an undeniable fact. There is, however, a clear understanding that this orthodox tradition, although historically most dominant, is still not the only one that exists and that is nurtured in this region.

The religious diversity and, in general, the acceptance of that diversity as part of the everyday cultural life in the Balkans, is a characteristic and value of the Balkan people.

The Islam, together with the Orthodox and the Catholic religion, are the three most dominant religious groups that played the biggest role in the process of creation of the main cultural and social seal of the Balkan countries and opened the process of greater inclusivity and cohesion of the people with a different religious background.

Unlike some past days, when the Balkans was described as "gunpowder barrel" where the inter-religious differences and specifics were considered a tumbling stone for the peace among the people, today, after all the conflicts, turbulences and systematic tensions we can speak about a calmer period where the tensions based on religion are relaxed and where inter-religious tolerance exists. Tolerance is part of the co-living among the Balkan people. It is a constitutional element of the new constitutional culture of the Balkan countries which is built within the new democratic systems.

The new constitutional culture in this region was built exactly thanks to the religious, as well as thanks to the overall tolerance that exists among the Balkan people, and in the building of the spiritual relations towards the believers. It seems that the 21st century marked the turning point in the processes of reconciliation, elimination of the tensions and antagonism among the people from different religious groups, first of all between the Christianity and the Islam and that the religious tolerance and the religious reconciliation led to calming down of the negative passions among the politicians and the people. By knowing the differences and the specifics of the Christianity on one, and the Islam on the other hand, the Balkan people started to build more intensively the bridges of cooperation and acceptance of the differences, which led to forgiving of the old sins and opened the door for new forms of religious integration.

We, therefore, understand this conference in Rome as a space that can reflect additional energy and motive for what is being developed in this part of Europe, to further boost the culture of religious co-living, tolerance for the religious differences and unification of the differences in direction to provide compromise solutions for all open issues and to serve as a guide for overcoming of any new problems that may arise among the people.

The principle of "live together while remaining diverse" is alive, it pulses and creates new values in the Balkans. Although the Western Balkan countries are not yet members of the EU, they have anticipated the key EU principle of "United in diversity" in their philosophy of social living.

Despite all the past challenges, temptations, conflicts, this principle is still Alpha and Omega for the survival and development of the Balkan countries. Christianity and Islam, although two separate religious with their characteristics and specifics have existed in the Balkans as two separate rooms of the same house.

But, on the other hand, we need to stress that the Balkans is not isolated from global events. The world globalisation caused certain problems in the Balkans as well, in the context of undermining the old traditional relations and the respect for the differences. The today contemporary world is deeply involved in the globalisation in which the ideology based on ultra-liberalisation dominates together with the neo-liberalism and the freedom of relations in general.

In reality, the globalisation has transformed the world, which is something the experts call "Pax Americana". It was this process that marked the era of new standardised ideals and views on the life, forms of the political organisation of the society qualified as mass cultural and life values in which there is practically no room for the traditional values, the religion included.

As many intellectuals will agree, these new values led to mass crises in the collective identities, crises of the individual identities form an aspect of strengthening of the individual self-esteem and by respecting the individual cult of the person.

The world faces with the cloning of people, cloning of spiritual and cultural values, aggression, selective use and development of the democracy, the blunt undermining of the human rights and freedoms, which certainly has an impact on the stability of the national structures and processes, as well as on the individual values. The crisis that exists in the cultural values on a global level, in sense of deviance of the system of spiritual values, also has an impact in the Balkans. This crisis has left its mark also in the constitutional culture which cannot be viewed as an isolated case but can only be observed in the context of the situation that exists in the overall spiritual and cultural processes within the countries.

If we agree that the constitution is the supreme product of the national, as well as of the regional culture, it means that its content and influence naturally evolves from our cultural understanding and behaviour within the national and regional system and context. **Or, according to the words of Häberle, "constitutions are not mere legal texts or normative rulebooks, but an expression of cultural development, the means to cultural self-presentation of a people, a mirror of their cultural heritage and foundation for renewed hope".**[18]

Häberle nonetheless also acknowledged that constitutions differ in some respects from other branches of cultural science: constitutions are not final, completed works, but ideally products of an open society and pluralism, as well as subject to ongoing development.

V. HOW THE "POST-SECULAR AGE" AFFECT THE BALKAN REGION?

The idea for a post-secularism which was originally revealed by the German philosopher Habermas, gains today a new meaning having in mind its presence in the everyday life of the new age.

Although according to the words of Habermas the post-secularism does not mean full rejection of the processes of secularism and returning to the religious autonomy, still this new trend has

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[18] **See: S. Theil, 'Constitutions as culture:** Two insights from Peter Häberle's "The rationale of constitutions from a cultural science viewpoint"' U.K. Const. L. Blog (7th April 2015) (available at: http://ukconstitutionallaw.org).

for its goal to mark the time of continuity in the existence and undisturbed activity of the religious communities in an enhanced secular environment.[19]

Further on, according to Habermas, the post-secular period will not reduce the influence, nor the presence of the religion in the politics, and it will even less manage to time the challenges that the new "enlightenment secular ideology" brings along.

The post-secularism advocates believe they will contribute to a building of a populist democratic society, something that did not exist before. However, the reality of the post-secular period seems to deny this claim. The societies, particularly those in the Balkans, are still not able to fully get rid of the colonial division on "us" and "them" in a religious sense of the word. According to some authors, **the post-secular is "a colonialism by other means".[20]**

It is a paradox, but today one of the strongest fingerprints on the colonial power politics contained in the post-secularism was erased from the contemporary debates that are intensively led by the experts, although that is not the case with the Balkans.

Despite Habermas' claim that in the populist democratic societies the religious people have the right and opportunity to participate in the development of the social sphere (in the creation of the law, the ethical principles and norms), he is still known by the reproduction of the teleology of the modern colonialism.[21]

We should also mention the opinion of Anne McClintock, who believes that the post-colonialism tends to reproduce the modern social time through the use of the prefix 'post-'. In this sense, the post-secular society is defined by Habermas as 'the continued existence of religious communities in an increasingly secularized environment'.

We should also stress that in Europe, the post-colonial understanding of the post-secularism has contributed in the process of learning about the connectivity between the secularism on one side, and the contemporary age together with the colonialism in the historic relations among the nations on the other.

The use of the prefix "post" by those who give up from the European colonial campaign and who insisted on the positioning of the colonial violence in the centre of the modern international political analyses is a paradox, seen from a critical perspective.

According to Habermas, neither classical secularization theories nor counter-secularization propositions are enough to understand the increasing presence of religion in politics today and the challenges it poses against the modern "Enlightened secularist ideology". The classic secular theories were a subject of criticism and review by several authors who determined the need of their de-mystification.

Starting from the 1970-ties, many religious sociologists, like, for example, **Robert Bellah,** have accepted the thesis that the secularism, when understood as a modern process that aims to privatise the religion through its progressive disappearance and institutional differentiation, was not necessary, having in mind the fact that the religion still has an important role in the modern society.

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[19] See: Habermas, Jürgen, (2009), Europe: The Faltering Project. Cambridge: Polity Press, p.63.
[20] See: Bubyis, Eric, (2015), 'Postsecularism as colonialism by other means'. Critical Research on Religions, 3 (1), p. 25–40.
[21] See: Ángela Iranzo Dosdad, Universidad de los Andes, Bogota, Colombia, From the Secular to the Habermasian Post-Secular and the Forgotten Dimension of Time in Rethinking Religion and Politics, http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-85292016000300887#B18*

Others, like Peter Berger, believed that the theses of the secularism are a mistake and that they have produced a tendency for counter-secularism seen through the prism of increased religious belonging of the citizens, increased influence of the political religion, and the increased role of the religious fundamentalism.

Here, we must highlight the well-known idea promoted in modern society, the idea of **believing without belonging.** According to many, the academic nature of the post-secularism cradles the "colonial tension" between the academic elite in Europe and the US, educated in renomated faculties and universities, and the common citizens, introduced as a vulnerable and discriminated part of the society.

Therefore, it is believed that the post-secular concept is a western academic creation that originates from the political violence of the occupied law by the "learned and the smart", to "speak on behalf of the others" and to look for "what is best for them".

On the other hand, according to Hassan al-Banna, the founder of the Muslim Brotherhood, "Islam rejects the idea of conflict between spiritual and secular that is characteristic of the West. … The Christian idea of 'Render unto Caesar the things that are Caesar's, and unto God the things that are God's' is absent, because everything belongs to the all-powerful Allah".[22]

Because of these core differences in the views on the concept of the post-secularism, in the Balkans there is no fertile ground for the Habermas' idea, nor can it win any support. The Balkans, although it has included the secularism, even the post-secularism, as a concept at a legal and normative level, it has never applied it in reality.

The Balkan societies have shifted to the line of secularism and post-secularism in accordance with the legal theory that aims to advance the concepts and the phenomena. So, by strengthening the role and the meaning of the religious organisations in the social life, the governments of the Balkan countries have rapidly decided to recognise in the constitutions and the laws their autonomy from the state and the politics, as well as the citizens' right and freedom to have their own religion in accordance with their internal spiritual will.

As a result of this governmental, predominantly legal orientation, the Balkan societies apply a number of different laws regarding the position and the status of the religious organisations within the systems, with an emphasis on the freedom of the religious belonging, as well as on the right of every citizen to his/her own religion. Most of the laws foresee the need of secularity, i.e. the obligation of the governments to cooperate with the religious communities and organisations in sense of giving support to their independence and providing conditions for the religious organisations to be able to conduct charities and to organise religious education for their followers.

We should point out that despite these significant legal successes, as well as the positive role of the administrations of the leading religious organisations in the Balkans, there are still some open issues, which some authors call "Achilles' heels", among the Orthodox and the Catholic churches on one, and the Muslim religious community on the other. This Achilles' heel is visible in the over-dependence and over-centralisation that exists among the church authorities and the political authorities in certain countries. This is particularly visible in the tendency of the dependence of the religious communities from the government aid, as well as from the aid they receive from the administrative or local resources.

This dependence of the religious organisations in the Balkans also explains the rigid attitude of many local Orthodox and Muslim organisations towards the holders of the power by giving

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[22] Quoted in Ansari Z. I. Contemporary Islam and Nationalism: A Case Study of Egypt // The World of Islam VII: 1–4. Leiden, 1961, p. 8.

maximum support to the local or the central politicians. It is this support that the religious organisations give to the politicians, as well as to the common citizens, in a form of food, services, material benefits, money etc. that urges the process of "hunt for new souls" in the Balkans which concerns the believers in many Balkan societies, and something which, as a trend, is unstoppable and can create additional problems for the fragile democracies in the Balkan countries.

If we take a look at the vitality of these "new agents on the religious market", one can think of the following question: Is this mass dependence of the people from the mercy of the religious organisations, regardless if they are Orthodox or Muslim, making the Balkan region extremely sensitive, even aggressive towards the religious organisations?

We need to also stress that fortunately, the Orthodox and Muslim communities in the Balkans are still unable to define their Dogmatic differences. There is a common belief that for both these communities Abraham's roots of the Christianity and the Islam, their mutual respect for Jesus Christ and Virgin Mary and to Muhammed are a key factor for the future development of the inter-religious dialogue and peace among the believers.[23]

Still, we must not forget about the global movements that urge the antagonism among the Orthodox and the Islamic believers. We must not forget about the antagonism that exists among the Muslim and Christian civilisations.

In this context, we should remind of the message sent by Alexey II before the participants at the IV Meeting of the joint Russian-Iranian theological commission on dialogue "Islam — Orthodox Christianity", which occurred in Moscow. The Patriarch said: "We cannot and must not prevent the advancement of international relationships. People of the world need to resist mutual threats, such as terrorism, conflicts, new diseases, environmental issues".

The Primate of the Russian Orthodox Church expressed his anxiety about the threats of globalization: "Is there somebody who is trying to control the whole system of international bonds to establish the domination of one worldview, one ideology, or one group of countries? Is not the advancement of the global economy leading to the further enrichment of rich peoples and the further impoverishment of the poor people? Will people and peoples be able to preserve their freedom of spirit?"

This anxiety was addressed to some extent by an appeal to the people: "Basics of the Social Policy of the Russian Orthodox Church", issued and adopted by the Assembly of Hierarchs. Also encouraging are efforts of the Protestant churches, namely the Baptists actively cooperate and with representatives of different churches in seeking which solutions for the most pressing humanitarian problems.[24]

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[23] For example, in Macedonia from approximately two million inhabitants, Orthodox Christians represent 64% to 66% of the people, Muslims represent 33% to 35% of the population, and 1% of the total population represents Catholics, Protestants, and other ethnicities. Macedonians of Albanian origin represent the majority within the Muslim Macedonian communities, they number approximately 72% or 509.083 people out of the 702.492 Macedonians Muslims. On the other hand, Macedonians of Turkish origins represent 11%, or number 77.959 people, and the Romans number 8%, and number 53.879 people. The Toribash, Gorani and Macedonian Muslims are nearly 5%, 35.000 people, while the Bosniaks constitute about 4% or 25.000 people. According to the data's of the State Statistical Office of the Republic of Macedonia, Census of Population, Households and Dwelling in the Republic of Macedonia, 2002, Skopje, State Statistical Office, May 2005.

[24] See, ibid, op.cit, World Religions in the Context of the Contemporary Culture, p.138.

VI. CONCLUSION

The renomated lawyer Lawrence Friedman wrote: "What gives life and reality to the legal system is the outside, social world. Social forces, he explained, are constantly at work on the law-destroying here, renewing there; invigorating here, deadening there; choosing what parts of 'law' will operate, which parts will not; what substitutes, detours, and bypasses will spring up; what changes will take place." The law, he said, is, therefore "a product of culture and society,"' and "one must accept the ultimate dependence of law on society", because "[n]o other point of view makes sense."[25]

Friedman's words are crucial for the definition of the constitutional culture because it is entirely dependent on the social strengths and the manner how the society applies and practices the law.

The essence of the pluralism as a concept, the balance in the system of organization of the power, as well as the historical and the traditional heritage are the pillars on which the constitutional order lays upon, and, by that, also does the constitutional culture. Within the traditional heritage, same as in the pluralism, there is also the role and the importance of the religion as an element of the constitutional order, i.e. the freedom to religion and free existence of the religious groups as a core value of the ethic side of the order.

The religion, with its cultural and humanist influence, takes a central place in the creation of the public moral system of the state. This of course also refers to the Balkans and to the Balkan countries where the process of development of the constitutional culture was mostly connected with the process of development of the constitutional culture was mostly connected with the process of transition of the entire legal, political, economic and social system, i.e. its movement form the old and ruined socialist system into a western-democratic one.

At the same time, by changing the matrix of the political and legal activity in the Balkans, the philosophy of tolerance and acceptance of the differences in every sense has also changed.

Although the acceptance of the differences in the Balkans did go relatively slower and with serious social quakes, followed by armed and military conflicts, still the Balkans managed to outlive all these stresses and to come out stronger.

In the first years of the systematic transformation, the people in the post-socialist countries were exposed to copy the Western political, legal, and social culture. The Balkan people have witnessing not the process of building autochthonic social and cultural environments with own tradition and authentically values, but the process which was familiar as "blending and mixing" the Western principles as a dominant and overwhelming feature of the new constitutional culture of the Balkan countries.

Practically all Balkan countries and peoples were captured from emotions and aggressive Western lecturing about the universal values of liberal constitutionalism. But, no matter how strong or weak those new democratic elements were in the new political, economic, and legal systems in the Western Balkan countries, the tradition was and is always be seen among the people as an important and the most stable component of their political culture. The cultural memories and religious traditions could not be deleted or replaced overnight. Those elements were and still are the core of the constitutional culture of the people.

The Balkans, by accepting and by incorporating the ideas contained in the Declaration of Principles on Tolerance, adopted by the General Conference of UNESCO (1995), "Tolerance means respect, acceptance and appreciation of the rich diversity of the world cultures, our forms

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[25] See: Lawrence M. Friedman, The Legal System: A Social Science Perspective, Russell Sage Found,1975, p. 193-194.

of expression and the ways of individuality expression, it is harmony in diversity, it is a virtue, which makes peace possible, contributes to the replacement of the culture of war by the culture of peace .. .”, has managed to free itself from the historic influx of religious and ethnic hatred and impatience which dominated in the last century and stood in the road of the tolerance, harmony and peace.

It is noteworthy that the issue of tolerance first arose in Western civilization on the religious level, and religious tolerance has initiated all the other freedoms that have been achieved in a free society.

Sometimes it seems nothing is harder than to be tolerant towards people who adhere to different religious beliefs. This is something that the Balkan countries experienced directly in the process of transition to democracy. Unfortunately, it is in the Balkans that certain separatist and fundamental groups have used, and are still using, the religion and the religious differences as a key factor to revive their military activities which often have terrorist nature, but predominantly come from personal and material interests.

In these circumstances, it is hard to find the path that leads to dialogue and tolerance among the cultures and the religions, although the reasonable people are aware that only through dialogue and tolerance it is possible to maintain the cultural differences as they are, as well as the civilisation in general.

Only by understanding the religious differences and by their acceptance, the Balkans will manage to build a unique and successful model of peaceful co-living and cooperation among the nations and the different religious organisations and communities.

In this process of understanding the religious differences and in the building of the religious co-living, the new democratic constitutions of the Balkan countries played a major role. These constitutions, developed in the 90ties, have started the new philosophy of the system, which says that „only the fruits of the tree of law and justice" may become the basis for upright actions by "fair governments," seeking individual and collective happiness in justice and lawfulness, subscribing to the imperative of "living our lives in law and justice".

This is the biggest message of "The Entrapment of Vanity."

"In order to live our lives as rational and dignified men […] we have to choose behaviour, order and law ourselves, not be lead by disorderliness and unlawfulness," be able "to come together to listen about the law, to compose laws."[26] The only way for the establishment of a rule of law state is, before "composing laws," to hearken to the advice "listen about the law," and follow it profoundly. The conclusion is that "let there be or appear no one among us or in our land, who, being a wayward and arbitrary man in his deeds, would remain unpunished under law, and let our laws be our king and our Lord, and we shall not accept anyone above our laws, but for our Lord the Maker".[27]

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