

Religion and the Constitutional Regulation

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Abstract—The relationship between the state and the religion is different based on the fact that how powerful is the religion faith in a state and of the influences that affected the views of the constitution drafters according to the constitutional system they were based to draft their constitution. This paper aims at providing, through a comparative methodology, how it is regulated by the constitution the relationship between the state and the religion. The object of this study are the constitutions of Italy as a nation with catholic religious tradition, Greece as a nation with orthodox religion tradition, and Turkey as a nation which represents Muslim religion, while Albania as a nation known for its religious plurality. In particular, the analysis will be focused on the secular or religious principle provided in the constitution of each respective state. This comparative overview intends to discern which of the states analyzed is more tolerant and fully respects the freedom of religion. It results that most of the states subject of this study, despite their religious tradition have chosen the secular principle in their constitutions, but the religious freedom is differently guaranteed.

Keywords—Constitution, religion, religious freedom, secular.

I. INTRODUCTION

EVERY constitution regulates the relation between the state and the religion to guarantee and mutually respect the independence of each other and to collaborate for the good of everyone. Religion is one important source of commitment and fulfillment among many, and the Constitution's goal is to protect members of our political community from discrimination on account of their spiritual commitments [1]. Many constitutions have stipulated the secular principle, by not formalizing any religion as the official religion. This choice was done with the intention not to prohibit the prevailing religion but to ensure the principle of equality and non-discrimination of all the other religious communities that are present in the state. The secular principle means that the state and the religion must be independent and autonomous from each other and can collaborate by mutual agreement for the religion coexistence. The constitutions that sanctions the secular principle gives priority to the state by separating the state from the religion and recognize the full autonomy to all the religions and the right to freely organize, express individually or collectively his religious beliefs, with the only limitation that the religious organization or their statutes should not be contrary to the fundamental principles of the legal system of the State.

The freedom of religion is one of the universal human freedoms and as such each constitution has provided it in its content. But the reality shows that the freedom of religion is not equally enforced in all the states, and particularly in those

states that have a religious tradition. The analysis of the dominant religion in a state is significant in understanding the religious tradition. In this context were chosen to be analyzed the constitutions of those states that have a tradition of one dominant religion. Italy is the centre of the Catholic independent State and has a catholic population of 83% [2]. In Greece the orthodox religion is very dominant with a percentage of 98% [3] of the population. While Turkey is distinguished for the Muslims religious tradition and has the most compact population as the 99.8% [4] of population is Muslim. Albania is known for the religious coexistence between Muslims, Catholics, Orthodox and atheist being a model of the religious harmony among different religions. Many can question that how can be this possible in a world where in the name of a religion are done many wars or currently the religious terrorism is increasing. Albania has a population consisting of 56.7% Muslim, 10% Catholics, 6.8% Orthodox, 2.5% atheist and 2.1% Bektashi (a Sufi order) [5].

Based on the percentage of the religion, Albania is considered as an Islamic state but this is not the religion tradition of Albania. Albanians are the successors of the Illyrians, who originally practiced an animist and polytheistic religion [6]. Consequently the Illyrians originally did not have a dominant religion as they were pagans. The ancient Albanians were originally pagans and later embraced the catholic religion. Christianity has had followers in Albania since the fourth century, when *Ghegs* in north become Roman Catholics and the *Tosks* in the south converted to Christianity [7]. Later the different occupations that Albania suffered have impacted the religious belief. The longest and the most influencing occupation was that of Ottoman occupation, which lasted for five centuries (14th -18th century) and forced practically 60% of the Albanian population to convert into Muslim religion. Considering the fact that the Illyrians were firstly pagans and later Christians, it is to be stressed that Albania has had a catholic tradition which was changed forcibly by the Ottoman suppression and cannot be judged as a Muslim state. Under the communist regime of Enver Hoxha, who converted Albania in the first official atheistic state in the world by forbidding all the religions and destroying or changing the destinations of the worship places, Albania suffered another brutal suppression of the religion. Part of the reason for this was the religious tensions due to a pluralistic society [8].

Practically the peaceful religious coexistence in Albania is a value and a model of how can different religions live and collaborate in total harmony based also in the ancient tradition of paganism, therefore the religion does not play an important role in the Albanians lives as the majority of the Albanian individuals does not follow or practice the religion rites.

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The historical overview serves to better understand and discern the reason of predominance of a religion in a state and what would have been the reasons of the drafters of the constitutions to provide or not the principle of secularism in the constitution. Balancing respect for religious conviction and the values of liberal democracy is a daunting challenge for judges and lawmakers, particularly when religious groups seek exemption from laws that govern others [9].

II. THE RELATIONS BETWEEN THE STATE AND RELIGION

The Constitution of Albania (1998) and of Turkey (1982) has sanctioned explicitly the principle of secularism while Italian Constitution (1948) has not declared directly this principle but it results indirectly by the meaning of some articles. The Albanian Constitution, based on the religious coexistence tradition, has given emphasis to the spirit of religious coexistence and tolerance in its preamble. The Turkish Constitution, in its preamble asserts that sacred religious feelings shall absolutely not be involved in state affairs and politics as required by the principle of secularism. Analyzing these two preambles it results that the preamble of Albanian Constitution gives importance to the spirit of religious coexistence and tolerance as one of the values of the Albanian Population, while Turkish preamble highlights the separation between the state and religion to stress that the religion should be not intermingled with the state as it was historically in the past.

The Constitution of Turkey declares explicitly the principle of secularism at the Article 2:

“The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.”

Even as the Albanian Constitution in the Article 10 sanctions that:

“In the Republic of Albania there is no official religion. The State is neutral on questions of belief. The state and the religious communities mutually respect the independence of one another and work together for the good of each other.”

Analyzing these articles of the Albanian and Turkish Constitution, it results that Albania has provided the independence of the state from religions but on the other side recognizes also the collaboration between the state and the religious communities for the good of each other and of the population in general. The relationship between the state and the religion in Albania is not based in the strictly separation by being independent and non-interfering on each other activity but as well as on the collaboration taking into consideration the great interest of the population. In Albania, the constitution recognizes to the religious communities the status of the juridical persons and they have independence in the administration of their properties according to their principles, rules and canons, but to the extent that interest of third parties is not infringed. Turkey’s constitutional approach has

provided a unique laicism in which religion is not part of public life but still controlled by state policies [10]. The exclusion of religion from the political and social life is ensured by the banning of all forms of head and body covering in public places, including universities and civil service buildings [11]. By amendments of 2008, it was sanctioned the allowance of women to wear headscarf in universities, but this allowance is in contrary to the secular principle of the Turkish Constitution. Thus the Constitutional Court only a few months later annulled the amendment intended to lift the headscarf ban, ruling that removing the ban would run counter to official secularism [12]. In particular, the Turkish Constitution has conditioned the restriction of the fundamental rights and freedoms to be not contrary as well with the secular republic by stressing the secularity of the state.

Contrary from the Albanian and Turkish Constitution, the Italian Constitution does not declare explicitly the principle of secularism but it results from some articles of the Italian constitution. The Article 2 and 3 recognize and guarantee the religious right as an inviolable right of the person and the principle of equality and of non-discrimination on religion basis. The article 7 sanctions the recognition by the Italian State of the independence and sovereignty and especially the exclusive jurisdiction of the Catholic Church. Even though the Constitution of 1948 was inspired by the principle of secularism, taking into consideration the fact that Italy is the centre of the independent state of Catholicism, it has recognized an exclusive jurisdiction to the Catholic Church on determined issues as specified by the Lateran Pacts. Whereas in Italy the relations between the State and the Catholic Church are regulated by the Lateran Pacts, Albania has a specific as the relations between the state and religious communities are regulated on the basis of agreements between their representatives and the Council of Ministers, which must be ratified by the Parliament. The Lateran pacts are important not only for the recognition of the legal status of a state to the Catholic Church but as well as for the concordat which regulates specifically the relation between the Italian state and the Catholic Church. By giving these pacts a constitutional recognition, Italy has granted to them prevalence in any case over the state laws. On the other hand the Italian Constitutions provides that for the relation between the Republic and the religious denominations the State has exclusive legislative power, but this is to determine that for these matters the Regions do not have any legal authority. The principal of secularism in Italy was not a constitutional tradition as it was in Albania. The secularity of the Albanian state was declared in all the previous constitutional documents while the previous Italian constitution, the *Albertine* Statute of 1848 declared as state religion the Roman Catholicism. This shows the importance that catholic religion has played in Italy in the past. In order to stress the importance of principle of secularism principle the Italian Constitutional Court [13] has interpreted that that is a “supreme” principle that cannot be abolished through a constitutional amendment procedure.

The present Greek Constitution, which was approved in 1975, differentiates from the other constitution in analysis

seeing that it has sanctioned the prevalence of the Orthodox religion and the Eastern Orthodox Church of Christ. The explicit reaffirmation of the prevailing position of the Orthodox religion (Article 3) is explained due to the predominance of the religious belonging in the Greek population and based also on the fact of the historical tradition of protecting the Greek society from the influence of the other religions. Besides Orthodoxy has had a special role in all the Greek Constitutions as the Greek society is a compact society of 98% of Orthodox's. the holy tradition has two sides; first, the Church has a right vis-à-vis the State to observe unhindered the canons and the holy tradition and second, canons and traditions are guaranteed vis-à-vis the Church of Greece, that is, the Church of Greece may not deviate from such observance; otherwise the unity in doctrine with the Ecumenical Patriarchate and the other Orthodox Churches would be lost [14]. The close relation between the state and the religion is expressed as well in preamble of the Greek constitution which is composed of only a sentence by confirming so the religious tradition spirit: "*In the name of the Holy and Consubstantial and Indivisible Trinity*". This sentence is also part of the religious oath that the President of the Republic and the members of the parliament have to swear on. This religious oath is an obligation for the President of Republic as the presidential tenure commences upon the swearing of the President and he has not any other alternative. In this context it can be concluded that the President has to be only from the Christian belief and not from any other beliefs. Consequently it can be interpreted that based on the provisions of the Greek Constitution the religious belief is an important criteria also for the election of the President of the Republic even it is not expressed explicitly, it is resulted by the analysis of the article 30/3 and article 33/2. While for the Members of the Parliament the religious oath based on *the name of the Holy and Consubstantial and Indivisible Trinity* is not an obligatory oath for the members of a different religion. Hence under the article 59/2 of the Greek Constitution it is provided that for the Members of Parliament who are of a different religion or creed they shall take the same oath according to the form of their own religion or creed. The question raised is what about the Members of the Parliament who are atheist? The Greek Constitution has not provided this case, but the practice has shown that in this case the Members of Parliament who were atheist has not been obliged to take the religion oath, in compliance with freedom of religion.

The Greek Constitution recognizes one religion as the official religion in the state, by granting so a privileged status to Orthodox religion and to which has as well recognized the significance of the text of the Holy Scriptures. The acknowledgement of the Orthodox Church as a prevailing religion was provided by all Greek Constitutions and is due to the fact that Orthodoxy and the clergy have made a unique contribution to the preservation of Greek nationality, language and education during four centuries of Turkish rule as well as a major contribution to the struggle for liberation and independence [14]. Consequently the Greek Constitution grants to the Holy Scriptures a specific status and which shall

be maintained unaltered. Furthermore it goes beyond as recognizes even the value of the language of the holy document seeing that for the official translation thereof into any other linguistic form, it is obliged the sanction of the Autocephalous Church of Greece and the Great Church of Christ in Constantinople or otherwise it is prohibited. The Greek State is not strictly separated from the Church because both interfere at each other but in different levels. The state has more competences toward the Church. The Parliament regulates issues relating to the organization and administration of the Church, within the constitutional framework and the representatives of the Church need to take presidential decree for their approval after have been elected by its organs while the Council of State review the legality of the appointment and acts of the ecclesiastical organs when they are used to exercise public authority [15]. The Orthodox Church is depended by the State as it is financed totally by the budget of the state and which does not accept church taxes but on the other hand has already appropriated the vast majority of the Church's property [16]. The involvement of the Church in the State works is on emblematic level as in the Parliament session opening it is needed the blessing or the Christian icons or symbols that are hanged in the public offices. The existence of special bonds between the Orthodox Church of Greece and the State is explained by the fact that this Church helped the nation survive through four hundred years of Ottoman occupation, by maintaining the faith, the language and the culture [17].

III. THE FREEDOM OF RELIGION ACCORDING TO CONSTITUTIONAL PROVISION

The freedom of religion comprises the freedom of religious conscience as an individual freedom to freely choose the religion and express his religious beliefs, and the freedom of cult as a collective freedom to take part in the worship ceremonies and in religious communities. These freedoms are sanctioned in all the democratic constitutions as well as in the constitutions taken in analysis and part of this research. More to the point in the constitutions it is sanctioned that the individual freedoms and rights cannot be deprived or violated in the name of one religion and it is not allowed the discrimination for reasons of religion or religious beliefs. The aim of this section is to briefly analyze the provision of the freedom of the religion in the constitutions of the states that have different religious tradition and find the distinctions and the specifics that each constitution has, based on relation between the state and religion and to what extent this relation interfere this freedom. It is to be taken into consideration that the freedom of religion will be viewed in analysis with the other constitutional freedoms or rights with which the freedom of religion is related like the freedom of expression, the right of education and the right to be organized or the freedom of assembling.

The Albanian Constitution guarantees the freedom of conscience and religion by giving everyone the right to be free on choosing or changing his beliefs/religion as well as to express them individually or collectively, in public or private

life, through cult, education, practices or the performance of rituals. In this frame no one can be compelled or prohibited to take part in a religious community or its practices or to make public his beliefs or his faith. The article 8 of the Italian Constitution defines the principle of equality for all the religious denominations, which have the same rights as the Catholicism, to be self-organized according to their own statutes, but with the limitation that these statutes have to not be in conflict with Italian law. As a country that emerged from Catholic *confessionalism* Italy has adopted the model of relations between states and religions-characterized by religious freedom and equality at an individual level, by the autonomy of religious organizations, and by selective collaboration between states and religions [18]. The relations between the Italian state and the religious denominations, except that of Catholicism are regulated by law, based on agreements with their respective representatives. The same regulation is sanctioned in the Albanian Constitution. Moreover the Albanian Constitution recognizes explicitly the status of the legal persons to the religious communities which have independence in the administration of their properties according to their rules, principles and canons, to the extent that interests of third parties are not infringed. This Albanian constitutional provision permits to religious beliefs to be recognized as external orders, which are developed outside the internal Albanian legislation and at the same time are considered as elements of the social body equipped with juridical personality and organizational and managerial autonomy [19]. The particularity of the Albanian Constitution is that it recognizes the right of minorities to freely express without prohibition or obligation their religious belonging, who have the right to preserve and develop this right as well. While the distinctiveness of the Turkish Constitution is that provides explicitly the right of individuals to not be compelled to reveal the religious belonging, to worship or to participate in religious rites and ceremonies to further guarantee the freedom of religion. Albanian and Greek Constitution can be distinguished as they provide the right of conscientious objectors those who have a conscientious objection to serve at the armed service to perform an alternative service. The difference between them is that while the Albanian Constitution grants explicitly this right, the Greek Constitution after the amendments of the 2001 has, recognizes this right through an interpretative clause of the article that provides the obligations of the Greek citizens to contribute to the defense of the Fatherland.

Analyzing the Greek Constitution the question raised is can it be possible to have real equality between the religion if it is known the privileged status to one religion and from the other side to be expressed the term of known religions? What has been taken into consideration by the drafters of the Greek Constitution when they decided to know the freedom to perform their rites and worship also to the all known religions? The using of this term can be interpreted also as a reason of discrimination, for those that are considered not known religion. In the Greek Constitution, under the article of the freedom of religion, it is stipulated that proselytism is

prohibited. It is a mere of fact that this prohibition by the constitutional provision and the punishment by imprisonment for proselytism established by Greek laws violates the article 9 of the European Convention of Human Rights, which was approved in 1950, before the approval of Greek Constitution in 1975. The prohibition of proselytism is a component that shows the identity of the Greek constitution which can be explained for the reason of protecting the orthodoxy religion, even though formally the equality between the religions is sanctioned. Greek constitution has taken into consideration by assuring the same supervision and obligation to the ministers of all known religions with those of the prevailing religion. This is an attempt to show that equality before the law is the same for all the individuals, even for the ministers who have not only rights and privileges but as well obligations which should not be affected by the religious reasons. Taking into consideration the equality before the law Greek Constitution provides that the religious convictions cannot be a reason for exemption of discharging from the obligation that the persons has to the state. Besides, the Italian Constitution forbids the imposing of special limitation or tax burden on the ground of religious nature or religious aims. In this aspect Italian Constitution is attentive of protecting from surcharging for religious reasons while on the other side Greek Constitution is attentive of not permitting discharging from state obligations on the ground of religious conviction.

It is worth to be stressed that the Turkish Constitution has a constitutional provision (article 24 paragraph 5) which prohibits the exploitation of religion or religious feelings and as a consequence restricts not only the civil freedoms of religious individuals compared to other individuals, but as well the political rights of these individuals. Another controversial provision of the Turkish Constitution is the stipulation of the Presidency of Religious Affairs (article 136), which is a public agency included under the general administration with the duty to serve basically to Sunni Muslims in line with a certain understanding of Islam in contradict with the principle of impartiality of state towards all religions and its equidistant stance towards all religions, sects, faith and faithlessness [20].

The Greek and Turkish Constitution have provided the studying of religious lessons at school as obligatory. This is another component that shows the prevailing position of the proper religion in Turkey and Greece based on their tradition of a dominant religion. According to Greek Constitution education shall aim inter alia the development of religious consciousness. In a wide interpretation of this clause it can be concluded that it is allowed not only the education of orthodox religion in schools but of every religion. But in reality in the Greek schools it is obligatory the learning of Orthodoxy lessons, but the students who are of a different religion have the right to inform the School Director and they are not obliged to attend the orthodoxy lessons. Whilst the Turkish Constitution has established more firmly that the religious lessons shall be compulsory in the curricula of primary and secondary schools and will be under supervision and control of the state. This is interpreted that the learning of religious

lessons is obligatory for all the students without exception. But for the persons belonging to other religion the Turkish Constitution has provided a permitting clause as upon their own desire or for the minors upon to the request of their legal representatives can be subject of other religious education, as a lesson of an additional religion. Even it is permitted to the non-Muslims children to exempt the Muslim lessons, according the USIRF Annual Report of 2014 there has been reported teacher discrimination against children who opt out [21]. Albania can be noted from the three others as a country that in public schools is not included in curricula the religious lessons.

It is to be highlighted that constitutional sanctioning of obligatory religious lessons creates many problems in reality by discriminating the children/students that do not belong to prevailing religion and as a result it is not appropriate for democratic modern constitution. In this context Albanian and Italian Constitution are distinguished for being more democratic and modern with respect to freedom of religion. Nevertheless in reality only in Albania the education of religion is not included in the curricula of the primary or secondary public schools. In Italy based on the provisions of the Concordat Accord the learning of Catholic religion is important for the public schools and this was further regulated by many [22] Decrees of the President of the Republic. In Italy are applied only personalized plans of catholic lessons in schools, as specified by Decrees of the President of the Republic of 2004 [23] and there is no obligation on attending these courses. In one sense the teaching of Catholic religion is compulsory as the state has the obligation to provide it and these teachers are paid by the state, although the students can decide whether or not to attend the Catholic religious classes; the other religion can be taught only upon request of the students, and those teachers are not paid by the state [24].

IV. THE RESPECT OF RELIGIOUS FREEDOM IN REALITY

All the states in analysis has provided the protection of religious freedom in their constitution but the reality shows the problems and concerns that has each state regarding the breaches of this fundamental human rights. Analyzing the International Religious Freedom Reports conducted by the US Department of State [25] it results that the state that has more problematic on the religious freedom guarantee are Turkey and Greece. Even in Italy are reported sporadic cases of abuses or discrimination due to religious issues, and the most concerning issue has been the presence of the Catholic symbols in public institutions in particular in public schools, for which has had many discussions and different opinions. Faced with the request to remove the crucifix, the Italian courts have stated that the crucifix is not only a religious symbol but also the symbol of the Italian identity; it manifest the historical and cultural tradition of Italy and is a sign of a value system based on freedom, equality, human dignity, and religious tolerance [26]. On other side ECHR on the case *Lautsi v. Italy* concerning the presence of the crucifix in the public schools has taken different decisions. On 2009 the ECHR [27] has held that there has been a violation of the

Article 2 of the Protocol No.1 taken together with Article 9 of the Convention (the freedom of religion and the right of education) as the compulsory display of the crucifix as a symbol of particular faith restricts the right of freedom of religion of the children studying in these schools. While on 2011 the Grand Chamber of the EHCR [28] decided that there has been no violation of Article 2 of the Protocol No.1 by reasoning that the decision to keep the crucifixes hanged on the wall of the public schools is in conformity with the right religious and philosophical conviction of the respondent state.

Albania is the country that has had no reports on cases of abuse or discrimination based on religious issues, and the only problems are relating to the return/restitution of the religious groups owned properties as problems inherited by the communist regime which expropriated all the properties owned by the religious groups. Furthermore it is interesting that worship places of different religions can be so close to each other.

The problems related to the respect of freedom of religion vary from the compulsory religious instruction, religious dress in public institutions and religious minority properties in Turkey. In sum the state has built a social artifact of a homogenous nation of Muslims not only suppressing religious expression but also ignoring and repressing expressions of religious and ethnic diversity [29]. The most discussed and debated issue has been that of the allowance or not of the headscarf wearing in public institutions. Based on the pressure of the supporters the Turkish government has lifted twice the headscarf ban for women in schools and in public institutions. The first decision of the Turkish Government was taken in September 2013, but however, the ban still existed in the areas that require a uniform, such as military and police offices, and in some courts [30]. After one year on September 2014, the Turkish Government removed the legal provisions that banned the headscarf and allowed the girls from the fifth grade and up to wear headscarf in the public schools [31].

The problems in Greece are not principally due to the government decisions or restrictions but are as a result of the societal racism. The problems resulting from the government are the restriction on issuance of the building permits for religious building of other religions. It is significant that despite the multicultural nature of the modern Greek society there is still no mosque either in Athens or Thessaloniki, but only a mosque in the prefecture of Attica (since 2007) and Athens is the only European capital without an official Muslim place of worship [32]. Another problem resulting from the state bodies is regarding the respect of the conscientious objectors. Albeit that the constitution permits the conscientious objectors to not perform the obligatory military service in practice are registered cases of imprisonment of the conscientious objectors who did not complete the obligatory military service or the mandatory service for them is no more longer being so discriminating [33].

V. CONCLUSIONS

The analysis of the four constitutional provisions regarding the relationship between the State and religion adduce that the principle of secularism is in general enshrined in all of them but each constitution has its specifics based on the religious tradition. In view of this analysis, it results that only the Albanian and Turkish Constitutions have explicitly provided the principle of secularism. But in Turkey the restrictions of religious freedom are generally imposed by the laws or the policies. Mainly the problems on the protection of religious freedom are due to inaction or imposition of restriction by the Turkish government for the other non-Muslim religions. Italy enshrined the principal of secularism but the relation between the State and the Catholic Church are regulated by Lateran Pacts, which enjoys the constitutional recognition status and prevail above the laws. Albania is discerned from the other countries as it has not only fully protected the freedom of religion in the constitution but as well it has no problems or reports of abuses of freedom of religion in reality attributable to the religious tolerance tradition. Greece is distinguished for referring the Holy Trinity at a constitutional level by giving thus an privileged position to one religion and for the ties that the state maintain with Orthodoxy [34]. Consequently Greek Constitution even though it has provided the freedom of religion to protect the privileged position of the dominant Orthodox religion, it has preserved some restrictions. Societal abuses or discrimination based on religious issues have happened in all the three other countries except in Albania, but the most problematic country is Turkey followed by Greece.

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