

Between Secularism and State Support of Religious Communities: An (In)Equality Dilemma

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Abstract

This paper discusses the concepts of 'freedom of religion' and 'secularism' in the context of the situation in Macedonia. It argues that State policies to support dominant religion(s) are not in coherence with the Constitution, the principle of equality and secularism, as well as the applicable international human rights standards. Having in mind that R. Macedonia is a secular State and that there is solid non-discrimination legislation in place, it is of interest to investigate whether such policy approaches are discriminatory. Such developments may threaten the principle of secularism, human rights and stability in a fragile multi-ethnic and multi-religious country such as R. of Macedonia.

In terms of methodology, this paper primarily focuses on the use of the normative and the empirical method. These methods are especially of use in the part where the existing legal framework in the domestic and international law is analyzed in regard to the various practices challenging the principles of secularism and equality before the law. In addition, this paper also focuses on the various reports in order to discuss and address relevant perceptions to such practices.

This article consists of four parts. Introductory remarks are provided in section I. Section II explores the notions of secularism and equality before the law. Section III explores the various institutional practices such as: religious instruction in

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public schools; building of religious objects with State funding and support; non-registration of religious communities; and practicing religious ceremonies in public institutions. Finally, section IV offers concluding remarks and comments.

Keywords: equality; discrimination; freedom of religion; human rights;

1. Introduction

Many States around the world have adopted the principle of secularism, separating the State from religious organizations. Although, debates about secularism are continuous, one possible definition by Tariq Modood describes secularism to provide such institutional arrangements according to which “political authority does not rest on religious authority and the latter does not dominate political authority” (Copson, 2017, p.90-93). On the other hand, according to cyclopedia Britannica, secularism is defined as any ‘movement in society directed away from other worldliness to life on earth’ (2008).

In today’s world, challenges to secularism are seen globally, although States vary in the degree and modalities of these challenges (Berman et al., 2013). In fact, one study found that most States, actually do not follow their secular constitutional norms (Fox, 2011, p. 397). In this regard, Macedonia may not be an exception either. Certain State practices discussed in this paper represent a challenge to the principle of secularism and equality before the law. It has to be noted from the beginning, however, that in the case of Macedonia as was reported by Special Reporter Jahangi, there is a high level of tolerance and respect by the Government for “religious diversity and freedom of religion or belief” (Report of the Special Rapporteur Asma Jahangi, 2009, p.4-29). The scope of this paper is primarily limited not to the practices that support, but on the contrary, the ones that challenge the principles of secularism and equality before the law.

The principle of secularism and the principle of equality before the law are enshrined in the Constitution of Macedonia. The Constitution provides guarantees for freedom of religion and expression of one’s faith publicly and freely as well as the separation of religion from the state and equality before the law of religious communities (Constitution of Macedonia, Article 19).

However, in practice, the principle of secularism is challenged continuously in Macedonia by various State practices that create a strong perception that the government is supporting a particular religion, while discriminating others. Moreover, such State practices may have a negative impact in multi-ethnic and multi-religious countries such as R. Macedonia and at the same time challenge existing municipal and international human rights regarding equality and freedom of religion.¹

Out of the 2.1 million inhabitants of Macedonia, around 65% of the population is Orthodox Christian, 33 % Muslim and other religious groups constitute less than 2% (US Department Report, 2016, p.1-2). Based on the census held in 2002, Macedonia has the following ethnic structure: Macedonians are represented with 64.18%, the second largest community are the Albanians with 25.17%, followed by Turks with 3.85%, and other non-majority communities such as Roma with 2.66%, Serbs with 1.78%, Vlachs 0.48% and others with 1.04%. In fact, in countries with ethnic tensions such as R. of Macedonia, religion is too often left out of discussions of democratic governance of ethnic diversity (Berman et. al., 2013). Religion has progressively been politicized not only in Macedonia, but also throughout the Western Balkans with the brake-up of Yugoslavia in the early 1990's (Repo, 2016, p.4).

2. The Principles of Secularism and Equality

The principles of secularism and equality are well established in the Constitution of R. of Macedonia and the relevant international human rights instruments. First, according to Amendment VII of the Constitution, Macedonia is a secular State. In particular, Amendment VII of the Constitution (2001) provides that:

¹ Macedonia, as an independent country emerging in 1991 from the brake-up of Yugoslavia is not a stranger to ethnic tensions. The ethnic conflict of 2001 between the security forces of R. of Macedonia and the National Liberation Army (NLA) ended in August of 2001 by adopting the OFA-Ohrid Framework Agreement. The OFA was signed by the leaders of the four major political parties (two Macedonian and two Albanian) and the Special Representative of the EU and of the United States. This agreement is seen as a peace agreement, ending the ethnic conflict in Macedonia. However, the OFA is also important for maintaining a sustainable peace in the country.

“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.”

As a result, there is no official faith or religion. As a principle, secularism insists on the separation of State and public affairs from religious rules and organizations (Zuckerman. et al., 2017, p. 1-15; Maclure et. al., 2011). Secularism requires for political decisions not to be influenced by religious rules and religious organizations and not to be reflected in the relevant legislation. For example, the conclusion of marriage in R. of Macedonia was traditionally based on a religious ceremony. However, the legislation now provides only for a civil marriage as a result of the separation of the state from religion (Family Law, 2004, Article 17 and further). This does not mean that a religious marriage cannot be concluded in private life. In addition, the application of legal rules should not be based on religious rules and that the State in its exercise of power should not interfere in any form or manner in the work of religious organizations. Moreover, the application of the principle of secularism is not only a normative obligation; it is also a practical necessity in a multi-religious and multi-ethnic country such as R. of Macedonia.

Second, the principle of secularism is closely related to the principle of equality and non-discrimination. According to Article 9 of the Constitution of Macedonia, all citizens of Macedonia are equal before the Constitution and the law of the country regardless of *“sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status”*. Moreover, all citizens equally enjoy the freedom of religion and have the right, individually or together with others, to manifest their religious beliefs. This is guaranteed by the Constitution in Article 19, which provides that:

“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 and other religious communities and groups are separate from the State and equal before the law.”

The Constitution of Macedonia also provides for the equality of religious organizations (Amendment VII of the Constitution, 2001). The freedom of religion also entails the rights of citizens to freely establish religious

organizations and build religious objects or places of worship according to the 2007 Law on the Legal Status of a Church, Religious Community and a Religious Group. In order to ensure equal treatment of different religious groups in the same manner (equally), the principle of secularism requires the legal framework not to be based on religious rules. By doing so, it provides for equal treatment of the various religious communities and does not result in discriminatory treatment, especially of individuals belonging to minority religious groups in a country. For example, the rule that everyone should celebrate a holiday of a given faith, results in discrimination of members of groups that do not belong to that faith. For this reason, in order to ensure equality of members of different religions in the country, secularism is of a major relevance. This means that the State should not interfere in religious organizations and adopt religious rules in State matters. This is the general rule although the State has the power to limit any manifestation of religion if it violates a greater legal value. For example, a State cannot allow practices where parents plan to sacrifice their child in the name of a religion ritual or practice. The goal will be the protection of the right to life. Such practice will always be easy to limit, and parents can be penalized according to the law. Such limitations cannot be considered a violation of the freedom of religion.

In fact, in this regard, Macedonia has achieved a reasonable balance in the determination of State religious holidays by recognizing religious holidays of non-majority religious groups in the State (Law on State Holidays, 2007). In other words, the State is neutral with regard to all religious organizations and different religious beliefs in the country and provides for equal treatment. Religion and religious organization of individuals remain in their private sphere. By staying neutral, the State guarantees full equality, equality of religions, religious organizations and individuals belonging to different religions.

However, as discussed in the following section, certain State practices challenge the principle of secularism and of equality.

3. State practices in (non) compliance with the principles of secularism and equality

Several international instruments guarantee the principle of non-discrimination and the principle of equality before the law as well as the freedom of religion as a fundamental freedom. These instruments, among

others, include the 1948 Universal Declaration of Human Rights (Articles, 1, 2, 7 and 18); the 1966 International Covenant on Civil and Political Rights (ICCPR, 1966, Article 18, 26); the 1950 European Convention on Human Rights (ECHR, 1950, Article 9, 14); or the General Assembly Resolution on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (GA Res.36/55, 1981, Articles 1, 2, 3). In particular, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief specifically address the principle of non-discrimination. It defines discrimination and intolerance based on religion or belief to mean any type of distinction, restriction or exclusion with the purpose to nullify or impair the:

'recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis (GA Res.36/55, 1981, Articles 2).'

It specifically considers such discrimination as a violation of human rights, human dignity and a repudiation of the principles of the United Nations Charter and an obstacle to friendly and peaceful relations between nations (UN Charter, 1945, Article 1 (2) et. al.; GA Res.36/55, 1981, Articles 3). Moreover, international agreements that are ratified according to the required constitutional arrangements are considered to be an integral part of the legal order of Macedonia and cannot be amended by law (Constitution of Macedonia, Article 118). Judges in Macedonia judge based on the specific hierarchy of sources. Pursuant to Article 98 of the Constitution, judges base their decisions on the Constitution as the highest legal source in the country; followed by laws, and international agreements that Macedonia has ratified in accordance with the Constitution (Article 98). Since Macedonia is a party to these international instruments, the principle of *'pacta sunt servanda'* creates an obligation to states to fulfil their international obligations in good faith (VCLT, 1969, Article 26). Therefore, the Government has the obligation to ensure equality and non-discrimination as well as autonomy to religious communities as provided by the Constitution and Macedonia's obligations in international human rights law (Follow-up Special Rapporteur, 2009, para. 53).

Freedom of religion in itself comprises two main elements. First, it includes the internal belief (*forum internum*), and a person's right to have or not to have a certain belief. This element does not endure any limitation, similar as the freedom of thought. The second element that can be seen is

the manifestation of religion. This manifestation is expressed in different forms such as: the conduct of religious rites, wearing certain clothes defined by the rules of a religion, following certain diets, building religious objects as places of worship, religious preaching and others (HRC General Comment No.22, 1993, p.5-6).

With regard to the manifestation of religion by individuals, different limitations can be prescribed. These limitations, generally, have to be prescribed by law (and should not be arbitrary), and should be prescribed with the aim to protect other important values, such as public health, public morals, public order and safety and rights and freedoms of others. In other words, since there are more religions and religious beliefs, and their manifestation can be in various forms, legislation foresees restrictions on manifestations of religious beliefs that can affect the values which the State previously announced as important and for which the State is not ready to compromise as they may violate other societal values (HRC General Comment No.22, 1993, p.8).

Having in mind the different forms of manifestation of this freedom, a State has to make an objective restriction of all those forms that contradict with certain values (such as public health or public morals, order, safety). A state cannot restrict only manifestations of one religion, but it may restrict manifestations that contradict defined values, of course under the test of proportionality and necessity. Even more, a state cannot give a priority to one religion, in relation with the others.

In Macedonia, unfortunately we notice some forms of privileges provided to dominant religion(s), thus placing other religions in a discriminatory position. The latest report by the US State Department on Macedonia (2016) states the claims by the smaller religious organizations like the Jehovah's Witnesses, or the Evangelical Church, and the Bektashi that they were not treated as equals by the Government compared to the treatment provided to the five Constitutionally recognized religious organizations (US Department Report, 2016, p.5). In addition, the Helsinki Committee has reported that the Protestant Evangelical Church as well as the Bektashi community have indicated government interference in religious matters and that the government politicized religion in the country (US Department Report, 2015, p.6).

Without claiming to provide a conclusive list of examples, such practices, among others include: introduction of religious instruction in public schools; building of religious objects with State funding and

support; non-registration of smaller religious communities; and religious ceremonies and practices in public institutions.

These examples require further analyses as they present violations of the principle of secularism and equality before the law.

3.1. Introduction of religious instruction in public schools

The first challenge to secularism discussed here is the introduction of legislation providing religious instruction (teaching) in primary schools (Report of the Special Rapporteur Asma Jahangi, 2009, p.4-29). Such legislation challenges the principle of separation of State from religious organizations (secularism) as an interference of the State in religious matters (Report of the Special Rapporteur Asma Jahangi, 2009, p.4-29).

These religious instructions in public schools offer no secular, humanist and atheist approach and are taught mostly by theologians or people that are believers in a given religion, and sometimes include religious-based events and activities (Freedom of Thought Report, 2016). According to the follow up table to the visit of the Special Rapporteur, such education needs to provide 'non-discriminatory exemptions or alternatives accommodating the wishes of parents and legal guardians' (Follow-up table to the Special Rapporteur, 2009, p. 55). Public education that includes education of a particular religion or belief needs to be consistent with Article 18 (4) of the ICCPR which provides that: 'the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their convictions.' The Human Rights Committee notes that Article 18 (4) of the ICCPR permits instruction in public schools of subjects as general history of religions and ethics, condition if they are given in an objective and neutral way (HRC General Comment No.22, 1993, p.6).

Fortunately, the Constitutional Court of Macedonia derogated the disputed article 26 of the Law on Primary Education that provided for religious instruction (teaching) in public primary schools (Decision D. 202-2008-0-1, 2009). According to the Constitutional Court of Macedonia, such a provision is a violation of Article 19 and Amendment VII of the Constitution. The Constitutional Court of Macedonia recognizes the possibility for religious communities to establish religious schools in all levels of education in accordance with Article 22 of the Law on Legal Status of the Church, religious community and religious groups (2007).

Conversely, the right of individuals wanting to attend religious teaching is not violated.

However, according to the Constitutional Court, the possibility of introducing religion in public schools is contrary to the principle of separation of State and religious communities (secularism); the introduction presents an interference of the State in religious matters, and the imposition of certain principles of religion or religion in general to pupils.

In this case, clearly the Constitutional Court acted as the guardian of the constitution and of the principles of secularism and equality before the law.

3.2. Building of religious objects with State funding and support

The building of religious objects as places of worship is recognized as a part of the 'freedom of religion'. International instruments provide that individuals, acting together with others, as a form of manifestation of religion, can build objects where they will perform religious ceremonies or concrete religious rituals. This form of manifestation of religion at times may be restricted or limited. For example, building of religious objects may be conditioned to obtaining administrative permits for construction and fulfilling of other criteria (Kadriu, 2010). In other words, building places of worship is considered as major part of freedom of religion and a form of its manifestation (HRC General Comment No.22, 1993, p.4).

However, this is not to be understood that the State should fund and support the construction of religious objects, especially in a selective manner. This situation would be less challenging if done in a legal system with an official State religion. But in cases when the State is determined to be a secular State, such as the case of R. of Macedonia, religious objects selectively supported by the State, can be easily seen to favor one religion and discriminate members of other religions, or those who have chosen not to belong to any religion.

In Macedonia this may take the form of a decision to build with public funds a religious object of worship belonging to a particular (primarily dominant) religion(s). Unfortunately, there have been strong tendencies to use ethnic and religious premises and even symbols as ways to mark territory, as seen in the *Skopje 2014* project by which certain statues, monuments and buildings built by public funds directly refer to the past of certain group of people but not so much others, although built in public space shared by all (Repo, 2016, p. 24). A significant number of statues built

are honoring persons with “specifically religious historic significance” (Freedom of Thought Report, 2016).

At times, the State authorities may provide support in other forms, such as donating public space for the construction of the particular religious object. For example, the Government “has made discounted land available to the church for building religious buildings” (Freedom of Thought Report, 2016). A *prima facie* example of such practices is the decision of the Government of R. of Macedonia to donate the space in the Centre of Skopje, the capital of Macedonia to the Macedonian Orthodox Church for the construction of the orthodox church of "St. Constantine and Elena" (Government of Macedonia, 2012).

The fact that the construction is assisted by State budget by granting the land in a selective form to one religious organization represents violation of the principle of secularism, discrimination and equal treatment of other religious organizations and individuals.

These and similar practices have prompted reactions of different religious communities not receiving such support. For example, the Islamic Community has stated that the government granted unique privileges to the Orthodox Church including public properties awarded free of charge; State funding to construct Orthodox churches, as well as exclusive invitations to attend government events by representatives of the Orthodox Church (US Department Report, 2016, p.6). In fact, even if the government provides funds also to other religious communities to construct objects of worship (obviously with great difficulty due to their large number), there are individuals who do not belong to any religion.

3.3. Non-registration of smaller religious communities

Another form of privileging the dominant religion(s) is the practice to refuse the registration of smaller religious communities. The European Court of Human Rights in the case of the Metropolitan Church of Bessarabia and others v. Moldova has held that freedom of religion is a right of believer that includes the right to ‘manifest one’s religion in community with others’ which ‘encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention’ (2001, p.118). Registration should be easy and quick and not to depend on extensive form requirements (Follow-up table to the Special Rapporteur, 2009, p.52). The Special Rapporteur in its Report reminds the obligation of

Macedonia to remain neutral and non-discriminatory in the registration procedure (Report of the Special Rapporteur Asma Jahangi, 2009, p.58).

The registration of religious communities in Macedonia is regulated with the 2007 Law on Legal Status of the Church, religious community and religious group and falls under the jurisdiction of the judiciary or the Basic Court Skopje II. However, in numerous times the court has refused applications for registration of smaller religious communities. The US Department of State Report on Macedonia for 2015 (as part of International Religious Freedom report) expressly notes that “the government continued to deny recognition to minority religious groups and maintain its preferential treatment of the MOC” or the Macedonian Orthodox Church (US Department Report, 2015, p.4). According to the same Report, the Basic court Skopje II received four applications for religious registration and has denied all of them on different grounds (US Department Report, 2015, p.4).

By doing so, the authorities do not allow pluralism in this sphere and actually privilege the dominant, already registered religious communities. One such example is the case of the Bektashi community which after being denied registration in front of the Basic Court took the matter to the Constitutional Court of Macedonia.

The Bektashi community claimed the decision to reject their registration by the Basic Court II Decision their freedom of religion is violated (Reg. RG-21/10, 2010). According to Article 110 of the Constitution, the Constitutional Court of Macedonia has the jurisdiction to protect the rights and the freedoms of citizens and of individuals related to their ‘freedom of conviction, conscience, thought and public expression of thought’ and cases of protection from discrimination based on religion or other grounds (such as national, social or political affiliation).

However, the Constitutional Court in its decision did not find any violation (24/2012-0-0, of 2012). This is an unfortunate decision due to several reasons. First, the Constitutional Court in its Decision states that individuals do not have to establish an organization if they can manifest their religion freely without such an organization.

Second, the Constitutional Court is of the view that in order for new religious organizations to be registered, they have to have a different name, sources and basic characteristics, as they can create confusion, fragmentism, parallelism and unnecessary competition with the existing religious communities. With this approach, the Constitutional court as the highest

court in the country protects the dominant and registered religious organizations.

In addition, contrary to the European Convention standards on human rights, the Court does not allow free and equal manifestation of the freedom of religion. In fact, the European Court on Human Rights has held that freedom of religion “excludes assessment by the state of the legitimacy of religious beliefs or the ways in which those beliefs are expressed” and that states cannot favor “a particular leader or specific organs of a divided community” and cannot “compel the community or a part of it to place itself, against its will, under a single leadership” (*Metropolitan Church of Bessarabia and others v. Moldova*, 2001, p.117).

Moreover, the European Commission against racism and intolerance in its report also recommends the authorities in Macedonia to “settle without delay the issue of registration of minority religious groups and communities” (*European Commission against Racism and Intolerance*, 2010, p.101).

3.4. Practicing religious ceremonies in public institutions

This is also a form of privileging dominant religion(s) since public institutions belong to everyone, and cannot be a place of certain ceremonies of particular religion(s). According to the 2016 Freedom of Thought Report, the Government has been involved in “promoting religion and/or religious beliefs and practices” (*Freedom of Thought Report*, 2016). For example, the beginning of the academic year in the largest public University, "St. Cyril and Methodius" in September 2012 began with orthodox religious rituals (Trpchevska, 2012). In 2013 again, the same public University held the first academic class in the church “St. Jovan Krstitel” (*Radio MOF*, 2013). Other examples include inauguration of new public objects (schools, hospitals, institutions) followed by religious rituals (Zarevska, 2011).

In such practices authorities allow interference of one religion and one religious organization in a sphere that belongs to all citizens and thus is controversial from a legal perspective notwithstanding the principles of equality and secularism.

4. Conclusion

From all the above, it can be concluded that the different forms of support that authorities give to religious organizations in Macedonia are not in coherence with the established principles of secularism and equality. Both these constitutional principles are violated and therefore State authorities should reconsider such practices. Such a conclusion is also confirmed by numerous international reports of various institutions in different time intervals indicated in this paper. There is room for positive social change when methods for exclusion and subordination can be revealed and fought (Merdjanova, 2016, p.33).

The goal of the principle of secularism among others is to achieve full equality between members of different religious beliefs. This will be achieved if State activities do not favor any religion. The State should not in any way, through its own rules and activities, support or favor any religion.

The European Court of Human Rights has a well-established case law requiring states parties to the Convention, in the relations with various religions, to be neutral and impartial (Metropolitan Church of Bessarabia and others v. Moldova, 2001, p.116). Every attempt and effort of favoring one or more religions will result with discriminatory effects toward smaller religious communities or individuals that do not belong to any religion such as atheist, agnostics, skeptics and the unconcerned.

This approach is also in accordance with basic standards adopted by international human rights instruments on freedom of religion.

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