

CHURCH AND STATE RELATIONS IN PRESENT-DAY SERBIA

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PART IV

SERBIA WITHIN THE EUROPEAN CONTEXT

Serbia's Orientation: East or West?

Ever since the fall of the Milošević regime in October 2000 Serbia's governments have been clear in their goal: reintegration into international and European structures and striving for eventual membership in the European Union for the State Union of Serbia and Montenegro. The country received a positive feasibility study from the European Union in April 2005, which meant that further negotiations would be possible regarding the country's intentions of joining.

The victory of nationalist forces in the Serbian elections on 28 December 2003 has given some reasons to doubt these aspirations. The greatest roadblock to faster and fuller European and Euro-Atlantic integration (for example to joining NATO's Partnership for Peace program) is the Serbian government's mixed attitude toward turning war crimes suspects over to the International Criminal Tribunal for the former Yugoslavia in The Hague. Although in 2005 Serbia has handed over many such people, the most-wanted fugitives, former Bosnian Serb general Ratko Mladić and former Bosnian Serb leader Radovan Karadžić, remain at large and there seems to be little political will to arrest them. This makes one question which direction Serbia is really heading. Whether it chooses to look to the East (primarily to Russia and other fellow Orthodox countries) or to the West, that decision will certainly determine what course its laws and policies eventually take, including church-state relations and the protection of human rights.

A Theoretical Framework for Church and State Relations in Europe

What systems of church and state relations exist in Europe that Serbia could follow? The theoretical framework for describing and structuring church and state relations can be approached from many different viewpoints and academic disciplines, depending on whether one takes a legal, societal, institutional approach, looks at history, or at possible ways of financing. After the fall of Communism in Eastern Europe church and state relations were re-shaped in most affected countries, which in turn had an effect on the entire continent. Two things most experts of church and state relations in Europe agree on is, firstly, that there is not one prevailing model of cooperation between these two spheres which characterizes the entire continent. Secondly, as a result of historical developments we cannot talk about a complete separation of church and state in Europe, as the term ‘separation’ is understood in the North American context.

Since much has been written about the theoretical framework of church-state relations, only a few specific theories will be mentioned below which illustrate certain aspects and trends relevant for this article in the complex and diverse present-day European context.

Silvio Ferrari claims that the traditional classification of church-state systems in Western Europe (separation systems, concordatary systems and national Church systems) is outdated and it “over-emphasizes the formal side of these relationships and does not pay enough attention to their content.”¹ Instead, according to Ferrari, it is possible to detect a common pattern in the structure of the constitutional provisions concerning religious freedom and current church-state relations in Western Europe, although this pattern may be applied in different ways. These provisions call for an impartial attitude of the public authorities. The pattern can be described in the following way:

- “At the individual level there is the neutral (impartial) attitude of the State toward the various religious subjects who are free to profess the religion they prefer.”
- “At the collective level there is the outline inside the public sector of a – religious-sub-sector... where the different religious subjects can enjoy treatment compared to non-religious subjects.”
- “At both levels the State’s right to interfere with religious subjects is confined to making the rules of the game and seeing to it that the boundaries of the domain are

¹ Silvio Ferrari, “Church and State in Europe: Common Pattern and Challenges” in H. J. Kiderlen, Heidrun Tempel, Rik Torfs (eds.), *Which Relationships Between Church and the European Union? Thoughts for the Future* (Leuven: Uitgeverij Peeters, 1995), 33.

respected.”²

Zsolt Enyedi, while looking at Europe as a whole, claims that currently “there is no common European model yet, although state support for church institutions, respect for the self-determination of religious communities and the extension of privileges to a growing circle of religious organizations seems to be the norm in most countries.”³

Approaching church and state relations from the viewpoint of financing, Rik Torfs observes that some form of financial support from the state for religious communities exists in every country of the European Union. He distinguishes between three different systems prevalent in the EU member states:

- Direct financial state support (as in Greece),
- State-created framework for financing (such as we find in Germany or Italy, where religious communities benefit from tax money collected by the state or levied by the churches themselves),
- Separation between church and state, but indirect support (for example, in France).⁴

Commenting on a survey of church and state relations in Eastern European post-Communist countries, Silvio Ferrari points out that the emerging model in these nations is not much different from that in the Western part of the continent. This model, he claims, also reflects the essential principles prevalent in Western Europe: “substantial respect of individual religious freedom, guarantee of autonomy and, in particular, the self-administration of the religious denominations, and selective collaboration of the states with the churches.”⁵ This implies that “after the collapse of Communist regimes, the opportunity to construct a new model of relations between church and state in the Central-Eastern part of Europe has been lost.”⁶

John Madeley presents an overview of church and state relations in Europe, building on data from David Barrett’s 1982 research,⁷ which provided a *de jure* classification of formal stances toward religion in the world’s countries. Madeley expands this to the *de facto*

² *Ibid*, 34.

³ Zsolt Enyedi, “Conclusion: Emerging Issues in the Study of Church-State Relations” in John T.S. Madeley and Zsolt Enyedi (eds.), *Church and State in Contemporary Europe: The Chimera of Neutrality* (London: Frank Cass Publishers, 2003), 219.

⁴ Rik Torfs, “Should Churches Be Subsidized? Different models. Some Perspectives”, in *The Role of the Churches in the Renewing Societies. Lectures and Documents. Budapest Symposium, March 3-5, 1997* (St. Alban’s International Religious Liberty Association, 1998), 45-53.

⁵ Silvio Ferrari, “Conclusion: Church and State in Post-Communist Europe” in Silvio Ferrari (ed.), *Law and Religion in Post-Communist Europe* (Leuven: Peeters Uitgeverij, 2003), 421.

⁶ *Ibid*.

⁷ See David B. Barrett, *World Christian Encyclopedia: A Comparative Study of Churches and Religions in the Modern World AD 1900-2000* (Nairobi: Oxford University Press, 1982).

relations and state attitudes towards religion. Within this framework, reflecting the situation in 1980, Yugoslavia was deemed an atheistic state (together with eight other Eastern European countries), “effectively policing only the politicisation of religion.” In Madeley’s revisiting of this scheme describing the situation in 2000 and the shifts that have taken place, one can see that almost none of the former communist countries remained in the same classification as their states’ attitude toward religion had changed. Yugoslavia was an exception from this, since “the embargo on religious groups engaging in political activity continued in 2000 to be policed by the Milosevic regime, albeit with extreme variations.”⁸

Attempting to categorize variations of church-state relations within the Orthodox world, Pedro Ramet describes four distinct patterns:

1. Simple co-optive-nationalist,⁹ in which hierarchy is co-opted and espouses a nationalist line endorsed by the regime, such as in Greece;
2. Non-nationalist independent, where the church is too weak to offer any resistance to the policy of the state;
3. Nationalist defiant (or independent-oppositionist), where a church’s opposition is organically related to its nationalism, such as in the case of Serbia;
4. Simple co-optive anti-nationalist, where an otherwise nationalist church is sapped of its nationalist strength by the slow strangulation of being ‘quarantined’ from the public and is penetrated and co-opted by the regime, as was the case in communist Russia.¹⁰

As we have seen, when examining the current situation in Europe, most scholars tend to agree on a few main points, namely that Europe does have a few distinguishable patterns in church and state relations and that there is no complete separation of church and state as such. The historical standing is also one of the most important factors in determining which religious communities receive preferential treatment by the state.

Legal Sources Governing Church and State Relations and the Status of Religious Communities in the European Union

Since Serbia and Montenegro is striving for eventual membership in the European Union, it should also be examined how the Union regulates church and state relations in its

⁸John T. S. Madeley, “European Liberal Democracy and the Principle of State Religious Neutrality” in Madeley and Enyedi (eds.), *op.cit.*, 12-15.

⁹Co-optation, as defined by Ramet, is “the drawing of the church into a stable cooperative relationship with the state, in which, in exchange for certain benefits..., the church agrees... to be a ‘loyal’ church and to advance regime goals in specific areas,” in other words, becoming a church, which is dependent on the state. Ramet, Pedro (ed.), *Eastern Christianity and Politics in the XX. Century* (Durham: Duke University Press, 1988), 241.

¹⁰Ibid.

member countries.

One of the important documents in this field is the 11th Declaration Annexed to the Treaty of Amsterdam, which describes the status of churches and non-confessional organizations within the European Union¹¹ and establishes the primacy of national legislation regulating this matter.

The Charter of Fundamental Rights of the Union reinforces some of the rights protected by international covenants in the area of religious freedom. These include provisions regarding the freedom of thought, conscience and religion, the freedom of expression and information, the freedom of assembly and of association and the right to education. All European Union member states are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth ECHR), and the rights enshrined by the Charter are almost identical to those found in the ECHR, except for the explicit mention of conscientious objection, which falls under the competence of the member states and is recognized in accordance with national laws.

The Draft Treaty Establishing a Constitution for Europe contains several relevant paragraphs dealing with various aspects of church and state relations. Article 51 deals explicitly with the status of churches and non-confessional organizations within the Union and is a verbatim copy of the 11th Declaration Annexed to the Treaty of Amsterdam. Only Paragraph 3 is new, which pledges that the Union will maintain an ongoing dialogue with these churches and organizations.¹² The Draft Treaty underlines the possibility for representative organizations (which religious communities certainly are) to “make known and publicly exchange their views in all areas of Union action” (Article 46 §1). It furthermore states that “the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society” (Article 46 §2). Exactly at what level and with whom this dialogue will be maintained is not clear and this has given rise to a range of different theories.

¹¹ 11. Declaration on the status of churches and non-confessional organizations:

1. “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.”

2. “The Union equally respects the status of philosophical and non-confessional organizations.”

<http://europa.int.eu/eur-lex/en/treaties/dat/amsterdam.html#0133040028>

¹² Article 51 §3 – Status of Churches and Non-Confessional Organizations

“Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations.”

Religious Pluralism and Tolerance: An Elusive Goal?

Summarizing the present-day situation in Serbia regarding church and state relations and the issues surrounding it in society, we can conclude that it is not in a static position. Serbia is still very much a country in a transitional state in all aspects, and should be examined with that in mind – not only when we assess the present situation but also when thinking about possible solutions. Serbia's special position calls for distinctive measures of implementation.

One of the greatest problems is the large gap that exists between existing legislation and theory on one hand, and their application and implementation on the other. Assessing the situation of church-state relations in the post-Communist countries of Europe, Silvio Ferrari observes that this phenomenon is a common characteristic of all these states. He points out, however, that “this gap appears to be wider in Central-Eastern Europe than in other parts of the old Continent.”¹³ Constitutional changes and legal guarantees are, however, not enough by themselves. The question is how a real transformation of values and behavior will take place in Serbian society.

In this process, social trends need to be taken into account. According to the latest census results, the number of those who declared themselves non-religious in 2002 is four times less than it was in 1991.¹⁴ At the same time, the number of those belonging to religions not mentioned in the census has increased three and a half times.¹⁵ This testifies to the growing popularity of non-traditional religions and new religious movements in the country. Although in many ways Serbia is still experiencing a renaissance of religiousness, the growing parallel trend of secularism is also noticeable in popular culture, especially among the younger generation.

The Implementation of Human Rights Protection

Tamás Földesi argued that the political transformation in Eastern Europe

¹³Ferrari, “Conclusion: Church and State in Post-Communist Europe” in Ferrari (ed.), *op. cit.*, 422.

¹⁴Their number has gone down from 160,000 to 40,000. Branislav Radivojša, “Povratak Tradiciji,” [Return to Tradition] *Politika*, (Belgrade), 31 May 2003.

¹⁵The categories mentioned in the census were: ‘Islamic’, ‘Jewish’, ‘Catholic’, ‘Orthodox’, ‘Protestant’, ‘Oriental religions’, ‘Belongs to a religion not mentioned’, ‘Believer but does not belong to any religion’, ‘Did not declare anything’, ‘Non-believer’, and ‘Unknown’.

“dramatically changed the status of human rights.”¹⁶ They were not only “afforded a central place in the new (or basically transformed) constitutions of the Eastern European nations” with mere words, but also “acquired true legal relevance.”¹⁷ Serbia is at this stage at the moment, when human rights are in the process of gaining new meaning in society. As Földesi himself acknowledges, this transformation is a long and often slow-moving process. In Serbia’s Orthodox majority society we also encounter an additional challenge. As Daniel Payne puts it [referring to Greece], “because Orthodoxy does not have the understanding of the human person as an autonomous individual, the concept of individual human rights is lacking in the ethos of Orthodox political culture.”¹⁸ Although Serbia cannot be described as an exclusively Orthodox political culture, nonetheless, a wider political and societal understanding of individual human rights is just as necessary as Payne suggests it is in Greece.

The efforts of the present government to freeze the status of certain religious communities in time (by wanting to restore to them the same legal privileges they enjoyed in the Kingdom of Yugoslavia)¹⁹ show signs of looking to the past too much, while disregarding the present state of affairs, and not leaving room for change in the future. A possible compromise offered by Rik Torfs is the creation of two levels of religious freedom within the context of church and state relationships. The basic level (Level A) firmly guarantees and protects religious freedom for all, following, for example, the stipulations of Article 9 of the ECHR. At the upper level (Level B), where basic religious freedom is supposed to be guaranteed, “some positive measures taken in favour of only *certain* religious movements or churches is quite conceivable.”²⁰ However, Torfs warns, such preferential treatment should not be at the expense of the freedom of others, and it should be based on objective criteria, including the historical presence and tradition of religious communities in the country. Although this proposal does not allow for a complete equality among religions, it attempts to capture reality and offers a workable compromise. In any case, recognizing the special

¹⁶Tamás Földesi, “The Main Problems of Religious Freedom in Eastern Europe” in John Witte, Johan David Van der Vyver (eds.), *Religious Human Rights in Global Perspective: Legal Perspectives* (The Hague: Nijhoff, 1996), 248.

¹⁷Ibid.

¹⁸Daniel P. Payne, “The Clash of Civilisations: The Church of Greece, the European Union and the Question of Human Rights” *Religion, State and Society* 31 (2003): 590.

¹⁹Minister for Religious Affairs Dr. Milan Radulović, interview in *Pravoslavlje* magazine (Belgrade: Serbian Orthodox Church), 1 May 2004: 10-11.

²⁰Rik Torfs, “European Nationalism. Coexistence in a Multi-ethnic and Multi-religious Society”, *Derecho y Opinión. Revista del Departamento de Disciplinas Histórico-Jurídicas y Económico Sociales* (1997): 438-439.

contribution and religious, cultural and societal importance of the Serbian Orthodox Church is understandable and even desirable, but not at the expense of the rights of others. Milan Vukomanović further argues that Serbia's situation needs to be solved not by copying models of other nations but looking at Serbia's specific issues and what is best for the country.²¹ Sima Avramović echoes this sentiment when he states that "the legislature of every country needs to create its own pathway, keeping in mind the entirety of its historical and societal circumstances, without having to worry about which popular model [of church-state relations prevalent in Europe] their solution will fit into."²²

Future Perspectives: Achieving a Functional Model

When looking at developments in recent years in the area of church-state affairs in Serbia, one cannot escape noticing that several positive steps have been taken. These include attempts at harmonizing national law with international standards; the increased legal guarantee of general human rights protection; and a stronger and wider inter-religious dialogue and cooperation within the country. Negative phenomena include a low level of religious (and also other forms of) tolerance in society; the postponement of finding answers to unresolved legal questions (including the regulation of the legal status of religious communities and the return of property to them, which in turn leaves religious communities partly dependent on the government); the preferential treatment of the Serbian Orthodox Church by the state, often at the expense of the other religious communities; and the general discrepancies between the written letter of the law and its implementation in everyday life.

First and foremost, the dismantling of the legislative roadblock needs to be dealt with. By far the most urgent step required from the government and the national parliament is the bringing of legislation regulating the legal position of religious communities and the return of nationalized or confiscated property to them. This will lead to religious communities functioning more independently, with fewer financial ties to government, and therefore, a greater *de facto* separation of church and state.

In the summer of 2005 public debate was taking place on the Draft Law on the Legal

²¹Milan Vukomanović, Faculty of Philosophy, University of Belgrade and Center for Religious Studies and Belgrade Open School, interview by author in Belgrade, 5 January 2004.

²²Sima Avramović, "Pravni Okviri Odnosa Crkve i Države u Evropi"[Legal Framework for Relations Between Church and State in Europe] in Bigović, Radovan (ed.), *Hrišćanstvo i Evropske Integracije* [Christianity and European Integration] (Belgrade: Hrišćanski Kulturni Centar and Konrad Adenauer Stiftung, 2003), 54.

Position of Religious Communities. This was the fourth version the government has produced since 2001 and the end is still not in sight. At a meeting with representatives of religious communities and non-governmental organizations in June 2005 Minister for Religious Affairs, Milan Radulović, expressed his desire to wait until complete agreement by all religious communities on the text is reached before forwarding it to the government, and then to the parliament for discussion. Once again, no deadline has been made public about when this procedure may end and when a law may finally emerge to fill this legal vacuum. Regarding the return of property to religious communities, a commission has been set up and has been charged to collect data on all the properties religious communities wish to claim back. According to promises by the government, a law will be brought by the end of 2005 to regulate this process separately from property belonging to individuals and profit-making organizations and firms. When the actual return will be completed is still not known.

I propose that the state maintain an ongoing dialogue with representatives of preferably all religious communities about relevant issues. A forum should be facilitated where these parties can meet, freely express themselves and devise possible ways of cooperation within their communities. Religious leaders (representing both the traditional and the minority religious communities) should also continue their dialogue. As regards the media, editors and journalists should be educated about religion and religious communities, preferably by representatives of these communities themselves. This will hopefully lead to fewer untruthful reports about religious communities.

On the whole, my suggestion is that in order for the current situation to change in Serbia, a joint effort by all societal actors is needed on all levels in order to steer the nation toward recognizing, accepting and valuing the existing religious diversity, and eventually toward creating a truly pluralistic democracy. This will undoubtedly be a slow process and we must expect and accept some ambiguity and confusion along the way but we must not forget that when this goal is reached it will be to everyone's benefit.

Serbia is at a crossroads. Is the government willing to create a new framework for church and state relations, and will it implement it? Will it take seriously its commitment to respect human rights, including the freedom of religion? How long will it tolerate religious discrimination and hate speech? Will the country finally acknowledge that religious diversity can be an asset enriching the entire nation? The answers to these questions are enormously important as they affect the whole of Serbian society, including the generations to come.