Church and State in the countries of Former Yugoslavia

A comparative analyze of legal frameworks and sociological data
1. Introduction: Scientific interest for the topic

• Step one: Religion and/or nation

• Starting question: was the Yugoslav civil war (1991-1995) an ethnical or a confessional conflict – for example, commonly speaking the war in Bosnia opposed Serbs, Croats, and Muslims.

• The question is even more complicated: The Serbs are traditionally an orthodox nation, till the Croats are Catholics.
• The fact is that the most important Yugoslav ethnic communities: Serbs, Croats and Bosnians belong to the same linguistic community and that the only aspect of distinction between them is a religion.

• This situation is pretty much the same like that one in the Northern Ireland.

• In this conditions the religion appeared as a main distinctive feature and the starting point for a development of a national self-consciousness.
Step two: History as a destiny

In the earliest period of European history the frontline between Byzantine Empire and the Holy Roman Empire, it means the sphere of influence of the Roman Catholic Church and the Orthodox one, passed across the Balkans and coincides pretty much with the today’s Serbo-Croatian frontline.

The presence of Islam in Bosnia as well as in many other parts of Balkan peninsula is a result of Ottoman rule longer than five hundred years.
• At the end of the First World War, all this nations were politically reunited in a common state – Yugoslavia - ideologically based on a romantic representation of a unique South Slavic nation composed of several tribes separated by religion but speaking the same language.

• This, so called First Yugoslavia, was the state with the three officially equal religious communities – orthodox, catholic and Islam – but in reality, it was a state with the Serbian domination.
• This Serbian domination provoked the separatistic tendencies which culminated during the Second World War - The first bloody conflict among Yugoslav nations and especially Serbs and Croats.

• **Step three : Communist official atheism as a remedy for the nationalism**

• In 1945 The Yugoslav Communist Party took the power and try to inhibit the Yugoslav nationalisms by an oppressive politics towards religion. The communists had been charging three leading religious communities (Ortodoxe, Catholic and Islam) as the main accountable for the war atrocities and the hostility among Yugoslav ethnies.
For nearly 50 years, from 1945 up to the fall of communism in the early 90s, the official atheism wasn’t only the reflex of a ruling Marxist ideology (like in Poland or other Eastern European countries). It was also a specific political strategy against the nationalism.

In other words, the religious practice was seen not only as a sign of a conservative or antirevolutionary behavior, but as a manifestation of the national feelings or political views.
• The fall of communist regime in Yugoslav case, had been followed with the renaissance of religious practice and Church activities who went along with the explosion of nationalist political movements who finally prevailed causing the new Civil war.

• It is the question now, how today these new-born states, issued from the bloody dissolution of Yugoslavia and involved in a process of a democratic transition deal with the problem of the religious freedom – especially of religious minorities. The rapport between the State and religion can be the useful indicator of their progress to the civil society.
2. Serbian case – mainstream of the regional legal politics

• Serbian legislation represents a mainstream not only because of the nature of its solutions, but also:

• Regarding its cause: the leading political tendency of massiv retour to the religion (reclericalisation), strong in all post-war Yugoslav societies.

• Because of its dominant ideological justification – the theory of open secularism that is extracted from a constitutional case law.
• Recognition

• According to the actual Constitution from 2006, Serbia is the only among former Yugoslavia countries which is self defined as a secular state. The concept itself is explained in two lines of Article 11: 1. the church and state are separated, and 2. there can no be the state or compulsory religion.

• This constitutional stipulation however didn’t stop the Assembly to vote, the same year, a Law on Churches and Religious communities, and to introduce a system of gradual, or pyramidal recognition in which some churches and religious communities are more equal than others.
• Art. 10, introduced the notion of Traditional Church or traditional religious community as the religious organizations that have already been recognized by the State, precisely, before 1941 (the year od beginning od World War II in Yugoslavia).

• All the others churches and religious communities have to submit a specific demand asking for the official recognition in a specific administrative process and upon the conditions provided by this law like, for ex. the minimal number of church members defined as at least 0,001 % of state population. (Art. 18)
• Even more, the Article 11 of the Law, speaks about an extraordinary historical and civilization role of Serbian Orthodox Church for the formation and the development of Serbian national identity.

• This legal classification offers a justification for some discriminatory government measures and further legal solutions as it is case with the articles 25 and 55 of the Serbian Tax law which provided the VAT tax exemption only for the traditional Churches and religious communities.
Financing

- Following the common European solutions, Serbian Law (Art. 28) allowed the financial support of the public funds not as a State obligation, but only as a possibility, and specifically for:
  1. The social security for the priest and other clerics
  2. Construction or reconstruction of churches and temples
  3. Indirectly, through tax exemptions
**Confessional Education**

- The Liberty of Education is very large and the Churches and religious communities are free to constitute maternal, elementary, high schools as well as their own universities and even to count on State financial support for those institutions which passed an official verification becoming the part of public school system.

- Confessional education in public schools, According the amendments on Educational Act from 2003 and 2004, is an option followed by civic education as the alternative subject. Important: The neither of these two subjects is not compulsory in a sense that their evaluation marks are not included in the students average mark.
• State enforcement of the decisions of church courts and administration bodies

• The Art. 7 of the Serbian Law on Churches and Religious communities provided the State help in enforcement of this decisions. The Article has been challenged before the Serbian Constitutional Court in 2010 and has been declared constitutional, but in a restrictive meaning of a possibility, not as an obligation of the State.
3. West side story – The Catholic Pole, Croatia vs Slovenia

- Two countries with traditionally dominant catholic population, but with the two quite opposite approaches to State and Church relationship: While Croatia most advanced in a processes of reclericalization in comparison with all others former Yugoslavia countries, Slovenia clearly opted for a Secular state system which, however, faced some challenges during the last decades.
Some basic sociological data testify that this two opposite legislative approaches are in a line with the some demographic changes:

The results of two Census, from 1991 and from 2001, show us that the common devotion of the local population to the religion in general, an especially to Catholicism as a leading and traditional religion, follows completely different evolutions in Croatia and in Slovenia.
<table>
<thead>
<tr>
<th>Slovenia Census 1991</th>
<th>Slovenia Census 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>71.6% Catholics</td>
<td>57.8% Catholics</td>
</tr>
<tr>
<td>4.4% atheists</td>
<td>10.2% atheists</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Croatia Census 1991</th>
<th>Croatia Census 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>76.6% Catholics</td>
<td>87.8% Catholics</td>
</tr>
<tr>
<td>3.9% agnostics, atheists and those without religions</td>
<td>6% agnostics, atheists and those without religion</td>
</tr>
</tbody>
</table>
• Recognition

Croatian constitution guaranties the religious freedoms in a series of articles 14, 39, 40 and 41, without particularly speaking about the Church and State relationship.

The Croatian *Law on a legal position of Religious Communities* from 2002 provides a unique administrative procedure and criteria for registration of religious communities: like, for example, a minimum of 500 believers.
• However, there is a series of five international treaties signed by Croatian government and The Holy See between 1996 and 1998, known by a single name as *Croatian concordat* which provided considerable privileges for the Catholic Church.

To avoid the charges for the discrimination, a new left-center Croatian government included in a Religious Communities Act from 2002, that the “Issues of mutual interest for the Republic of Croatia and one or several religious communities can be settled by a separate Agreement”.
The serious problem appeared in 2004 after the new right center government decided to set up a particular criteria for the religious communities willing to make this kind of agreement with the State, as these two, the most controversial:

- That the Religious communities has been active in Croatia continuously all from 1941

- That belongs historically to the European cultural circle
After they demands for Agreement were rejected, three small protestants religious communities took a discrimination case against the Republic of Croatia to the European Court for Human Rights (ECHR) in Strasbourg.

According to the court, *there has been discrimination against the applicant churches. It concluded* that the difference in treatment between the applicant churches and those religious communities that concluded agreements with the government of Croatia did not have any “objective and reasonable justification.” The Court held that there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention.
• **Financing**

• The Croatian State has the serious financial obligation exclusively towards the Catholic Church upon a Concordat as an International Treaty: It is due to pay an annual amount which corresponds to the sum of two averaged salaries multiply with the number of catholic parishes and increased for 20%.

• The left center government tried to replace this state duty with an introduction of a religious tax as a common European solution.
• In Slovenia, State finances the social security of the priests and covers from 30 to 50% of all costs of reconstruction of the churches but only if they are considered as a part of a common cultural heritage.

• In 2007, new Slovenian Religious Freedom Act, proposed by the right center government provided the provisions relating to the payment of social security for priests in hospitals and prisons.

• In June 2010 the Constitutional Court annulled these provisions.
• Confessional education
• Slovenia:
• There is no any confessional education in public schools. In November 2001 the Constitutional Court refused to declare this as an unconstitutional measure.
• In private schools which belong to public school system Constitutional court allowed the confessional education but only as an extra school activity after the classes.
Croatia:

- Confessional education in public school is an option:
  - But it is a mandatory subject and its evaluation mark is included in the student’s average mark.
  - There is Ethics as alternative subject
  - Nearly 95% of all students in elementary schools, and 75% of them in high schools attempt confessional education.
• State enforcement of the decisions of church courts and administration bodies

• The article 13 of The Treaty on The legal Issues as a part of Croatian concordat states that the canonical marriage has civil effects in Croatian legislation.

• According to this, it provides that the decisions of church courts on the nullity of marriage and decisions of the Church Supreme Authority on the dissolution of martial conjunction are submitted to the competent state court for the implementation.
4. East side story – The Orthodox Pole
Macedonia vs Montenegro

• Unlike the Roman Catholic Church, the Orthodox church is organized on the national level: the establishment of autonomous national church is often considered as a birth date in history of many orthodox nations.

• After the dissolution of Yugoslavia in two new born States with the orthodox majority – Montenegro and Macedonia – two self-declared autonomous orthodox churches continue to claim their recognitions from their mother-Church: Serbian Orthodox Church.
• Therefore, in both States the orthodox Church is divided, as well as the believers: the unrecognized national Church exists alongside with the part of the Church which stayed in unity with the Serbian Orthodoxy.

• Two States, however, don’t face this problem in the same way:
  - Montenegro adopted a strategy of a religious neutral state
  - Macedonian government took a side in favor of a self-proclaimed national Church.
Montenegro adopted, and pursuits for so long, the politics of religious neutral state in order to prevent deeper division into the nation, Therefore:

- There is no any confessional education in Montenegro public schools
- There is no specific Religious Freedom Act or criteria for recognition of religious communities.
- There is no any legal framework for financial State support to the Churches, even as a possibility.
• According to Macedonian Law, The Religious organizations can apply to register themselves as a “church,” a “religious community,” or a “religious group.” These classifications are based on group size, internal organization, and internal hierarchy, and do not bestow different legal rights, benefits, or obligations.

• However, there is a series of conditions for the official recognition and the most important is that the Church-applicant can not take the name of any other, already registered religious organization.
Since The Law proposed by the government, had been already recognized a national Macedonian Orthodox Church upon the name Archbishopric of Ohrid, the second Church, that one which decided to stay loyal to Serbian Church didn’t obtain its official registration since it claims the same historical name.

Now, the second, loyalist Church is still waiting for a judgment from the ECHR regarding its application to be registered as a recognized religious organization.