

FREEDOM OF BELIEF AND THE RELATION BETWEEN CONSTITUTION AND THE ISLAMIC RELIGIOUS COMMUNITY IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract

Being part of the public sphere, religion and faith inevitably have meeting points with the state and its legal order, where it should be noted that the history of a large number of legal institutions is permeated by the influence of religion since the issues of sovereignty, in the contemporary issues of human rights, discrimination and coexistence and preservation of diversity in international integrations, or multicultural societies, religion and the legal order are intertwined and mutually determined and this is so at different levels and in different aspects - both in terms of achieving the individual dimension of religious freedom, and in terms of the legal status of religious communities and other religious associations as an expression of the collective dimension of religious freedom, from the general pattern of relations to the details of that relation in "the various points of relationship" between religion and public order, such as public holidays, the autonomous legal order of the religious traditions, its application and protection, the education system, public broadcasting, the use and protection of religious symbols, worship in public places, the construction of cult objects, the oaths of public servants, the promotion and protection of religious heritage where many of these issues regulate or the autonomous legal order of religious communities, or the law of state religion, or the law of religious communities understood as a legal branch of the state legal order that includes norms that regulate relations between the state and religious communities.

In this statement freedom of belief and the mutual relationship between the constitutional legal framework and the Islamic Religious Community in the Republic of North Macedonia will be analyzed.

Keywords: Freedom, Faith, Constitution, Islamic Religious Community, Law.

Entry

It is not easy nowadays to speak objectively, constructively and meaningfully about Islam and Muslims, because it is the historical background in which that speech is inevitably supported by interwoven with different, complex and inseparable factors. On the one hand, for decades the complicated international political situation in the Middle East has raised not only ethical and civilizational issues, but also the almost daily media stigmatization of Islam and Muslims makes the issue even more complex. On the other hand, the multi-layered problems faced by contemporary Western Europeans as a multicultural society impose new thinking in these same societies about their cultural identity and values both in relation to themselves and in relation to the growing number of Muslims. And other beliefs that live in them, as well as their identity and cultural values. It is indisputable that the Islamic religion and civilization in the age of globalization constitute an integral part of world history and culture and therefore require that they be thought about in an integrative and constructive way, under the guise of a dialogical challenge and in the form of coexistence and the essay to be discussed through the prism of a permanent covert threat or rivalry.

Precisely in this aspect, the legal norms are important through which it is possible to create the real conditions for the rule of freedoms and universal human rights. As a result, the provision of religious freedom and respect

for conscience and belief are undoubtedly found in the constitutional order of liberal democratic societies and in international and regional human rights instruments. There is no doubt that the establishment of these criteria was a consequence of the concerns that existed in the world in this context.

Freedom of thought, conscience and religion is a fundamental human right which is provided for in the most important international human rights instruments such as: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights as well as the Convention European Commission on Human Rights. In addition, all states guarantee this right in their constitutions, which is also supplemented by lower legal acts. (Norman, 2011, p. 3)

Article 18 of the Universal Declaration of Human Rights of 1948 states that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief, and freedom, either individually or in association with others, and, whether in public or private, to manifest his or her religion or belief in teaching, practice, worship and rites." (Universal Declaration of Human Rights, Article 18)

In such human rights instruments, freedom of thought, conscience and religion is inevitably supported by the prohibition of discrimination on religious grounds, for the obvious reason that such would certainly have an impact on the effective exercise of the right. However, there is another fundamental principle: "discrimination between human beings on the basis of religion or religious belief constitutes a violation of human dignity and a denial of the principles of the United Nations Charter. (United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Article 3, 1981)

The 1990 Copenhagen Document of the Conference on the Human Dimension of the CSCE (Commission on Security and Co-operation in Europe) further "clearly and strongly condemns totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone, as well as persecution in based on religious or ideological motives". (Copenhagen Paper of the CSCE Human Dimension Conference)

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right means the freedom to change one's religion or beliefs, as well as the freedom to manifest one's religion or beliefs individually or collectively, publicly or privately through worship, education, practices and performance of rites.
2. The freedom to manifest one's religion or one's beliefs cannot be subject to other restrictions, except those provided by law and which constitute necessary measures in a democratic society, for public security, for the protection of order, of public health or morals, or for the protection of the rights and freedoms of others. (European Convention on Human Rights, Article 9)

Whereas in Article 2 of Protocol No. 1 of the European Convention on Human Rights in the context of the right to education it is stated:

"No one can be denied the right to education. The state, in exercising the functions it undertakes in the field of education and training, respects the right of parents to provide this education and training in accordance with their religious and philosophical beliefs". (European Convention on Human Rights, Article 9)

Freedom of thought, conscience and religion is a vital human right. The proper assessment of these fundamental principles and ideals is crucial: in particular, freedom of thought, conscience and religion should be considered as an aid to the protection and approach of democratic discussions and the notion of pluralism. Both sides of it – individual and collective – are essential. This freedom is, "in its religious dimension, one of the most vital elements that create the identity of believers and their concept of life, but it also constitutes a precious value for atheists, agnostics, skeptics and the disinterested. Also, "the autonomous existence of religious communities is necessary for pluralism in a democratic society. ... The danger lies in the preservation of pluralism and the proper functioning of democracy, where, one of the main characteristics, is the possibility to offer a solution to a country's problems through dialogue, even when they are irritating." In other words, the

protection of individual beliefs seems to be further supported rather than discouraged for mutual respect and tolerance of the beliefs of others.

Practical postulates in relations with religious organizations, as well as freedom of religion, in RMV are based on the following:

1. First, the spiritual heritage of Western Europe which states that the state power is separated from that religious organization, and that the principle of secularism is accepted as a principle for the non-interference of state institutions in the powers of religious organizations and vice versa. Secularism is also expressed through the constitutional ban on the essential involvement and intervention of religious organizations and communities in matters that are the responsibility of the state;
2. Second, the guarantees given for the realization of religious freedoms and the rights of citizens based on universal and Western European standards;
3. Thirdly, the heterogeneous character of religious beliefs in the country is being built on the basis of the existing system of guarantees for the activity of religious communities, starting from the Macedonian Orthodox Church, the Islamic Religious Community, Catholic Church, the Methodist Church, the Jewish Community and others. (Karakamisheva-Jovanovska & Spasenovski, 2018)

The model of secularism in RMV envisages institutional secularism, as well as the position of the state as a non-theocratic structure. The state cannot be governed by the religious clergy, nor can the state interfere in the election of the clergy or in the internal affairs of religious organizations. But it should also be taken into account the fact that secularism based on its official existence with the imposition of the legal system cannot model the feelings of citizens in relation to religious communities. The separation of religion from political power is guaranteed by a constitutional category, which is further elaborated in laws in this area, but personal feelings and personal affiliation of people to a certain religion and belief can hardly be kneaded within the limits of regulations. Feelings and belonging to a certain religious organization are much more related to the environment in which citizens live, to some unwritten rules and customs of behavior, than to legal regulations. Customs and traditions remain strong factors that often know how to escape from secularism and problematize relationships defined by law.

Almost all the states that emerged from the Yugoslav federation were faced with war and inter-ethnic and inter-religious conflicts. This is precisely why the comprehensive guarantee of freedom of religion is a prerequisite for social well-being and the free spiritual life of man. Freedom of religion should guarantee individuals the right to their religion. To guarantee them that they can form an arbitrary religious idea according to their own judgment or that they can have an arbitrary religious worldview. Freedom of religion also guarantees the right to manifest religion from the outside, that is, the right to believe as an act of internal decision which will be transferred to the external world of intersubjective perception. At the same time, this theoretical aspect also needed to be applied in practice, since the post-Yugoslav society had bitter experience from the past.

In general, post-communist constitutions and legislations guarantee the same basic rights and provisions for religious communities as their predecessors, such as freedom of religion, religious organization, equal status, separation from the state and state support, and freedom to establish and run schools for the preparation of religious ministers. Religious communities are also required to register with national or local government bodies.

It is clear that Muslims have also taken advantage of the opportunities brought to the region by the democratic changes. The general change in the public mood towards religion was manifested in new laws for religious communities and new opportunities for religious communities. In some countries, state support for religious organizations has enabled a more proactive engagement for Islamic Communities when it comes to religious organization or life. Also, general relations between the state and religious communities have improved, which in most cases has enabled the establishment of an unhindered religious life. Muslims have built dozens of

mosques, madrassas and other religious institutions. Much aid has been channeled through new Muslim humanitarian organizations, while many books have been published throughout the region. There is also progress in restoring waqf properties, as well as improving the economic position of all religious communities. The institutions of the Islamic Communities have not only continued their work from the communist period, but have also created many new departments and new initiatives. In many cases, educational institutions dating back to pre-communist times have been revived. Islamic education has been introduced in public schools in some countries. As a result, the role of schools in some areas has decreased, but they continue to play an important role in Islamic education. In addition, private Muslim educational institutions are also established, as madrassas often produce more graduates than the Islamic Communities can actually employ. Higher education institutions have been established in Bosnia, Kosovo, Macedonia and Sanjak.

The Islamic Community in the Republic of North Macedonia is a religious organization of all Muslims who live in the territory of the Republic of North Macedonia. It is a competent and responsible institution for the development of religious life on sound Islamic bases; organizes the progress of the religious affairs of believers and determines their duties and obligations. The Islamic Religious Community protects and cultivates the precious treasure of moral, social, economic, cultural, educational, etc. values of its members. It represents the Muslims of this underworld at home and abroad and protects their interests in all spheres of life. Since the appearance of Islam in our lands, Macedonian Muslims have continuously been an undivided Islamic spiritual whole, who have inherited the teachings of the last revealed Book - the Qur'an and the Sunnah of the Prophet, peace be upon him. In order to fulfill their religious duties, Muslims are bound to the single Islamic Religious Community regardless of their national or ethnic affiliation.

The Islamic Religious Community of the Republic of Macedonia is the only organization that organizes the religious life of Muslims in the country and abroad. BFI (Islamic Religious Community) bases its activity on the Qur'an, the Sunnah, the Constitution and the normative acts that emerge from the same. BFI is independent in the organization of religious life, in religious education and training, in endowments, administrative-financial activity as well as in other activities arising from the Constitution. In the implementation of Islamic duties, in the field of worship, this community applies the Hanafite legal school. The headquarters of the BFI is in Skopje. The purpose of the BFI is to raise religious awareness, organize the performance of worship as well as other forms of expressing feelings and living Islam among Muslims. (Constitution of the Islamic Religious Community of the Republic of Macedonia, Preamble, 2013)

The Constitution of the Republic of Macedonia from 1991 defines the legal status of religious communities, guaranteeing freedom of belief, guaranteeing the free and public expression, individually or in community with others, of religion. Religious communities and religious groups that exist in the country are separate from the state and are equal before the Constitution and the law. However, in all periods of the establishment of laws and general legislation, the state concept of Macedonia, even though with a secular paradigm, has considered the Macedonian Orthodox Church as more privileged and in that way the ranks in the Constitution of the Republic of North Macedonia have been established.

Professor Tanja Karakamisheva asserts that the model of secularism in RNM is intertwined with those models that do not accept related dominance, but establish a certain categorization of religions according to their understanding and acceptance among citizens without making any discrimination between citizens. (Karakamisheva- Jovanovska & Spasenovski, Priračnik za pravoto na verskite zaednici i za slobodata na veroisповest vo Republika Makedonija, 2018) However, this finding of categorizing religions based on one-sided evaluations clearly damages and cripples the concept of real secularism. The Macedonian Orthodox Church is always more advanced than all other religious communities, both in the order in the Constitution and in the social practice of the RNM.

Conclusion and Recommendations

The following can emerge as recommendations from this study:

1. Freedom of thought, conscience and religion is a vital human right. The proper assessment of these fundamental principles and ideals is crucial: in particular, freedom of thought, conscience and religion should be considered as an aid to the protection and approach of democratic discussions and the notion of pluralism. Both sides of it – individual and collective – are essential. This freedom is, in its religious dimension, one of the most vital elements that create the identity of believers and their concept of life, but it also constitutes a precious value for atheists, agnostics, skeptics and the disinterested.
2. BFI in RNM is an autonomous institution which regulates the life and organized religious activity of Muslims in RNM and those who are on temporary work abroad without making ethnic or territorial divisions and it is the heir of the organizations of the Islamic community starting from Sheikh Al-Islam, BFI in the Kingdom of Yugoslavia, with certain parts in the Kingdom of Albania as well as in the FSRJ and it must be cultivated in this way by state institutions without leaving any possibility of hindering its scope.
3. The constitution is the fundamental legal act of a certain community, in this case also the BFI in RNM. It contains essential determinants for the possible and successful operation of the BFI. The constitution should not be a single act, but it is the highest basic law and other laws through which the activity of the community will be operationalized should be derived from it. But, unfortunately, in the BFI of RNM there are no sub-constitutional legal acts nor regulations that will put the action of the BFI bodies into legal frameworks. There is no doubt that a community adopts a constitution for the effectiveness of the community and not just to say that it has a constitution. In the case of the BFI, the Constitution has rather served for the justifications of the various conflicting parties within the BFI in order to protect personal positions. Whereas, effectiveness is the basic determinant of the validity of the constitution, which will show that this highest act has managed to be implemented in practical life and has made the community more efficient. The constitution aims to achieve a harmonious functioning of community life – based on its defining principles. It is the defining basis of the matrix according to which the religious life of Muslims in RNM should be developed and it is ungrateful if it serves other issues.

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