

“Religious symbols in the public sphere and the secularity of the state”

Religious symbols are present all around us: on state flags, emblems and official insignias, in classrooms, public offices, court rooms, in mass media, in hospitals, public transportation etc. It could be sad that wherever there are people, there is some symbol with religious roots. In Serbia, religious symbols in past three decades became an inherent part of the public space, together with religion. In this case the meaning of the term “public space” should be understood in the broadest of terms: it includes state and public institutions and all spaces outside the private sphere and inner domain of religious organizations.

According to its Constitution the Republic of Serbia is a secular state. There are at least two conceptions of secularity that coexist in Serbia. The first one interprets the constitutional secularity of the state as a strict separation of church and state, and consequently as a constraint to the presence of religious symbols in the public sphere. On the other hand, the second conception views secularity in a more benevolent light, one that does not exclude religion from the public sphere. According to this perception the separation has been understood as an opportunity for cooperation. Despite the fact that Constitutional Court upheld the second conception, the confrontation between two different attitudes still remains in the public discourse.

There are several different situations that generate ardent controversies related to the presence of religious symbols in public sphere. The first one is presence in public sphere of symbols that the most of citizens perceive as exclusively religious, such as: icons, crucifix, statues of saints etc. The second is the issue of wearing of religious symbols in public spaces, e.g. courts, educational institutions, state offices etc. The third controversy is the compatibility of the practice of construction of religious symbols and monuments in public spaces that have been financed by the government, local authorities or state owns companies with the principle of secularity. Lastly, but most importantly, there is a question whether the manifestation of religion or belief in public space is constitutional, or more precisely whether religious services and ceremonies that include the use of different religious symbols and have been performed in public or state institutions violate the principle of state secularity.

Those are some of intricate questions that were discussed on the online lecture that was held on Thursday, April 22, at 7:00 pm as a part of the master programme of the University of Belgrade “Religion in society, culture and European integration”. The presenter was the assistant professor dr. Dalibor Đukic and he presented the results of the research conducted under the support of the Ferenc Mádl Institute of Comparative Law within the *Central European Professors’ Network*.

The principle of the secularity of the state

The principle of the secularity of the state is one of the main principles on which the regulation of the relations between the state and religious organizations in modern democratic states is based. When it comes to the Republic of Serbia, it is specific that the principle of secularity is one of the constitutional principles. Namely, in the first part of the Constitution of the Republic of Serbia, which contains constitutional principles, it is prescribed that Serbia is a secular state (Article 11). The question that arises is whether the presence and display of religious symbols in the public sphere violates the principle of secularity of the state prescribed by the constitution. In that case, is the manifestation of religious beliefs and the presence of religious symbols in the public sphere unconstitutional?

In order to be able to give a clear answer to these questions, it is necessary to define the concept of secularity. There is no generally accepted definition of this term in the literature. Most authors try to use a comparative method to deduce certain regularities from the example of several secular states. However, the ways in which the status of religious organizations and the exercise of the right to freedom of religion are regulated in secular states vary widely. It could be argued that the states with state religion are all alike; every secular state is different in its own way. It is this breadth of the notion of secularity that allows different states to adapt their legislation on churches and religious communities to their own historical, social, legal and religious circumstances. This is also the reason why there are as many definitions of secularity as the authors who have dealt with this issue.

There is also the view that the notion of a secular state, due to its polysemy and the impossibility to determine its precise meaning, is not adequate to be a constitutional term. There are a number of different definitions of secularity, secularism and secularization in the literature. This can be seen from the fact that the constitutions of only a few countries in the world contain the adjective *laïque* or secular, when they talk about the character of the state, looking mainly up to France and Russia. The existence of such a term in the Constitution of Serbia has led to the formation of specific secular fundamentalism, which is advocated by certain NGOs and human rights activists. They are of the opinion that in a secular state “no interference of religious organizations in a public sphere is allowed and no impact of religion in social issues is acceptable”. Such secular fundamentalism is in its essence closer to the socialist (or communist) reality from the second half of the 20th century, than to the meaning of the term secularity in modern democratic states. The fact that the secularity of the state is a constitutional category cannot be an argument in favor of its fundamentalist interpretation, according to which secularism implies the hermetic separation of religion from the public sphere and its isolation in the private sphere.

In order to understand better the issue, it would be useful to underline the terminological difference between secularity and secularism. Brett Scharffs explains this in the following words: “Both secularity and secularism are linked to the general historical process of secularization, but

as I use the terms, they have significantly different meanings and practical implications. By 'secularity' I mean an approach to religion-state relations that avoids identification of the state with any particular religion or ideology (including secularism itself) and that endeavors to provide a neutral framework capable of accommodating a wide range of religions and beliefs. By 'secularism', in contrast, I mean an ideological position that is committed to promoting a secular order". The difference between these two terms as two antipodes has also been developed by the Roman Catholic doctrine. According to it, secularity is "a principle of distinction between Church and state" and secularism "a negative conception of separation between Church and state, in which the Church is persecuted or denied its basic rights". Thus, the secular character of the state guaranteed by the constitution does not mean that the state identifies with secularism as an ideology. On the contrary, in a secular state, secularism can only be one of many competing ideologies. This means that the manifestation of religious beliefs in the public sphere is not unconstitutional in secular states. Quite the opposite. The presence of religion and religious organizations in the public sphere is desirable because it is a natural space for acting of a religion and a space in which, through confrontation with competing ideologies, it gives its contribution to the development of a democratic and pluralistic society.

Uncertainties about the meaning of the term secular state contained in the 2006 Constitution of the Republic of Serbia were resolved by the Constitutional Court, which in deciding on proposals for determining the unconstitutionality of the Law on Churches and Religious Communities established that "these constitutional provisions by themselves do not imply the system of the complete separation of the church and state, but that there is no state church and that there is no identification of the state with a particular religion or religion in general...". Since the manifestation of religious beliefs in public and the presence of religious symbols in the public sphere do not establish a state church or religion, nor does it identify the state with a particular religion, it can be argued that such practice does not violate the constitutional principle of the secularity of the state.

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