Constitutions and Religious Favoritism in the European Union: A View from Azerbaijan

A WINDOW INTO THE WORK OF YOUNG RESEARCHERS

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The article explores the constitutional provisions for religious freedoms among the member states of the European Union in light of Azerbaijan's experience as a secular Muslim nation which has been interested in European integration since regaining its independence in 1991. The author examines the legislation of specific EU countries and their historical backgrounds, arguing that aside from France, none of the EU countries provide legal protections for the equality of all religions. Instead, the doctrine of tolerance has been introduced in some EU member countries: a sociological concept that has no legal content. The author puts forth Azerbaijan as a model for equality of among religious and ethnic communities. The relationship between religion and the state has always been a priority for Azerbaijan because its society is multi-confessional (two branches of Islam, Christianity, and Judaism). It is therefore believed that Azerbaijan can only function properly based on equal respect for religions at the state level, and minority religions have been placed under state protection on this basis. In conclusion, the author claims that the philosophy of civil religion in Azerbaijan may constitute a model for the provision of equal conditions for all confessions and ethnic groups, fostering a sense of common historical destiny.

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Of the countries interested in the European Union integration processes, Azerbaijan has the second largest traditional majority Muslim population after Turkey, in proportion to the total population. The Agreement on Partnership and Cooperation between the Republic of Azerbaijan and the European Union was signed on 22 April 1996.[1] Azerbaijan sought to implement the principles of this agreement in its Constitution. In 2000, Azerbaijan became a member of the Council of Europe, confirming that it was on the right path. A decade later, in 2010, the EU and Azerbaijan opened negotiations on the Association Agreement within the framework of the EU Eastern Partnership initiative. In the same year, in accordance with Article 43 of the 1996 Agreement, the harmonization of national legislation with EU standards was accelerated. Subsequently the Action Plan for the alignment of Azerbaijani legislation with EU legislation for 2010–2012 was approved, followed by the approval of the 2013-2014 plan on 24 August 2013.[2] Article 71 of the 1996 Agreement specifically provides cooperation on the harmonization of legislation on human rights and fundamental freedoms in accordance with the EU standards.

The freedom of religion, among many others, is a key area of concern in the EU harmonization process. Azerbaijan is quite confident in this regard, as it firmly maintains its neutral position towards all faiths. However, in the EU since the Agreement on Partnership and Cooperation was signed, within the last 18 years, academics have agreed that religion is back (having never really been gone). As a consequence, religion has been de-privatized and religious institutions and traditions have been revived.[3]

At this juncture, this paper aims to answer the following questions: to what extent is the constitutional law of the EU countries ready for the challenges of the 21st century; what are the constitutional guidelines for religious "renaissance" in Europe; is there a possibility for an alternative to the revival of religious ideology?

Azerbaijan's experience

Azerbaijan is a part of Europe; however, particular historical characteristics distinguish it from other European countries,

1 See full text. Available at http://eeas.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf

2 See full text. Available at http://www.economy.gov.az/index.php?option=com_content&view=article&id=1038&Itemid=183&lang=en

3 Religion & Civil Society in Europe, Joep de Hart, Paul Dekker & Loek Halman (eds.), (Springer), 2013 pp.1-2

namely the specificity of the relationship between religion and state, which is reflected in the legislation. Azerbaijan is a secular republic, neutral with respect to religious institutions that are part of civil society (Art. 7 and 18 of the Constitution of the Republic of Azerbaijan). For Azerbaijan, the relationship between religion and state has throughout its history been a priority, because Azerbaijani society has always been multi-confessional (with two branches of Islam; Christianity Judaism). Thus, its functionality depended equal respect for all religions at the state level. On this basis, minority religions have been placed under state protection. With regard to the majority religion, however, Azerbaijan has been "trying to develop a national brand of Islam by diminishing Shi`a-Sunni differences and fighting against foreign missionaries under the pretext of keeping the so-called unique peaceful coexistence of both branches of Islam. Azerbaijan may be the sole Islamic country where adherents of both sects pray together in the same mosque, sometimes even led by the same mullah performing both prayer rites".[4]

Azerbaijani history consists of a sequence of wars, but none of these wars was inter-confessional. Analyzing the relationship between religion and state in Eastern Europe and the former Soviet Union, British political scientist John Madeley mentions that "[n]or did more than one of them (Azerbaijan) opt for the separationist model, despite the recommendations of the United States and international organizations such as the OSCE (the Organization for Security and Cooperation in Europe) and the claim in some quarters that so-called church-state separation constituted a virtual *sine qua non* of liberal democracy".[5]

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Azerbaijan is the only country in the South Caucasus where state neutrality attitude towards different religion has been consistently enforced. Legally, secularism entails the separation of the state and religion and the promotion of freedom of religious belief: in other words, the privatization of religion. The basic position is ordinarily that there should be no established or official religion, a principle often supplemented by several others: a state must not officially promote or favor one religion over another. In the two

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4 Raoul Motika, Islam in Post-Soviet Azerbaïdjan, Archives de sciences sociales des religions, 46e Année, No. 115, Islam et Politique dansle Monde (Ex-) Communiste (Jul. - Sep., 2001), p.117.

5 John T.S. Madeley, Religion, State & Civil Society in Europe: Triangular Entanglements, in: Religion & Civil Society in Europe, Joep de Hart, Paul Dekker & Loek Halman (eds.), (Springer), 2013,p.58.

other countries of the South Caucasus, Georgia and Armenia, constitutional regulation of the relationship between state and religion is different. For example, the Constitution of Georgia provides for the status of so-called traditional religion. On this basis, the government signed a "Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia", according it preferential treatment in a number of ways.[6] The Preamble and Article 17 of the Law of Armenia "On Freedom of Conscience and Religious Organizations" (2001 edition), establishes the Armenian Apostolic Church as the national church of the Armenian people. According to the law, the Armenian Apostolic Church, which also operates abroad, should be protected by the Republic of Armenia within international legal norms.[7]

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Azerbaijan has historically been a crossroads for the world's three Abrahamic religions - Islam, Christianity and Judaism. From the IV century, due to the efforts of the Parthian Christian missionaries, Christianity spread in the territory of Azerbaijan. The north of Azerbaijan was a part of the Khazarian Empire, where the official religion was Judaism. Part of the population in the northeast of Azerbaijan continues to practice Judaism. Following the Arab conquest of Azerbaijan in the VII century, the vast majority of the population was converted to Islam. Nevertheless, Albanian church maintained its autonomic (autocephalous) status for more than 1000 years, up until the first half of the XIX century. Ten Azerbaijani states (khanates) became part of the Russian Empire by 1828 and by 1836, on the appeal of Catholicos of the Armenian Gregorian Church, the Albanian Autocephalous Church was abolished by the tsarist government. Its property was transferred to the Armenian Catholicos. These processes played a key role in the institutionalization of mutual relations between state and religion in both constitutional and legislative terms.[8]

Tolerance is a cultural phenomenon in Azerbaijan, a system-forming civilizational feature. Islam served as the basis of self-identification for Azerbaijanis until the last quarter of the XIX century. "For the Azerbaijanis, who have a long literary tradition

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6 See: http://www.patriarchate.ge/_en/?action=eklesia-saxelmcifo.

7 See: http://www.e-gov.am/u_files/file/kron/khighch.pdf

8 Comments of the Government of the Republic of Azerbaijan on the Draft Joint Opinion by the Venice Commission & the OSCE/ODIHR on the Law on Freedom of Religious Belief of the Republic of Azerbaijan doc.CDL(2012)073, available at http://www.venice.coe.int/webforms/documents/default.aspx?country=41&year=all&other=true

dating back to the sixteenth century, the main identity was either sub-national (khanates, regions, or clans) or supra-national (Islam).”[9] Nevertheless, at the beginning of XX century Vladimir Stankevich, a former chief of the cabinet of the military minister in the Provisional Government of Russia, who fled to Germany in 1919, described the situation preceding the proclamation of the Azerbaijan Democratic Republic (ADR) in 1918 as follows; Azerbaijan “in its national development poses extremely instructive germs of European and Eastern influences”. In his opinion, “Caspian” newspaper (published in Baku) was “an expression of the ideological hegemony of Azerbaijan over all Muslims of Russia”.[10]

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In the Declaration on Independence of the ADR adopted by the National Council on 28 May 1918, a number of basic principles were established. The political system was proclaimed a Democratic Republic; the intention to establish good neighborly and friendly relations with all (especially neighboring countries) was declared; the civil and political rights of all citizens regardless of ethnicity, religious beliefs, social status or gender were guaranteed; opportunities for the free development of all nationalities living in ADR were guaranteed.[11] The principles adopted by referendum in 1991 in the Constitutional Act on State Independence of the Republic of Azerbaijan, further developed in the 1995 Constitution, are: establishment of a secular democratic state based on the separation of powers (Article 11, 12,13,15,28), with explicit social orientation (Article 17, 25). Accordingly, the Preamble of the Constitution of Azerbaijan of 1995 starts: “The people of Azerbaijan, continuing a long tradition of its statehood ... expresses its following intentions: … to build a legal, secular state which ensures the rule of law as an expression of people’s will”. Legal guarantees for the preservation of secularism also feature in other articles of the Constitution and legislation. For example, the principle of ineligibility applies to religious figures in accordance with Article 85 of the Constitution: they cannot be elected as Members of Parliament. In accordance with the legislation of Azerbaijan, if a religious figure serves in other government

9 Svante E. Cornell, Small Nations & Great Powers: A Study of Ethno political Conflict in the Caucasus, (Richmond: Curzon Press), 2001, p.33.

10 В. Станкевич. Судьбы народов России (V.Stankevich, Destiny of the nations of Russia) (Берлин: издательство И.П. Ладыжникова),1921, p.237.

11 Азербайджанская Демократическая Республика (1918-1920). Законодательные акты. (Azerbaijan Democratic Republic (1918-1920). Legislation) (Баку: издательство Азербайджан, 1998), p.10.

agencies, he/she is obliged to suspend religious activities during the term of office. Civil servants are prohibited to conduct religious propaganda by using their status, and religious figures are not accepted for permanent service in the army, law-enforcement agencies, etc.

Historical heritage of religion in Europe

The constitutional regulation of relations between religion and state in Europe cannot be understood in isolation from its history. According to David Onnekink, "looking back on the recent history of Europe, it was easy to see that the Liberty the Protestants enjoy, has, next to God's Goodness, been the Purchase of the Sword."[12] It is impossible to understand the breadth of legal regulation of issues related to religion without considering the history of religious wars in Europe, from the Crusades to the Westphalia agreement of October 24, 1648, which put an end to the Thirty Years War, in which almost all the European powers were active. The principle of the Peace of Augsburg (1555), that "whosoever controls the territory decides the religion", was abandoned outside the hereditary lands in favor of more general tolerance. Religious minorities everywhere in the Empire were legally permitted to practice their faith if they had done so in that territory before 1624. This led Pope Innocent X to fulminate that all articles affirming tolerance were "null and void, invalid, iniquitous, unjust, condemned, rejected, frivolous, without force or effect, and no one is to observe them, even when they be ratified by oath."[13]

The conventional end to Europe's age of religious wars between Catholics and Protestants did not result in "the establishment of general religious tolerance (except at the level of relations between states), although it did require the observance of a range of *particular* local exceptions to the *cuius regio eius religio* (whose region, his religion) rule; instead the final institutionalization of that rule decisively conferred on the authorities within each jurisdiction the right to enforce conformity to the locally established confession thereby repressing pluralistic tendencies within individual territories."[14] Even the 1789 French Revolution's grand declaration that "no one may be harassed because of his opinions" – to which was added, as it needed particular emphasis,

12 War & Religion after Westphalia, 1648-1713, David Onnekink (ed.) (Ashgate Publishing) , 2009, p.1

13 Cathal J. Nolan.The Age of Wars of Religion, 1000-1650: An Encyclopedia of Global Warfare & Civilization. vol.2 (Westport: Greenwood Press) , 2006, p.506

14 John T.S. Madeley, ibid, p.48

"even religious ones" – failed to introduce a decisive change to Europe's confessional map."[15] This declaration is still an integral part of the French Constitution. Nevertheless, "although it signaled the important symbolic break of uncoupling citizenship rights from denominational membership within that country was for a long time, the only country to have put this major and radical dissociation into operation."[16]

In the XIX century, the church switched to the fight against European liberalism. "In the name of the rights of man, democracy, and the nation, partisans of the French revolution, republicanism, socialism, and Bismarck's *kulturkampf* attacked the authority of the Catholic Church, who, in response, clung to its medieval doctrine and condemned the liberal sovereign state."[17] "From the late nineteenth to the mid-twentieth century, though, circles of Catholic intellectuals and Christian Democratic parties in Europe came to embrace what they saw as a friendlier liberalism that envisioned Catholicism to be neither established nor suppressed and that proclaimed religious freedom." [18]By the middle of the XX century, in taking this position at the Second Vatican Council (1962-1965), the Church "in fact preserved its censure of absolute state sovereignty, rendering the state's legitimacy as real but relative to a larger moral order to which the Church would now demand conformity from its differentiated position."[19] According to John Madeley, "throughout most of Europe for a century thereafter, growing tendencies towards religious dissent and pluralism continued to be held at bay, courtesy of the civil authorities, by means of discrimination in favor of the locally established confessions, using the instrumentality of, variously, religious tests for public office, the provision or denial of public funding, the encouragement of religious-nationalist themes and in some countries the maintenance of oppressive systems of penal law […] and […] it is perhaps unsurprising then that Europe continues at the start of the third millennium of the Common Era to exhibit some of the marks of the age of the early-modern confessional state."[20]

15 Ibid, p. 49.

16 Ibid, p.49.

17 Christopher Clark and Wolfram Kaiser, The European culture wars, in: Culture Wars: Secular-Catholic Conflict in Nineteenth-Century Europe, Christopher Clark & Wolfram Kaiser (eds.) (Cambridge: Cambridge University Press),2003, p.1-2.

18 Daniel Philpott, Explaining the Political Ambivalence of Religion, The American Political Science Review, Vol. 101, No. 3 (2007) p.509

19 J.Bryan Hehir, The Roman Catholic Church & World Order Issues: Ideas, Structures, & Relationships. (Harvard: Harvard University) , 2005, pp. 97-101.

20 John T.S. Madeley, Religion, State & Civil Society in Europe: Triangular Entanglements, ibid. p.49.

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Europe acquired religious tolerance through a series of bloody wars. It was a matter of survival for European nations, marked by the consciously adopted necessary decision that was normatively enshrined in the Peace of Westphalia in 1648, but not the result of an evolutionary development of European civilization. It is the perception of this historical model of tolerance, as imposed and introduced from the outside, that explains why a number of European countries uphold constitutional legislation that is contrary to the principles of the secular state.

Normative regulation of the role of religion in the public sphere in European Union

The legislation of EU countries represents the range of models for state - religion relationships, from French "laïcité" (secular nature)[21] to theocracy in the State of Vatican City[22], which makes it difficult to provide an in-depth analyze here of the constitutional law of each country.[23] Many options for the classification of this relationship have been proposed, but they all suffer from either excessive generalism[24] or excessive specification[25], which does not allow for the identification the essential characteristics that reveal the specific features of a particular group of countries.

It is possible to group these countries based on the principle proposed by John Madeley. Using an index that characterizes the degree of secularity of the state, John Madeley made a table that includes all the countries of Europe. The deviations are identified from batches of variables which code for (a) state support for one or more religions either officially or in practice, (b) state hostility towards religion, (c) comparative government treatment of different religions, including both benefits and restrictions, (d)

21 J-P. Willaime, European Integration, Laicite & Religion, Religion, State & Society, Vol. 37, No. 1-2 (2009), pp. 15-23.

22 Daniel P. Strouthes. Law & Politics. A Cross-Cultural Encyclopedia. (Santa Barbara : ABC-CLIO) ,1995, p.259; Encyclopedia of Philosophy, Donald M. Borchert (Ed. in Chief) (New York: Thomson Gale) 2006, p.699

23 N. Doe, Towards a 'Common Law' on Religion in the European Union. Religion, State & Society. Vol. 37, No. 1-2, (2009), pp.147-166.

24 See, for example, L.Leustean, Challenges to Church-State Relations, in: Contemporary Europe: Introduction, Journal of Religion in Europe, Vol. 1, No.3 (2008), pp. 247-250. Religion & the State: A Comparative Sociology, Jack Barbalet, Adam Possamai & Bryan S. Turner (eds.) (London: Anthem Press, 2011), pp.159-160 ; J. Francis, The Evolving Regulatory Structure of European Church-State Relationships, Journal of Church & State, Vol. 34, No.4 (1992), p.800.)

25 See: Jonathan Fox, A World Survey of Religion & the State. (New York: Cambridge University Press)

government restrictions on the practice of religion by religious minorities, (e) government regulation of the majority religion, and (f) legislation of religious laws.[26] This classification leads him to the conclusion that "it is notable that the lowest SRAS (Separation of Religion and State-*L.A*.) scores in Europe are to be found in the three countries with an Accommodationist, not a Separationist, type of state-religion regime – the two cases of Separationist regimes in fact score either moderately above the regional average SRAS in the case of France or in the case of Azerbaijan". According to him:

> "by contrast with Separationism, Accommodationist regimes are described by Cole Durham as marked by a `benevolent neutrality toward religion` which does not however extend to direct financial subsidies or the requirement that religious education be provided in schools. In Western Europe the eight countries with the highest SRAS scores are, unsurprisingly, those with Official Religious regimes – or, in Cole Durham`s terms, those with Established Churches. In Eastern/ Central Europe only two cases of Official Religion are identified – Greece with its long-standing recognition of, and support for, the Greek Orthodox Church as `the prevailing religion` of the country and Armenia, the only post-Soviet state to opt for this type of state-religion regime". Continuing the analysis, he concludes: "the other two types of regime occupy the central range of both columns with the Cooperationist type being on average lower in the 7 Western and the 10 East/Central European cases and the Endorsed Religion higher in the 2 Western and the 10 East/Central European cases on the SRAS loading; as these figures indicate, both types exhibit significant levels of deviation from full religion-state separation".[27]

When applied to the countries of the European Union, this classification works as follows:

1. Separationist type of state-religion regime. In the EU, France is an example of such a regime. Freedom of religion and belief is guaranteed by the constitution. Article 10 of the 1789 declaration specifies that "no one shall be disquieted on account of his opinions, including his religious views, provided their mani-

26 John T.S. Madeley, ibid., p.53-56.

27ibid.p.62.

festation does not disturb the public order established by law". Article 1 of the 1958 constitution says that "France shall be an indivisible, secular, democratic, and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis". The *laicité* of the republic was enshrined in the law of separation between church and state of December 9, 1905. It is associated with the principle of equality of all citizens without distinction in relation to religion and liberty of conscience. On March 15, 2004 changes were made to the French Education Code prohibiting school staff and students from manifesting any religious symbols, including large crosses. In France, supporting religious communities is seen against the background of the "nationalization" of church property after the French Revolution.

2. Accommodationist type of state-religion regime. The Netherlands and Estonia fall into this category. Here, the general law is secular, yet a degree of jurisdictional autonomy is granted to religious minorities, primarily in matters of personal status and education. In the Netherlands, the separation of church and state is assumed to be an unwritten principle of constitutional law, as the Basic Law keeps silent on this issue. In the middle of the nineteenth century, the Netherlands had a system of public education imparting general Christian morals. Some stricter Protestant groups rejected this form of public education; Catholics were not satisfied, either. Therefore, these denominations started their own schools. In 1917, religious parties had achieved such influence in parliament that they managed to insert a provision into the Constitution to the effect that private schools have a right to state funding on par with schools in the public education sector. That is the main reason why in the Netherlands, the private education sector is so large. Nowadays, however, only in a small percentage of these private schools, does religion play a major role. As far as public education is concerned, the teaching of Christian morals has disappeared and been replaced by an openness to different religions and philosophies of life.[28]

3. Endorsed type of state-religion regime. These countries are Ireland, Poland, Portugal, Romania, Bulgaria, and Croatia. This group of states makes references to a particular religion on a constitutional or legislative level, without providing any legal preferences, or the ability of the state to support all religious be-

28 Stephen V. Monsma & J. Christopher Soper, The Challenge of Pluralism: Church & State in Five Democracies (Rowman & Littlefield Publishers, Inc.), 2009 , pp.51-92

liefs in general. Ireland has traditionally had a strong Catholic tradition, alongside a long history of religious conflict with the Church of England, which in Northern Ireland has only recently emerged from its most acute phase. According to the Constitution, the Irish State acknowledges that the homage of public worship is due to Almighty God; it shall hold His Name in reverence, and shall respect and honor Christian religion (Article 44.1). The State guarantees that it will not endow any religion (Article 44.2.1). Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school (Article 44.iii). At the same time, blasphemy is declared an offence (Article 40.6.1.iii.i.). The Constitution has been amended follow a referendum held in 1995, whereby Article 41.3.2, prohibiting divorce, was abolished.

In accordance with Article 13 of the Constitution of Bulgaria, "The Eastern Orthodox religion is the traditional religion of the Republic of Bulgaria". The Constitution of Poland stipulates that the relationship between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See (Art. 25). According to Article 29.5 of the Constitution of Romania, religious cults shall be autonomous from the State and shall enjoy State support, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages. In 2011, Romanian President put a veto on a draft law on the partnership between Church and State, adopted by Parliament on March 8 and providing state funding to 80 percent of the charitable activities of the Church.[29]

4. Cooperationist type of state-religion regime. This group of States, which provides for the possibility of cooperation with religious organizations through legislation, is the largest. This group includes Germany, Belgium, Latvia, Lithuania, Austria, Czech Republic, Hungary, Slovakia, Slovenia, Cyprus, Luxembourg, Sweden, Italy, and Spain. Two features of this constitutional regulation are distinct: firstly, their Constitutions generally recognize religion as a positive social phenomenon, which means that religion as such is assessed as a useful component of social life. Secondly, the government undertakes to maintain appropriate relations of cooperation with the respective confessions. Germany constitutes a particularly important and representative case.

29 See: http://www.cnlnews.tv/2011/04/12/rumania/

The principle of separation between church and state was proclaimed in Germany after World War I with the adoption of the new Constitution, known as the "Weimar", in 1919. However, this separation was not absolute as in France, and was a "lame division" or harmonious division, in the definition of the famous German lawyer Ulrich Stutz.[30] The Constitution of Germany is addressed to God: "The German people, realizing its responsibility to God and people, inspired by the desire as an equal partner in a united Europe, to serve to universal peace on the basis of its constitutive power, adopted this Basic Law". The Constitution guarantees that "Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. The undisturbed practice of religion shall be guaranteed" (Article 4) and thus, the Basic Law does not formally bind State with any of the confessions. Under the German Constitution, "Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state`s right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned (Article 7.3). Case law of the Constitutional Court shows that voluntary supra-denominational school prayers are allowed.[31] The whole education may also be colored by Christian culture ("christlich-abendländische Kultur").[32] Moreover, the government, in certain circumstances, is obliged to support private schools with a religious background, if their quality is similar to the quality of public schools.[33]

In Germany, church taxes are collected by the state authorities by subtracting them from net income. Religious organizations pay a special fee to the Government for this. The amount of tax is determined by the churches.[34] All religious organizations registered

30 History of the Church: The Church in the Modern Age, vol. 10. Hubert Jedin & John Dolan (eds.), (New York: Crossroad Publishing Co.), 1980, p.194.

31 Bundesverfassungsgericht (Federal Constitutional Court) 16 October 1979, E 52, 223.

32 Bundesverfassungsgericht, 17 December 1975, E 41, 29.

33 Bundesverfassungsgericht, 9 March 1994, E 90, 107.

34 Church taxation also exists in other EU countries. In Denmark, citizens belonging to the Lutheran church pay taxes (12 percent) in its favor. In Finland, the Lutheran church has the right to collect church tax, which is deducted from the income of religious citizens. Sweden abolished the mandatory tax on the Lutheran Church; Lutherans only pay a fee for baptism. According to Article 2 of the Act of May 4, 2000 "On payments, registered religious organizations" put the church tax, which is paid only by believers. The eight most significant religious organizations have a right to part of the income tax. In Spain, the citizens can choose to transfer the 0.5% income tax on the Catholic Church or one of the religious organizations which have concluded a concordat with the state. In Italy, citizens have the right to choose which organization (one of the recognized confessions having a concordat with the state, or a charitable organization) will receive 0.8% of their income tax. Austria and Switzerland have a system of church taxes made available to the leadership of recognized religious organizations

as a "corporation under public law" are exempted from taxes and enjoy two rights, which in some cases is the prerogative of the *Bundesland*[35] to levy taxes and to teach the fundamentals of religion in schools. These privileges date back to the Weimar Constitution of 1919 (Article 137) and are preserved in the postwar German Constitution (Art. 140). However, there are a number of requirements for religious organization (including loyalty to the state), in order to obtain the right to the status of "public law corporation", whereby they have the right to organize themselves freely (including permission to collect taxes and to apply their own labor law), under the precondition that neither the German constitution nor positive laws are violated. Critics of the German system of "State-Church" Law argue that this system favors major religious groups while staying hostile towards minorities.[36] The Christian church also receives additional subsidies from the state as compensation for nationalized church plots by the German nation in 1803 with the collapse of the Holy Roman Empire.

In understanding the specifics of the *cooperationist type of state-religion regime* the case of professor Hartmut Zappa is illustrative. In 2007, he announced his withdrawal from the Catholic Church as a "public corporation" and refused to pay church tax, which amounts to 8 percent of income tax. However, he declared that he would remain a member of the Catholic Church as a "religious community of believers." Zapp pointed to unauthorized mixing of the Church as a community of believers, and the state as a tax collector. He also asserted that the decision of the Conference of Catholic Bishops of Germany, according to which those who do not pay church tax are automatically excommunicated, is contrary to the position of the Vatican. Zapp was referring to Pope Benedict XVI, who talked about voluntary, not mandatory payment of the church tax.[37] In 2007 the Court of First Instance made an award in favor of Hartmut Zappa. However, in 2010 the Supreme Administrative Court of Baden-Wuerttemberg found that it was impossible to maintain membership of the Catholic Church without paying church tax: "The law requires that those

to spend at their own discretion. In Estonia, the church, parish and Union of parishes are allowed to charge their members dues, to the order established by the statutes under state control (Articles 25 and 26 of the Act of February 27, 2002 "On the churches and parishes"). Jonathan Fox., *A World Survey of Religion & the State*. (Cambridge :Cambridge University Press), 2008, pp.115-126.

35 Germany is made up of 16 *Bundesländer,* the partly sovereign constituent states of the Federal Republic of Germany.

36 Michael Moxter. Religion in the Legal Sphere. in: Religion in the Public Sphere. Proceedings of the 2010 Conference of the European Society for Philosophy of Religion (Ars Disput&i, Supplement Series, nr. 5) Niek Brunsveld & Roger Trigg (eds.),(Ars Disput&i, Utrecht), 2011, p.41

37 Pope Benedict XVI, «The formal act of defection from the Catholic Church», 13 March 2006.

who decided to leave the Church, unambiguous statements, excluding any conditions and reservations. The one, who limits his withdrawal from the Church, just as from the "public law corporation" with the intent to remain at the same as a member does not fulfill the requirements of the law."[38]

John Madeley placed Spain in the group of states with an official state religion that is not quite true.[39] In 1978, the reference to Catholicism as the state religion was excluded from the Constitution of Spain. Nevertheless, the Concordat of 1979, signed with the Vatican – rather than with local bishops - entails close collaboration between the Catholic Church and the state. Taxpayers can voluntarily pay the tax (0.5% of their income) to the church (Catholic only); moreover, the state additionally allocates funds to church, including on religious education in state schools, chaplains in the army and hospitals, etc. In 1992, concordats were signed with representatives of the Protestants, Jews and Muslims (each side was represented by one local organization).[40] Religious organizations, except Catholic dioceses and parishes, are registered to receive benefits. For example, the Catholic Church has the right to religious instruction in state schools, while salaries for teachers of religion have been paid by the state since 1996. Spain also legally recognizes civil marriages contracted according to church canons, Institute of Catholic military chaplains integrated in the Spanish army, etc.

5. Official religion type of state-religion regime. The position of a specific religion as the state religion is enshrined in the Constitutions of Great Britain, Andorra, Malta, Denmark, Iceland, Greece, Liechtenstein, Norway and Finland. In Constitutions of Great Britain, Denmark and Norway, unlike in other countries of this group, the head of state-monarch is also the head of the church. The possibility of delegating religious representational functions to another person if the head of state defects to another religion, for example, Catholicism, is not stipulated. Although on formal grounds John Madeley attributed all these countries to the same group, but these countries differ significantly in terms of the impact of the related provisions of the Constitution upon the other legislation. Thus they can be divided into the following subgroups:

38 Voice of Reason. The Journal of Americans for Religious Liberty, No. 4 (2009), p. 15

39 John T.S. Madeley, ibid, p.55

40 Jonathan Fox, ibid, pp.127-128

a) A weak form of religious establishment. According a specific religion the status of the state religion in the Constitutions of Andorra, Denmark, Iceland, Liechtenstein, Norway, Finland is in fact a constitutional fiction. An evident case in point is the designation of the Evangelical Lutheran Church as the "state church" in Norway, Denmark, Finland, and Iceland—arguably some of Europe`s most liberal and progressive polities. Norway`s head of state, for example, is also the leader of the state church. Article 2 of the Norwegian Constitution guarantees freedom of religion, but also states that Evangelical Lutheranism is the official state religion. Article 12 requires more than half of the members of the Norwegian Council of State to be members of the state church. In Liechtenstein religion is also used to legitimize the power of the head of state. The Constitution of the Principality begins with the words: "We, Johann II, sovereign Reigning Prince of Liechtenstein…, by the Grace of God". According to Article 37 of the Constitution of Liechtenstein the Roman Catholic Church is the National Church and as such shall enjoy the full protection of the State; other denominations shall be entitled to practice their creeds and to hold religious services within the limits of morality and public order. Co-rulers of the Principality of Andorra are "in their personal and exclusive right, the Bishop of Urgell and the President of the French Republic" (Article 43 of the Constitution).

b) A moderate form of religious establishment. The second subgroup includes the United Kingdom and Malta. The Church of England is represented at the highest levels of the British state, including in the British Parliament, where 26 seats in the House of Lords are held by representatives of the Church of England. As a result of Queen Elizabeth I`s *Act of Supremacy* 1558, the monarch is still the supreme governor of the Church. Upon accession to the throne, the new sovereign swears an oath confirming his or her allegiance to the Protestant faith and vowing to uphold the Protestant succession as required by the *Act of Settlement*. As head of the Church, the monarch has power over the appointment of bishops, but just as the monarch`s powers as head of state are subject to convention; similarly the appointment power is exercised on the advice of the Prime

Minister. The Prime Minister receives two names from the Church and selects one to forward to the Palace. The monarch also retains the power of convening the ancient Convocations of Canterbury and York, though, as shall be seen in the next section, their significance in the governance of the Church has largely been superseded by the General Synod.[41] According to the *Church of England Assembly (Powers) Act 1919,* the Church secured greater practical autonomy through use of devolved legislative power. The Act created a body to be known as the National Assembly, which built substantially upon the structure of the convocations. After 1969, the Assembly was replaced by the General Synod, which retained most of the features of the former body, but also absorbed the two convocations which transferred much of their power to it. Under section 3 (6) of the 1919 Act, the National Assembly was granted power to make laws to be known as `measures` on `any matter concerning the Church of England`.[42] The measure must then be accepted or rejected by Parliament—no amendment is possible under the terms of the 1919 Act. The measure has the status of an Act of Parliament once it has been approved by both houses and received royal assent. The most notorious example of a measure being derailed by a House of Parliament is the refusal by the Commons to approve changes to the Book of Common Prayer in 1928, though there have been others in more recent times.[43] Today, the Church of England`s court system remains connected to that of the state through, above all else, the fact that the ecclesiastical law which is administered in those courts is part of the fabric of English law comprised of statutory instruments and common law. No other church has its matters of internal governance backed by the authority of the laws of the state and administered by judicial bodies germane to itself alone. Consequently, it should not surprise us that it is possible to be punished for contempt of an ecclesiastical court.

Such close interweaving of the secular and ecclesi-

41 Andrew Lynch, The constitutional significance of the Church of England, in: Law & Religion, Peter Radan, Denise Meyerson, Rosalind F. Atherton (eds.) (Taylor & Francis), 2004, p.166

42 Ibid p.167

43 Ibid p.168

astical authorities does not exist in Malta, where the proclamation of Catholicism as the state religion is not quite formal. According to Part 1 of Article 2 of the Constitution of Malta "The religion of Malta is the Roman Catholic Apostolic Religion". At the same time, the primacy of Catholicism in the field of morality and rectitude is constitutionally enshrined: "The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong". Accordingly, "Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education".

c) The strong form of religious establishment. The third subgroup could include Greece. According to Article 1(3) of the Constitution of Greece, "The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions". The Constitution of Greece, along with the recognition of Orthodoxy as a main religion, regulates issues related to the field of traditional theology: "The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited" (Article 3.3). Moreover, in accordance with paragraph 2 of Article 13 of the Constitution of Greece, proselytism is prohibited. Proselytism was declared a criminal offense during the Metaxas regime (1936-1940) in accordance with the law of 1938. In 1939, the law was amended, providing clarification of the term proselytism.

In the same sense Mount Athos (Aghion Oros) provides a wonderful example. Its autonomy is recognized by the Constitution of Greece as Orthodox (Article 105). Its special status is recognized in the Joint Declaration of state parties of the European Community at the time of accession of Greece to this Community (1979). These countries, emphasizing that the special

> status granted to Mount Athos under the constitution, dictated by the spiritual and religious considerations, oblige Community to comply with its "in incarnation and further development of provisions of Community law, especially in regard to customs and tax privileges and the right to residence and economic activity". Moreover, it is forbidden to form associations, to proselytize and disseminate religious and moral teachings on Mount Athos. Any commercial activity, which is not necessary to sustain life of monks, is illegal.[44]

The draft of the European Constitution: what next?

Aside from the countries included in the 1, 2 group and in 1 subgroup of the 4th group, the constitutional norms in all other EU member States regulating the relationship between state and religion are not only historical tributes but also serve as effective legal tools to enable the State to interact positively with religious institutions. Moreover, as mentioned, this interaction is selective in most cases. Such a legal regime could be termed a regime of state religious favoritism, given that it is almost universally accepted that only specific religious organizations perform important public, and in some cases ideological, functions in the interests of the state. In European countries, these functions are fairly wide-ranging (school, spiritual solace in the army and prison, family values, etc.). All of the above-mentioned states are completely secular and they can hardly be blamed for the cultivation of religious radicalism. However, rules that are contrary to the principles of secularism still present in the constitutional law of these countries. In the foreseeable future this situation is unlikely to change. In spite of decision by the European Court of Human Rights, Greece, in particular, does not intend to make changes to its Constitution on proselytism.[45] The question arises: how does a preferential attitude of state to a particular religious confession differ from holding a more favorable attitude to a particular social, ethnic or racial group? Is the absence of negative discrimination ("freedom from" for all) in the presence of positive ("freedom for" for some) evidence of non-discrimination in general?

The Amsterdam Treaty Declaration on the status of churches and non-confessional organizations from October 2, 1997 states:

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44 Ch. K. Papastathis, The Status of Mount Athos in Hellenic Public Law, in: The Mount Athos & the European Community, (A.A.W., Thessalonica), 1993, p.55.

45 Ibid

"The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organizations." According to John Weiler, Article 22 of the Charter of Fundamental Rights of the EU could be pointing in the same direction, by stating in a rather general manner that "The Union shall respect cultural, religious and linguistic diversity".[46] However, the legislation of the European Union is rather secular. Benoit Challand approaches the Churches-EU theme with legalistic criteria, trying to identify the presence of religion in EU legislation. An analysis of nine fundamental treaties of the European Communities and the European Union leads him to conclude that "the question of religion is not a central topic at all in legal terms for Europe itself." In these documents, the theme of religion appears only 15 times (in 755 pages). In almost all cases (14) it refers to the text of the European Constitution, including the European Charter of Fundamental Rights, which mentions religious freedom and non-discrimination on the basis of religion. This allows Challand to argue that "the collocation of Europe and religion is only a very recent construction", and the increasing interest of the EU towards religion can be ascribed to pragmatic reasons, where the desire to separate itself from Islamic neighbors (i.e. Turkey) plays a prominent role. The opinion of Valery Giscard d`Estaing (that Europe will lose its soul if it accepts a Muslim country) is a testimony to this.[47]

It the draft Constitution for Europe, it was noted in the Preamble that the people of Europe "are proud of their national identity and history" and "are determined to overcome their ancient divisions and, united more closely to determine their common destiny". Thus, "being united in diversity" they will implement the project to make Europe a "special area of human hope".[48] In addition, according to the original wording of the Preamble, the basis for this is the set of common "Judeo - Christian values". This rather complicated document, which numbers 450 articles and about 300 pages, was put to a referendum in 2004, where it was rejected by voters.

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46 J.H.H.Weiler. European Law of Religion - organizational & institutional analysis of national systems & their implications for the future European Integration Process**.** Available at http://www.jeanmonnetprogram.org/papers/03/031301.pdf.

47 S. Mudrov, The Christian Churches as Special Participants in European Integration, Journal of Contemporary European Research. Vol. 7, No.3, (2011). p.365,

48 Treaty establishing a Constitution for Europe. Official Journal of the European Union. Vol. 47. (2004).

The architects of this project should have anticipated that most European citizens, who voted against the draft of the European Constitution, would still be too proud of their national identity and history, while others might be skeptical or indifferent toward European aspirations, and thus that a common set of "Judeo - Christian" values would fail as a supranational identification principle. As a matter of fact, this is just an attempt to build identity in the European Community, not government policy of religious discrimination. Nonetheless it reveals a tendency that could lead to such a situation.. As Cvijic and Zucca note, the "claim that the liberal ideal derives directly from Christian philosophy and that it is accordingly illogical that the Preamble of the European Constitution invokes humanist values but refuses to make a direct allusion to Christian values, fails to give due recognition to the full picture of the relationship between humanism and Christianity".[58] According to Charles Taylor, if to try to identify Europe constitutionally through "Judeo - Christian" European values in the understanding of fundamental human rights, which "need to be connected to a deep past, we are forced to face how conflicted this past is, and how much we rely on different partisan readings of it, e.g., human rights as the fruit of Christianity versus human rights as won in heroic struggle against the reactionary obscurantism of the Church".[49]

However, it is unclear why is there an approach to human rights not through international regulations, but through religion, which often does creates not unity but rather divisions. With the same success it would be possible to refer to the Roman-Germanic, Anglo-Saxon values. The debate over the possible inclusion of Europe`s Christian heritage in the preamble of the Europe constitution as opposed to a more universalist outlook has for years marred the constitutionalization process. It is hard not to see the strong symbolic, foundational religious motifs embedded in such constitutional visions.[50]

Conclusion

Aside from France, none of EU countries protects the legal equality of all religions. Instead, the doctrine of tolerance is introduced, which is a sociological concept that has no legal content.

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49 Charles Taylor, Religion and European Integration, in: Religion in the New Europe, Krzysztof Michalski (ed.) (Budapest: Central European University Press), 2006 p.13.

50 Ran Hirschl, Constitutional Theocracy (Harvard University Press), 2010, p.209

Under these conditions, the emergence of religion-based "first-class citizens", who must be tolerant towards those with different beliefs, seems inevitable. The equal attitude of the state to all confessions, is as important as the equal treatment of all ethnic groups. Otherwise, it violates the general principle of citizenship. In the words of George Orwell, it creates a situation where some citizens are "more equal than others".[51]

The experience of the European Constitution demonstrated that even "sleeping" regulatory norms of religious favoritism can be artificially resuscitated. It is possible that in certain circumstances they can activate processes contributing to the realization of Samuel Hattington's darkest prophecies.[65] Despite the active cooperation of European countries with religious institutions, some authors believe that such cooperation is insufficient and that "today, Europe is viewed by many as the most secular, non-religious place on Earth. Religious observance and identification has plummeted among white Europeans, and many churches fear the total disappearance of Christianity in Europe".[52] However, the sociological surveys demonstrate the growth of religiosity in Europe.[53]

Thus what is the European alternative? The alternative ought to be sought in history of Europe - not in the concept of Christian Nationhood, but in the philosophy of the Enlightenment. "All justice comes from God, who is its sole source; but if we knew how to receive so high an inspiration, we should need neither government nor laws", wrote Jean-Jacques Rousseau.[54] It is about civil religion. The concept of civil religion has its origins in the eighteenth century, when it was first posited by Rousseau. He believed that every society needed "a profession of faith which is purely civil "in order to integrate members into society". He saw religion as unrealizable in its pure form, a cause of conflict, and a support for absolute power. His civic religion, in contrast, is designed to unite the citizens in loyalty, and to establish respect

51 George Orwell, Animal Farm (1945).

52 Natalie Goldstein, Religion & The State (Global Issues), (New York: Infobase Publishing), 2010, p.133

53 P. Achterberg, A Christian cancellation of the secularist truce? Waning Christian religiosity & waxing religious deprivatization in the West. Journal for the Scientific Study of Religion, Vol.48 No 4 (2009). p.689; John T.S. Madeley Religion, State & Civil Society in Europe: Triangular Entanglements – Religion & Civil Society in Europe, Joep de Hart, Paul Dekker, Loek Halman (eds.), (Springer), 2013, p.49; J. T. S. Madeley, America's secular state & the unsecular state of Europe. In R. Fatton & R. Ramazami (Eds.), Thomas Jefferson's church-state separation principle in the contemporary world (New York/London: Palgrave), 2009, pp. 109 –136

54 Jean-Jacques Rousseau. The Social Contract & Discourses, G.D.H. Cole ed., (Everyman's Library pub.), 1993, p.210

for the state and laws.[55] In the understanding of American sociologists, "In practice, the idea of civic religion may justify the kinds of collective ritual and honor that are given, for example to the Constitution of the United States and to commemorations of dead heroes and leaders in the Pantheon".[56] It is possible to attribute here a profound faith in the national exclusiveness and messianic mission of the American nation. However, "[t]his is less a matter of deep beliefs than a symbol of political unity and respect for political institutions of the polity. Such modern examples tend to have political institutions or the nation as the focus of respect, but another approach focuses on creating identification more directly among otherwise diverse citizens by providing common experiences and reference points. This may emphasize the value of public occasions and spaces set aside to foster interaction in joint activities, and lay the ground for purely political engagement with one another".[57]

It is not obvious what civil religion could possibly look like in Europe, which is what this paper has sought to explore. The practice of civil religion practice in Azerbaijan may constitute a model. It provides equal conditions for all confessions and ethnic groups, fostering a sense of common historical destiny. It provides a common, non-religious morality, including a sense of honor, mutual respect and dignity; it entails the presence of moral obligations that cannot be expressed in a material calculus, and finally it relies on family values. It can be stated that civil religion as a self-identification component of society is the quintessential experience of the long-term co-existence of people of ethnic and religious communities. Hence, for some EU countries, Azerbaijan's experiences in institutionalizing respect for religious pluralism could be interesting to consider.

55 Inger Furseth, An introduction to the sociology of religion: classical & contemporary perspectives (Ashgate pub.), 2006, p.103

56 Iseult Honohan, Civic Republicanism, (Taylor & Francis pub.), 2002, p.176.

57 Ibid