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Christian Values in the Constitutions of Serbia and Greece—A Comparative Overview

- **ABSTRACT:** *Christian values are the foundation of modern European societies. Suffice it to say that the most important European philosophers and cultural movements have originated from Christian environments. The constitutional history and tradition of the majority of the European countries are proof of the strong influence of Christianity and Christian churches on the creation and constitutional organisation of the modern European states. The subject matter of this work is a comparative analysis of the current Constitution of the Republic of Serbia and the Constitution of Greece, with the aim of identifying the Christian values comprised in their constitutional provisions. This work has two fundamental hypotheses. The first one is that the constitutions of both these countries comprise a substantial number of constitutional norms with Christian origins and foundations. The second hypothesis is that the Constitution of Greece comprises more provisions that demonstrate close connections between the state and Christianity. This is a consequence of the fact that in Greece, there have been no interruptions in the continuity of the constitutional tradition, unlike the case with Serbia during the communist rule.*
- **KEYWORDS:** Christian values, Constitution of Serbia, Constitution of Greece, state-religion relations, constitutional principles.

1. Introduction

Discussions about the contemporary constitutional nature of secular states rarely consider the contribution of religion and religious organisations to the development of the fundamental constitutional principles. Despite the close connections between the constitutional tradition of the majority of the European countries and religion, the prevailing perspective in most cases is that the contemporary constitutions and their principles are the result of the French revolution, liberalism, and secularism. This

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perspective disregards the fact that all the above mentioned movements originated from the Christian milieu and in societies wherein the Christian churches played a dominant role. Although the French revolution was characterised by an anticlerical attitude, one cannot claim that all its consequences and all the accomplishments of that event preserved such character. Therefore, it would be beneficial to consider the extent to which modern constitutions are based on Christian values, as well as whether certain values claimed *a priori* to be the result of anti-religious and anti-clerical movements are actually values that have been promoted by Christianity for centuries in European societies, and are still being promoted.

The subject matter of this work is an analysis of two constitutions: the 2006 Constitution of the Republic of Serbia and the 1975 Constitution of Greece, inclusive of all the amendments. The Constitutions of the above mentioned states have been chosen for comparative analysis for multiple reasons. First, these states have different constitutional traditions and histories. The Constitution of the Kingdom of Serbia and the Constitution of the Kingdom of Greece did not differ significantly in the 19th century because they had originated from the same models. However, the constitutional histories of Serbia and Greece differed significantly in the 20th century. Serbia became a part of Yugoslavia, which was a multi-ethnic and multi-confessional state. After World War II, it became a communist state, and during this period, the Church was mentioned in the Constitution only negatively. Thus, a discontinuity occurred in the constitutional history of Serbia during the 20th century. The non-existence of any explicit mentions of Christianity and Christian values in the Serbian Constitution was a consequence of historical circumstances and it is the heritage of the socialist constitutional tradition.

The Constitutions of Serbia and Greece differ in respect of the proclaimed constitutional model of the relationship between the state and the Church. Serbian constitution-makers adopted the model in which the state and the Church are separate entities. On the other hand, the Greek Constitution specifies that the Orthodox religion is 'the predominant religion' in Greece. Although not representing a classical model of the 'state Church' that exists in Denmark and England, constitutional proclamation of the predominant religion has certain legal consequences. This work will focus on an analysis of the extent to which different constitutional models of the relationships between the state and the Church are impacting the existence of Christian values in constitutional texts.

The Greek Constitution comprises provisions that are a consequence of the special legal position of individual entities of the Church. The Constitution thus regulates the legal regime of Mount Athos. Since it is a unique phenomenon in the European continent, it is to be expected that the Serbian constitution-makers would not regulate any part of the Serbian territory, any church, or any state entity in a similar manner.

The main hypothesis of the work is that the Constitutions of both states include constitutional norms that originate from Christian values. Although it can safely be said that the constitution-makers did not intend to bestow constitutional character upon individual Christian values, it does not have any impact on the significance of the fact

that the basic principles of contemporary constitutionalism are compatible with the Christian dogma and values that Christianity has promoted for centuries in Christian societies. In order to achieve the objective of this work, the comparative method will be used first, followed by the historical, dogmatic, and descriptive-analytical methods.

2. Preamble

The Constitution of the Republic of Serbia was adopted in 2006.² The main reasons for its adoption include the democratic changes in 2000 and the change of the Serbian statehood as Serbia became a sovereign and independent state on the same year.³ Another reason the constitution was adopted was that the constitution-makers wished to point out that the territory of Kosovo and Metohija was an integral part of the territory of the Republic of Serbia.⁴ The Greek Constitution was also a post-revolution constitution from 1975. The seven-year dictatorship of the colonels ended in 1974. The new constitution established a presidential parliamentary democracy.⁵ Although the constitution was adopted with a simple majority of votes, it gained broad support over time from the political forces in Greece.⁶ The constitution was amended several times, and the last revision occurred in 2019.⁷

Although a vast majority of state constitutions begin with a preamble, legal science has long ignored it. It was the question of the place of Christian values in the Constitution of the European Union that spurred interest among researchers regarding this subject matter.⁸ One of the common characteristics of the Constitutions of Greece and Serbia is that both have preambles. Concerning the formal characteristics of both preambles, it can be said that they are among the shorter constitutional preambles,⁹ and that both lack any particular title.¹⁰ The most important difference between them is the formal position of the preamble in the constitutional text. The Preamble of the Greek Constitution is positioned after the title of the constitution and is an integral part of it. Despite this, the predominant view in Greek scientific texts is that the preamble is of a declarative character.¹¹ The Preamble of the Serbian Constitution precedes the

2 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006.

3 Marković, 2006, p. 7.

4 Marković, 2006, p. 7.

5 Parliamentary democracy is a notion that is broader than that of 'parliamentary government', and it includes the participation of the majority of citizens in controlling the exercising of the ruling power in its entirety. Pejić, 2016, p. 69.

6 Constitutional History.

7 Published in the Official Government Gazette of the Hellenic Republic, No. A' 211/24.12.2019.

8 Bačić, 2013, p. 7.

9 Simić, 2020a, 188. The Preamble of the Greek Constitution is among the shortest preambles in the world. It comprises only 10 words. Kutlešić, 2010, p. 64.

10 In some constitutions, the preamble has its own specific title (such as 'The Preamble'). This is mainly the case with the African countries. Radovanović, 2020, pp. 100–101.

11 Papadopoulou, 2015, p. 41.

title of the legal act itself (Constitution). The classical constitutional theory generally holds that preambles that are positioned before the title of the legal act do not have a legally binding effect since they are not integral parts of the constitution.¹² However, more recent theoretical approaches, which take into account the case law of the constitutional courts and the relevance of the contents of the preamble from constitutional and legal aspects, do not analyse its legal nature solely from the aspect of its formal characteristics. This is the reason an attitude supporting the normative function and binding legal effect of the Preamble of the Constitution of the Republic of Serbia has prevailed in recent scientific texts.¹³ Hence, another common characteristic of the two preambles is that consensus is lacking in the constitutional theory about their legal nature.

It was stated in the Preamble of the Greek Constitution that the constitution was adopted 'In the name of the Holy and Consubstantial and Indivisible Trinity'.¹⁴ This is not the only mention of the Holy Trinity in the Greek Constitution. Art. 33, which regulates the text of the oath taken by the President of the Republic, as well as Art. 59, which prescribes the text of the oath taken by the parliamentary deputies, also mentions the Holy Trinity. Although the doctrine of the Holy Trinity is fundamentally common to all Christians, the Greek constitution-makers identify it with only the Orthodox denomination.¹⁵ This is evident from the provisions of Art. 59 of the Constitution, which proposes a different text for the oath to be taken by deputies not of the Orthodox denomination. The fact that the supreme legal act in Greece was adopted 'In the name of the Holy Trinity' is indicative of the close relations between the Greek state and Christianity, despite the lack of consent in the relevant literature concerning whether the preamble has any legal effect.

The Preamble of the Serbian Constitution is somewhat longer and is seemingly free from any religious dimensions. The constitution-maker refers to the state traditions of the Serbian people and equality among citizens and ethnic communities in the preamble in order to then focus on the main topic of the preamble, namely, the constitutional and legal position of Kosovo and Metohija. It is pointed out in the preamble that the Province of Kosovo and Metohija is a part of the territory of the Republic of Serbia and that certain constitutional obligations of all the state authorities arise from such a position of the province.¹⁶ Thus, the preamble includes both declarative and prescriptive elements: the declarative ones include the references to state tradition and equality among the citizens, and the prescriptive ones include the provisions serving to confirm that Kosovo is a part of the Republic of Serbia and introducing the 'obligation of all the state authorities to represent and protect the Serbian state interests in Kosovo and Metohija in all the domestic and foreign political relations'.¹⁷ Despite the initial

12 Marković, 2015, p. 43.

13 Simović, 2020, p. 191.

14 Constitution of Greece, preamble.

15 Papastathis and Maghioros, 2015, p. 345.

16 Constitution of Serbia, preamble.

17 Simović, 2020b, p. 30.

impression that the preamble does not include any religious elements, it should be stressed here that Kosovo and Metohija, along with their territorial dimension, have an exceptionally important spiritual dimension for the Serbian people, as it is a territory that is a symbol of Serbia's Christian and traditional values.¹⁸

The preambles predominantly include mentions of the purpose and objectives of the principal part of the constitution in question.¹⁹ In that sense, the facts that the constitution was adopted in Greece in the name of the Holy Trinity and that the Serbian preamble introduced the obligation to protect the state interests in Kosovo and Metohija are indicative of the inspiration for the basic objectives and purpose of the constitutions being found in specific Christian values. In the Greek Constitution, the connection with Christianity is direct and obvious, while in the Serbian Constitution, it is indirect and concealed.

3. Constitutional model of the relationship between the state and the church in Greece

In Art. 3, the Greek Constitution stipulates that the Eastern Orthodox Church of Christ has the status of 'The prevailing religion in Greece'.²⁰ Many theoretical works have been dedicated to the implied meaning of the term 'prevailing religion'.²¹ When the different attitudes are taken into account, it can be concluded that there are at least four different theoretical approaches. Some authors are of the opinion that the term 'prevailing religion' implies the official religion in the state, i.e. the state church.²² Authors that conclude that the term implies the state religion share a similar opinion.²³ Nevertheless, the 'prevailing religion' enjoys special care and protection by the state and it has a unique legal position. However, the authors that promote this opinion point out that the existence of a state or official religion by no means implies that the rights of the members of other denominations are reduced or limited, or that the constitutional principle of equality of all denominations is violated, since all the fundamental rights are guaranteed to all the religious organisations, irrespective of their constitutional and legal status.²⁴

Contrary to that interpretation is the opinion that by the term 'prevailing religion', the constitution-maker implies the religion of the vast majority of the population

18 Čizmar, 2010, p. 113.

19 Mikić, 2014, p. 434.

20 Constitution of Greece, Art. 3.

21 A similar term was used in the 1869 Constitution of the Principality of Serbia, according to which the Eastern Orthodox religion was the 'predominant religion' in Serbia. Mrđenović, 1988, p. 76.

22 Παλαστάθης, 2007, p. 57.

23 Πουλής, 1982, pp. 965–971. It is an interesting fact that the term 'state religion' was used in the Constitutions of the Kingdom of Serbia. Mrđenović, 1988, p. 107 and p. 147.

24 Παλαστάθης, 2007, pp. 57–60.

of Greece.²⁵ Despite the arguments opposing this opinion that contend that the constitution does not include statistical data on the population of Greece,²⁶ it predominates the more recent literature. The fact that the vast majority of the citizens of Greece belong to the Orthodox religion has certain legal consequences, including the special constitutional and legal position of the prevailing religion. That opinion is corroborated by the historical interpretation of this constitutional norm, since the general rapporteur of the parliamentary majority claimed during the discussions on the adoption of a new Constitution that the term ‘prevailing religion’ denoted the religion accepted by the vast majority of the Greek people.²⁷

Additionally, some attitudes fall midway between the two above mentioned extremes. According to these attitudes, the term ‘prevailing religion’ implies that all religions are equal, and that the Orthodox religion is only the first among them (*prima inter pares*). According to this perspective, the Orthodox Church, owing to its historical connections with the state, as well as its civilisational role in the development of the Greek state, has an honorary place among all the denominations in the country.²⁸ Such an interpretation is incompatible with other constitutional provisions, which introduce privileges for the Orthodox Church in Greece, which are not solely of an honorary nature.

Another approach attempting to reconcile the constitutional and legal position of the Orthodox Church and the principle of equality of all religious organisations is the theory of the two circles representing two different areas of regulation. The first circle includes the regulation of the legal relationship between the state and religious organisations, and the second circle includes the protection of the rights proclaimed by the Constitution. Although differentiation between the ‘prevailing religion’ and other religions is permitted in the first circle, in the second circle, the introduction of any differentiation or the mirroring of differences from the first circle in the second circle is not permitted.²⁹ The problem with such an interpretation is that it indicates an unnatural division between the legal position of the religious organisations and their rights, as well as between the legal position of religious organisations and the right to freedom of consciousness and religion.

The Constitution of Greece, in addition to proclaiming the Orthodox religion as the prevailing one, enters to an extent into the field of its autonomy and internal organisation. The constitution dictates that it is autocephalous, i.e. independent of all other Orthodox Churches.³⁰ At the same time, according to the constitution, the Orthodox Church of Greece is obliged to maintain unity with the Ecumenical Patriarchate of Constantinople and all other Orthodox Churches. Concerning the internal organisation of the Greek Church, the constitution lays down the management of the ‘Holy Synod of

25 Τρωϊάνος, 2003, p. 112.

26 Παπαστάθης, 2007, p. 56.

27 Πρακτικά των συνεδριάσεων των υποεπιτροπών της επι του Συντάγματος 1975 Κοινοβουλευτικής Επιτροπής, 1975, p. 402.

28 Κυριαζόπουλος, 1999, pp. 91–92.

29 Τσάτσος, 1993, p. 608.

30 Parasnath and Maghioros, 2015, pp. 350–353.

serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928'.³¹ The 1850 Tome is an act based on which the Church of Greece was granted its autocephaly status, and owing to the Patriarchal and Synodal Act of 4 September 1928, the territories of the northern Greece were placed under the governance of the autocephalous Church of Greece.³² Since the jurisdiction of the Orthodox Church of Greece does not cover the entire territory of Greece,³³ the constitution prescribes that the existence of other ecclesiastical regimes is not contrary to the constitution.³⁴ Although the constitution does not regulate the field of autonomy of the Orthodox Church of Greece, making references to the internal ecclesiastical regulations still leaves some space for the protection of ecclesiastical self-government.

Finally, it can be concluded that the relationship of the state and the Orthodox Church in Greece is regulated in an imprecise manner, to grant potential for different interpretations. This so-called 'rubber norm' permits extensive interpretations and arbitrary application. That is why these relations are fluid and changeable, and they can hardly be categorised in any constitutional model of the relationships between the state and the church.³⁵

The Constitution of Greece regulates the position of other churches and religious communities in Art. 13, which guarantees inviolability of the freedom of consciousness and enjoyment of personal and civil rights irrespective of religious affiliation. The constitution protects the freedom of consciousness as an absolute right.³⁶ The Constitution of Greece introduces the category of 'known denominations' for religions that do not have the status of the 'prevailing religion'. It is not specified in the constitution which religious organisations comprise the known religions. That subject matter has been regulated by the Law on Organization of the Legal Form of Religious Communities and their organizations in Greece since 2014, and it prescribes the following: 'Every religion and doctrine for the exercise of public worship of which an authorization to establish and operate a church or worship place is into force, is presumed to be a known religion'.³⁷ According to the constitution, all known religions are free and enjoy freedom of expression of religious beliefs. As opposed to the freedom of consciousness, freedom of expression of religious beliefs must be limited. The Greek Constitution restricts the freedom of expression of religious beliefs by public order, public morality, and express prohibition of proselytism.

31 Constitution of Greece, Art. 3.

32 It is about the so-called New Lands which continue to belong to the Ecumenical Patriarchate from the spiritual point of view. Papastathis and Maghioros, 2015, p. 353.

33 Τρωιάνος, 1984, pp. 463–539.

34 Constitution of Greece, Art. 3, sec. 2.

35 Κονιδάρης, 2000, p. 98.

36 Papastathis and Maghioros, 2015, p. 368.

37 Law on Organization of the Legal Form of Religious Communities and their organizations in Greece, Art. 17.

4. Constitutional model of the relationship between state and church in Serbia

The Serbian constitution-makers chose the system of dissociation of the state and the Church. The Constitution of the Republic of Serbia stipulates in Arts. 11 and 44 that churches and religious communities are separate from the state.³⁸ Debates in Serbian literature have revolved about the type of dissociation of the state and churches and religious communities. On one side are the authors who maintain that the constitution introduced a system of strict separation of the state and the church,³⁹ and on the other side are those who believe that the type of separation of the state and religious organisations is not determined by the constitution and that the system of cooperative separation has already been rooted in Serbian legislation.⁴⁰ This dilemma was resolved by the Constitutional Court of the Republic of Serbia, which explicitly concluded in two judgements that the system of strict separation had not been applied in Serbia, and that the system of cooperative separation of the church and state was being applied instead.⁴¹

When speaking about the legal position of churches and religious communities, as well as in general about the position of religion in the legal order, the provision of the constitution that prescribes that the secular character of the state is one of the constitutional principles is of particular importance.⁴² The question here is whether the secular character of the state means that there shall be no space in the public sphere for religion and that cooperation between the state and religious organisations is not possible because it would violate one of the constitutional principles. The practice in secular states, as well as the multitude of doctrinal attitudes,⁴³ clearly indicates that the secular character of the state is not an obstacle for the implementation of various levels of cooperation between the state and religious organisations. Bearing in mind the above, it can be claimed that the Constitution of the Republic of Serbia does not restrict cooperation between the state and churches and religious communities, although the establishment of their institutional unity is prohibited.

38 Constitution of the Republic of Serbia, Art. 11 and 44.

39 Draškić, 2013, pp. 38–39; Marinković, 2011, p. 379; Milošević, 2020, p. 180.

40 Avramović, 2011, pp. 298–299; Đurić, 2013, p. 45; Rajić Čalić, 2019, p. 743; Đurić and Trnavac, 2018, p. 98.

41 Decisions of the Constitutional Court of the Republic of Serbia IUz- 455/2011 and IUo-175/2012.

42 Constitution of the Republic of Serbia, Art. 11.

43 Andrés Sajó asserts that ‘Secularism is a somewhat unfortunate term for use in constitutional theory. It is overloaded—it refers to different, albeit interrelated, concepts in different languages and according to different disciplines’. Sajó, 2008, p. 608.

5. Constitutional protection of Christian values in the constitution of Greece

The Constitution of Greece comprises a series of provisions that protect the ultimate Christian values and the reputation of Christian Churches and all other religious organisations. Art. 3 of the Constitution of Greece, which has been mentioned above, includes a regulation governing the protection of the text of the Holy Scripture: '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'.⁴⁴ The Holy Scripture has exceptional importance for Christian spirituality and identity as the source of Christian doctrine.⁴⁵ Constitutional and legal protection is enjoyed only by the 'official translation' of the Holy Scripture. Since the Holy Scripture is available in its original form in archaic Greek (*koine*), its translation into the Modern Greek language is subject to approval by the Greek Church and the Great Church of Christ in Constantinople. This does not mean that unofficial or private editions of these translations of the Holy Scripture may not be published. Nevertheless, constitutional protection of the official text of the Bible is indicative of the importance that Christianity and its system of values in the Greek Constitution.

The Constitution of Greece guarantees freedom of the press, and prescribes limitations of such freedom as well. One of the limitations is established in Art. 14, paragraph 3, which stipulates that the press can be curtailed following a publication in case of 'an offence against the Christian or any other known religion'.⁴⁶ Concerning education, the Greek constitution-makers prescribe that its objective is, among other things, 'the development of national and religious consciousness'.⁴⁷ Since the vast majority of the population is of the Orthodox religion, it is clear that the development of religious consciousness must be to some extent related to Christianity, while the rights of members of other religions are not reduced. Ownership right of some specific property types, such as mines, caves, archaeological sites, lakes, abandoned spaces, etc., is regulated by Art. 18 of the constitution, as is the ban on expropriation of agricultural land that is under the ownership of three monasteries under the jurisdiction of the Ecumenical Patriarchate, as well as any property of the Patriarchates of Alexandria, Antiocheia, and Jerusalem and the Holy Monastery of Mount Sinai.⁴⁸ Thus, special care

44 Constitution of Greece, Art. 3, sec. 3.

45 Christian spirituality can be generally described as a set of beliefs, values, and way of life that reflects the teachings of the Bible and the way in which Christians express their faith. Baah-Odoom, 2016, p. 2414. For additional information, see Childs, 1993, pp. 3–6. Dunn et al., 2010.

46 Constitution of Greece, Art. 14, sec. 3.

47 Constitution of Greece, Art. 16, sec. 2.

48 In the text of the constitution, these monasteries are mentioned individually: the Monasteries of Aghia Anastasia Pharmacolytria in Chalkidiki, Vlatadhes in Thessaloniki, and Ioannis the Evangelist Theologos in Patmos. Constitution of Greece, Art. 18, sec. 8.

has been demonstrated for the property of the Orthodox churches, the seats of which are not located in the territory of Greece.

The Constitution also prescribes the text of the oath to be taken by the President of the Republic and the deputies in the Greek Parliament. In both cases, the oath is taken 'in the name of the Holy and Consubstantial and Indivisible Trinity'.⁴⁹ The Constitution of Greece envisages that the heterodox deputies may adjust the oath to their religions or beliefs. Such an option, however, has not been envisaged in the case of the oath to be taken by the President of the Republic. It could be claimed that the constitution-makers preferred an Orthodox Christian as the President of the Republic.⁵⁰ The Constitution of Greece also prescribes additional protection of the freedom of consciousness as well as of the legal position of religious organisations by envisaging that the proposals of the laws relating to the issues regulated by Art. 3 (the prevailing religion) and Art. 13 of the constitution (freedom of consciousness and freedom of religion) would be discussed exclusively in parliamentary plenum.⁵¹ Another mechanism of additional protection was established by the constitutional provision according to which any revision of the constitution whereby Art. 13, paragraph 1 of the constitution—which protects the freedom of consciousness—would be amended was prohibited.

Art. 105 of the Constitution of Greece also relates to Christian values. In itself, this article substantially represents the constitution.⁵² It comprises a series of provisions regulating the position of Mount Athos, which is, according to the constitution, a self-governing territory of the Greek state. The constitution recognises the existing legal regime and relinquishes the governance of Mount Athos to monastic institutions. Few tasks, such as protecting security and public order and exercising judicial powers, remain under the purview of the Greek state.⁵³

6. Constitutional protection of Christian values in the constitution of Serbia

The Serbian Constitution does not include a substantial number of provisions that could be directly linked to Christian values. This is a consequence of the current Serbian Constitution originating from the tradition of socialist constitutionality.⁵⁴ It would be unfair to say that there had been no deviation from it. The term 'church' has been used in the 2006 Serbian Constitution in a positive sense, unlike the case with the 1946 FPRY Constitution, wherein it has been used only negatively. Specifically, the term 'religious community' was consistently used in that constitution to refer to

49 Constitution of Greece, Art. 33, sec. 2 and Art. 59, sec. 2.

50 Παπαστάθης, 2007, p. 56.

51 Constitution of Greece, Art. 72, sec. 1.

52 For information on the constitution in the material sense, see Goldoni and Wilkinson, 2018, pp. 567-597.

53 Νικόπουλος, 2017, p. 155.

54 Marković, 2006, p. 6.

religious organisations, and the term ‘church’ was used only in three occasions, when prescribing that the state and school are separate from the church and prohibiting any abuses of the church for political purposes.⁵⁵ Not a single constitution adopted after that one contained the word ‘church’.⁵⁶ Although these constitutional regulations pertained equally to churches and religious communities, it indicated that the term ‘church’ was used solely in a negative context.⁵⁷ However, in the 2006 Serbian Constitution, the term ‘religious communities’ was replaced by ‘churches and religious communities’ to ensure that the special significance of Christianity was indeed recognised, since the church is a special form of a religious society that is characteristic of Christianity as a religion.⁵⁸

The 2006 Constitution of the Republic of Serbia has no provisions comprising any religious elements. An exception to this could be Art. 7, which regulates the state coat of arms, flag, and anthem. The constitution prescribes that the state anthem is ‘Bože pravde’ (‘God of Justice’), which begins by addressing God.⁵⁹ This is the only instance in which God is mentioned in the text of the Constitution. The fact that the state anthem includes an invocation of God is indicative of the close connection of the state and national identity to religion. In addition to the above mentioned, it should be pointed out that other state symbols have a religious basis, such as the two-headed eagle and the cross with four fire strikers.

Provisions indicating that the constitution-makers adopted and accepted certain Christian values can be found in the Constitution of the Republic of Serbia. However, since these are universal values, and one can positively claim that they were not introduced into the constitution owing to their significance in Christianity, but rather other political and historical circumstances, it should be pointed out that the purpose of this work is not to examine the origins of these values or the reasons behind their incorporation into the Serbian Constitution. The issue of whether the constitution-makers protected a universal value because it originated from Christian teachings or because it was an achievement of a great cultural and educational movement, an achievement of a revolution, or an international obligation undertaken by the state is not of any key significance for the topic of this work. The objective of this work is to point out that the constitutional provisions protect certain values that can be demonstrated to be related to Christianity and its teaching.

The first article of the constitution prescribes that the Republic of Serbia is a state ‘based on affiliation to European principles and values’.⁶⁰ European values undoubtedly include values with religious origins. This is also confirmed by the Treaty

55 Constitution of the Federal People’s Republic of Yugoslavia, Arts. 25 and 38.

56 Radulović, 2014, pp. 7–8.

57 This is particularly obvious in Art. 25 of the Constitution of the Federal People’s Republic of Yugoslavia, from which it could be concluded that only churches could be abused for political purposes. In addition, at the time when this constitution was in force, connections of the state and schools with the church were considered a negative phenomenon.

58 Troicki, 2011, pp. 30–31.

59 Constitution of the Republic of Serbia, Art. 7.

60 Constitution of the Republic of Serbia, Art. 1.

of Lisbon; its preamble mentions the universal values inspired, among other things, by European religious heritage.⁶¹ Even the authors that point out the secular character of contemporary Europe cannot disregard the fact that the secular and the religious identities have mixed in Europe.⁶² The constitution has, thus, implicitly prescribed that the Republic of Serbia is based on religious values as well, on condition that they represent general European values as well.

The Constitution of the Republic of Serbia guarantees equality of women and men,⁶³ which is a Christian value that has gained universal significance in modern times. According to Christian teachings, the human being is 'one being in two forms', the male and the female one.⁶⁴ Despite the frequent objections to Christianity due to women's position in certain Christian churches, the actual contribution of Christianity to the improvement of the position of women in the past is often disregarded. Suffice it to mention that it is the only religion that preached that woman was the crown of the creation of the world.⁶⁵ As early as in the second half of the second century, Justin Martyr developed the concept of the gender equality of men and women in his works, which was a complete novelty for the age in which he lived.⁶⁶

The Constitution of the Republic of Serbia prescribes universal equality of people before the constitution and the law.⁶⁷ Equality of all people according to their nature is also one of the values discussed by the great Christian teachers, such as Gregory of Nyssa.⁶⁸ In addition, in the majority of Christian churches, the ideas of equity and equality are included in their documents on the concept of human rights.⁶⁹ The Constitution of the Republic of Serbia protects human dignity by prescribing its inviolability and the universal obligation to respect and protect it.⁷⁰ The biblical narrative of the concept of human dignity and the texts of the patristic tradition were clearly demonstrating that the Christian concept of human dignity does not differ from the contemporary concept of human rights.⁷¹ The constitutional norm regulating conscientious objection, i.e. prescribing that nobody shall be obliged to fulfil the obligations that include the use of arms if that is contrary to their faith, is also related to Christian values.⁷²

The constitutional provisions regulating the right to enter into marriage are of special importance. The Serbian Constitution recognises only the marriage that is

61 Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, preamble. A special problem is the (often ideological) denial of the significance of Eastern Christianity in the formation of modern Europe. Βενιζέλος, 2005, p. 28.

62 Casanova, 2006 p. 66.

63 Constitution of the Republic of Serbia, Art. 15.

64 Bulović, 2021.

65 Bailey, 1970, p. 43.

66 Devrnja, 2014, p. 165.

67 Constitution of the Republic of Serbia, Art. 21.

68 Devrnja, 2014, p. 181.

69 Lutheran World Federation, 1977; Pontifical Commission «Iustitia et Pax», 2011, pp. 27–28. The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom, and Rights.

70 Constitution of the Republic of Serbia, Art. 23.

71 Božović, 2020, p. 71.

72 Constitution of the Republic of Serbia, Art. 45.

concluded before a state authority based on the free will of a man and a woman.⁷³ Hence, the constitution-makers excluded the possibility of recognising the validity of a marriage concluded according to the rules of religious organisations. Thus, the position of religious persons was made more complicated, since they were forced to have two weddings, if they wished their marriage to be recognised by the state. Additionally, the constitution-makers made the introduction of same-sex marriage impossible, as it would be contrary to the Christian understanding of marriage.⁷⁴ Marriage is, as a lifetime union of two persons of different sexes, also defined in the regulations of the Serbian Orthodox Church.⁷⁵ Thus, the constitution is protecting marriage in the form in which that institution was developed in Christianity and in accordance with Christian values.

It should be finally pointed out that the Constitution of the Republic of Serbia specifically protects the freedom of religion. Art. 202 of the constitution stipulates that the freedom of conscience and freedom of religion are among the human and minority rights that shall be upheld even in the regime of an emergency or the state of war.

7. Conclusions

This work analysed the Constitutions of Serbia and Greece with the aim of identifying the Christian values that are standardised, adopted, and protected by these constitutions. The first conclusion is that the Greek Constitution comprises more provisions that explicitly mention the Orthodox Church or some elements of its teaching. On the other hand, the Constitution of the Republic of Serbia does not contain a single provision that includes an explicit mention of Christianity or any element of its teaching. The Greek constitution-makers maintained the connection to the Greek constitutional tradition in this field, while the Serbian constitution-makers relied more on the socialist constitutional tradition, with a minimum deviation from it when regulating the issues of the protection of the freedom of religion.

The presence of a specific religion or elements of religious teaching in a constitutional text depends on the constitutional model of the relationship of the state and religion as well. In Greece, the constitution-makers opted for the system of the 'prevailing religion', in which special rights, privileges, and constitutional and legal position were recognised to one religious organisation. In order to regulate such a position of one religion, it was necessary to regulate the relationship of the Greek state and church more comprehensively, and hence, the text of the constitution comprises the constitutional norms that include both some individual elements of the dogma of the Greek Orthodox Church and its internal organisation. On the other hand, the Serbian constitution-makers opted for the system in which the state and the churches

73 Constitution of the Republic of Serbia, Art. 62.

74 Aničić, 2015, pp. 97–99.

75 Marital Rules of the Serbian Orthodox Church, Art. 1.

and religious communities were separated, and hence, the regulation of the relations of the state and any specific religious organisation was not needed. This is one of the main reasons the Serbian Constitution does not include any norms or provisions mentioning any Christian church. It could be said that the Serbian Constitution completely ignores the contribution of the Church and of the religion to contemporary Serbian statehood and the identity of the citizens of the Republic of Serbia.

The analyses of the constitutional provisions of the Greek and Serbian Constitutions differ in that the work includes an analysis of the Christian values and elements of Christian teaching that are explicitly mentioned in the Greek Constitution, while in the case of the Serbian Constitution, the analysis comprises connecting the constitutional norms that are *a priori* not of a Christian character to the teachings and history of Christianity. Thus, the Christian roots of the contemporary concept of human rights, which are protected by the Constitution of the Republic of Serbia, have been pointed out. It could be strongly advised that the future efforts of the academic community be focused on research of connections of the contemporary concept of human rights and their Christian roots. Such research works are also significant from the aspect of contemporary constitutionalism, since they can provide a new and fresh perspective on the values behind the constitutional norms of the European constitutions of the new century. Such research works should contribute to avoiding of the misconception of ascribing the protection of human rights solely to the anticlerical movements developed in the western part of the European continent, while completely ignoring that a similar concept of human rights was promoted by Christianity as early as in the beginning of the first millennium of the new era.

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