

THE LEGAL REGULATION OF RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE IN SLOVENIA



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1. Introduction¹

This paper analyses the legal regulation of the presence and/or use of religious symbols in the public sphere. The presence/use of religious symbols in the public sphere is rarely governed by specific regulations, as noted in the now famous *Lautsi v. Italy* judgement of the European Court for Human Rights (ECtHR).² However, the fact that this matter is not regulated does not mean that it is not hotly disputed. The presence of religious symbols in public schools is particularly controversial; this issue has been brought before the supreme courts of several member states of the Council of Europe.³ According to the ECtHR, only the former Yugoslav Republic of

1 The author wishes to express his gratitude to Akad. Prof. Dr. Marijan Pavčnik for his help in preparing this text.

2 *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 26.

3 In Switzerland, the Federal Court issued a communal ordinance, stating that the presence of crucifixes in primary school classrooms was incompatible with the requirements of confessional neutrality enshrined in the Federal constitution; however, it did not prohibit their display in other parts of the school (26 September 1990; ATF 116 1a 252). In Germany, the Federal Constitutional Court ruled that a similar Bavarian ordinance was contrary to the principle of state neutrality and difficult to reconcile with the freedom of religion of children who were not Catholics (16 May 1995; BVerfGE 93,1). The Bavarian parliament then issued a new ordinance supporting the

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Macedonia (today Northern Macedonia), France (apart from Alsace and Moselle), and Georgia expressly prohibit religious symbols in state schools. By contrast, such symbols are either permitted or required in Italy, Austria, some German Lander, and some Swiss and Polish communes. Religious symbols are also found in the state schools of countries that do not regulate them, including Spain, Greece, Ireland, Malta, San Marino, and Romania.⁴ In Slovenia, there is a direct prohibition against religious symbols in state schools. The nation's Organisation and Financing of Up-bringing and Education Act (Education Act)⁵ explicitly bans religious activities in public schools and all kinds of denominational activity in public schools and kindergartens. For obvious reasons, therefore, the presence of religious symbols in public schools is also prohibited. In other public spaces, there is no regulation, as in most European countries.

This paper analyses the legal regulation of religious symbols in the public sphere in Slovenia. In addition to desk research, it surveys research by contemporary authors in Slovenia and analyses the Slovene church-state model established by the Slovene constitution and executive practice. It also explores the role of the Constitutional Court, which has issued several interesting decisions (and one opinion) on religion and its role in society. It is important to show how historical development has influenced the legal regulation of religion in Slovene society, as the legal regulation of religion and church-state relations is indistinguishable from the legal regulation of religious symbols in the public sphere.

It is a key hypothesis of this paper that the chosen model of church-state relations has the most significant impact on the position of religion in the public sphere, and

previous measure, but enabling parents to cite their religious or secular beliefs when challenging the presence of crucifixes in the classrooms attended by their children. It also introduced a mechanism through which a compromise or a personalised solution could be reached. In Poland, the ombudsman referred an ordinance of 14 April 1992 to the Constitutional Court. The ordinance, issued by the Minister of Education, prohibited the presence of crucifixes in state-school classrooms. The Constitutional Court ruled that this measure was compatible with the freedom of conscience and religion and the principle of church-state separation guaranteed by art. 82 of the constitution because it did not make the display compulsory (20 April 1993; no. U 12/32). In Romania, the Supreme Court set aside a November 2006 decision of the National Council for the Prevention of Discrimination, recommending to the Ministry of Education that it should regulate the presence of religious symbols in publicly run educational establishments and, in particular, authorise the display of such symbols only during religious-studies lessons or in rooms used for religious instruction. The Supreme Court held that the decision to display such symbols in educational establishments should be a matter for the community of teachers, pupils, and pupils' parents (11 June 2008; no. 2393). In Spain, the High Court of Justice of Castile and Leon, ruling in a case brought by an association that promoted secular schooling, which had unsuccessfully requested the removal of religious symbols from schools, held that the schools should remove such symbols if they received an explicit request from the parents of a pupil (14 December 2009; no. 3250). *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 28.

⁴ *Lautsi v. Italy*, no. 30814/06 on 18 March 2011, para. 27.

⁵ Uradni list RS, nos. 16/07 (consolidated text), 36/08, 58/09, 64/09, 65/09, 20/11, 40/12, 57/12, 47/15, 46/16, 49/16, 25/17.

thus on the legal regulation of religious symbols. Much of this paper will therefore be dedicated to explaining the Slovene model of church-state relations.

Some scholars have argued that Slovenia and France have a similar approach to religion in the public sphere, sharing a model that resembles the famous French *laïcité* model. The second hypothesis is that this is not the case. Although the Slovene approach may appear to resemble *laïcité* on paper, Constitutional Court cases and a legislative analysis reveal that it functions differently in reality. This finding is vital for understanding the legal regulation of religious symbols in Slovenia. Relations between the state, churches, and other religious communities in Slovenia resemble the cooperation model, with some exceptions detailed in this paper. These exceptions help to determine the extent to which religious symbols are actually prohibited in the public sphere. The answer, as will be shown, is not without ‘but ifs’.

2. The historical, social, cultural, and political context of religious symbols in public spaces

Slovene society cannot be described as particularly multicultural or heterogeneous. Compared to several other European countries, Slovenia is virtually homogeneous.⁶ Following Slovenia’s independence from Yugoslavia in 1991 and the introduction of multiparty democracy, there were many examples of religious pluralism. The number of registered religious communities rose to 43. Today, 60 groups are listed in the register of religious communities, five of which have been erased, leaving 55 existing communities.⁷ Although the Catholic Church has attempted to regain its former position and to maintain a cultural hegemony, it has not succeeded.⁸ Baptism records indicate that the Roman Catholic Church is by far the largest religious body in Slovenia, accounting for 60–80% of citizens (the census records 57.8% in 2002 and 71.6 in 1991. According to data provided by the Public Opinion and Mass Communication Research Centre of the University of Ljubljana Faculty of Social Sciences, which has been conducting public-opinion surveys for more than thirty years, around 70% of Slovene citizens consider themselves ‘adherents’ of the Roman Catholic faith.⁹

6 Črnič and Lesjak, 2003, p. 350.

7 Available at: <https://www.gov.si/teme/verske-skupnosti/>

8 Črnič et al., 2013, p. 212.

9 Črnič, 2009, p. 119.

Table 1. Comparison of religious demographics, according to the 1991 and 2002 censuses¹⁰

Religious affiliation	1991	2002
Catholic	71.36%	57.80%
Orthodox Christian	2.38%	2.30%
Muslim	1.51%	2.40%
Protestant (including Evangelical)	0.97%	0.90%
Other religions	0.04%	0.30%
Believers with no specific religion	0.20%	3.50%
Response denied	4.21%	15.70%
No response known	14.97%	7.10%
Atheist	4.35%	10.10%
Total	100.00%	100.00%

From the 9th century onwards, as ancient Slovenians became ever more politically incorporated into the Frankish (Carolingian) Empire, which ultimately became the Holy Roman Empire, the power and status of the new religion—Roman Christianity—likewise became more consolidated and institutionalised.¹¹ The principle of *cuius regio, eius religio* brought about the end of the Reformation. The Counter-Reformation, which began in these lands at the end of the 16th century, adopted maxims that were part of the ideological arsenal of Roman Catholicism in Slovenia and endured well into the 20th century.¹²

During the Hapsburg Monarchy (after 1867, the Austro-Hungarian Monarchy), which included Slovenia, the Catholic Church became the ‘state’ religious community and Catholicism the state religion. There were, of course, other received religions (*religiones receptae*), such as the Augsburg Protestants and the Orthodox churches, which had full civil rights but no privileges.¹³

During the rule of Joseph II (1780–1790), the *Toleranzpatent* was enacted. This edict proclaimed that Catholicism was the ruling faith, but other faiths would be

10 Statistical Office of the Republic of Slovenia. Available at : <https://www.stat.si/popis2002/gradivo/2-169.pdf>; Šturm, 2004, p. 608.

11 Črnič et al., 2013, p. 206.

12 *ibid.*, p. 207.

13 Staničić, 2014, p. 226.

tolerated.¹⁴ After the death of Joseph II, religious communities reverted to their former positions. During that time, the Catholic Church exercised an immense influence over all areas of everyday life, including education. Apostasy was a crime punishable under Section 122 of the Criminal Code and listed as grounds for disinheritance under Section 768 of the Civil Code.

The state made the Catholic Church responsible for many official duties, including marriages, funerals, and registries. In 1855, the Monarchy signed a concordat with the Holy See, which guaranteed that the Catholic Church would continue to be the official state church. In 1859, the Imperial Patent gave Evangelical churches equal status with the Catholic Church.¹⁵ After the Austro-Prussian War of 1866, Emperor Franz Joseph had to unify the monarchy and deprived the Catholic Church of its status as the state religion, in particular through the 1874 May laws in Austria.¹⁶

Following the dissolution of the Austro-Hungarian Empire at the end of the First World War, the South Slavic nations formed a new political alliance, which became the Kingdom of Yugoslavia in 1929. This new multi-ethnic and multi-religious state, which was dominated by Orthodox Serbs, did not jeopardise the majority status or ideological monopoly enjoyed by the Catholic Church. The religious structure thus remained unaltered in the ethnic Slovenian lands encompassed by the new kingdom.¹⁷ Both the 1921 and 1931 censuses documented a Catholic majority (97%) and the weak presence of six other religious communities. Protestants (Slovenian and German Lutherans and Reformed churches) accounted for a little over 2%, while other religious communities (Orthodox, Muslim, Greek-Catholic, and Jewish) together accounted for less than 1% of the total population.¹⁸

Nevertheless, the status of religious communities was a major problem in the new state. Among the many reasons, disagreements about the position of the two largest religious communities—the Serbian Orthodox Church (SOC) and the Catholic Church—were significant and an important reason for enacting a new constitution in 1921.¹⁹ Before the constitution was enacted, a ‘religious poll’ was carried out in 15–21 February 1921, asking religious communities to express their views and make suggestions about their future position. According to some authors, it was clear from their responses that religious communities were not thinking about religious equality or the separation of church and state. They clearly wanted to preserve their own status quo, with the obvious problem that the SOC status quo negated that of the Catholic Church and vice versa.²⁰

When the constitution of 1921 was finally enacted, it abandoned the system of state churches, but did not separate religious communities from the state. Instead,

14 See, also, Črnič et al., 2013, p. 213.

15 Staničič, 2014, p. 226.

16 Staničič, 2014, p. 228.

17 Črnič et al., 2013, p. 209.

18 Črnič et al., 2013.

19 Staničič, 2014, p. 231.

20 Staničič, 2014, p. 233.

they became public institutions with special privileges, a special position in the state, and the authority to perform some public-law duties.²¹ The constitution recognised both 'adopted' and 'legally recognised' religious communities. The adopted religious communities had been legally recognised in some part of the state prior to 1 December 1918. Legally recognised religious communities would be recognised by law in future.²² After 1929 and the dictatorship of King Aleksandar, a set of laws regulating the position of religious communities was enacted. The one exception was the Catholic Church, whose position continued to be regulated by a set of four concordats established before World War I. The Catholic Church demanded a new concordat, provoking the Concordat Crisis. The ultimate result of the crisis was that the concordat was never signed, leaving the Catholic Church, during the existence of the Kingdom of Yugoslavia, with a lower status than that of the Serbian Orthodox Church.²³ According to Šturm, Slovenia had become secularised by the end of the eighteenth century, with the church maintaining a special influence over secular politics until the creation of socialist Yugoslavia.²⁴

According to Toš, Slovenia was part of a totalitarian state during the communist era.²⁵ As socialist Yugoslavia did not want to repeat the mistakes of earlier times, its primary aim was to prevent activities that could lead to interethnic strife or religious hatred. Very soon after the war, the Act Prohibiting the Incitement of National, Racial and Religious Hatred was enacted.²⁶

In 1946, the first Federal People's Republic of Yugoslavia (FPRY) constitution introduced the separation of state and religion. For the first time, religious communities lost their prerogative rights over state registries and marriages. Religious teaching in schools was abolished or prohibited and religious communities had to begin financing their own activities (arts. 11, 12).²⁷ Free worship was possible only inside religious facilities and their auxiliary spaces, such as churchyards and cemeteries. Most other religious activities held in public required prior administrative authorisation. Initially, funerals and weddings were exempt; although weddings too required authorisation after the introduction of civil marriage.²⁸ Especially during the 1970s, legislation generally tightened these solutions by imposing more rigorous police penalties.²⁹

Inside this essentially totalitarian structure, Slovenia's development had many distinctive features and divergences. The legal status and actual position of religious communities in the Socialist Federal Republic of Yugoslavia were not determined

21 Staničić, 2014.

22 Staničić, 2014.

23 Staničić, 2014, p. 234.

24 Šturm, 2004, p. 609.

25 Toš, 1993, p. 23.

26 Staničić, 2014, p. 236.

27 Staničić, 2014, p. 237.

28 Božić, 2019, p. 60.

29 Staničić, 2014.

solely by widely known and published legal rules. Instead, they were primarily shaped—especially in the case of the Catholic Church—by strictly confidential legal rules, which, together with other confidential regulations, formed a parallel secret legal system.³⁰ The ruling party took a negative view of all religious communities, especially the Catholic Church and to some extent the Serbian Orthodox Church, which were seen as anti-Yugoslav.³¹

Between World War II and 1991, religious communities were forbidden to engage in ‘activities of a general or social significance’, including educational activities.³² The position of the Catholic Church improved during the 1960s, as Yugoslavia and the Vatican gradually converged. This process led to the signing of a protocol on 25 June 1966, which ultimately re-established diplomatic relations, severed since 1952, between Yugoslavia and the Vatican.³³ Although this legal order was considered the most liberal³⁴ in the communist world, it nevertheless restricted church activities severely. Those who wished to openly express their faith became, in many respects, second-class citizens.³⁵ According to Črnič and Lesjak, there was relative freedom in socialist Slovenia, although the regime generally disapproved of religion.³⁶ It is hard to agree with this assessment, as conscientious objectors were imprisoned and members of the public were subjected to systematic discrimination when applying for higher-level positions in the judiciary, state offices, educational institutions, and private sector (the criterion for social-political suitability was ‘*družbeno politična primernost*’).

Slovenia, along with the other formerly communist Central and East European countries, was caught up in the third wave of democratisation that followed the Second World War. The transformation of these countries and their capacity to establish democratic institutions and political relations were determined by the sources and intersections of tensions and conflict relations, specifically: (a) the re-definition of the nation or nation state; the so-called national churches played an important part in these processes, having broken free from the marginalisation they faced during communist rule.³⁷ The churches experienced renewal, gaining importance by contributing to the awakening national consciousness, and thus becoming a political factor as well. (b) Questions about the relationship between democratic institutions and the economic restructuring of society; and (c) the eradication of the ideological monopoly of communist parties, which prevented the emergence of other ideologies.³⁸

30 Šturm, 2004, p. 609.

31 Staničič, 2014, p. 238.

32 Šturm, 2004, p. 610.

33 Staničič, 2014, p. 238.

34 ‘Yugoslavia enjoyed one of the tolerant approaches to religion’. Črnič and Lesjak, 2003, p. 356.

35 Črnič et al., 2013, p. 216.

36 Črnič and Lesjak, 2003, p. 357.

37 Toš, 1993, p. 24.

38 Toš, 1993, pp. 24, 25.

The constitution moved away from negative perceptions of religion and began to build new foundations for the church-state relationship.³⁹ However, the Slovenian path did not resemble those of other former Yugoslav republics, most of which opted for a separation between church and state, while retaining strong ties to their largest religious communities (the Catholic Church in Croatia, the Serbian Orthodox Church in Serbia, and the Muslim community in Bosnia). By contrast, Slovenia envisaged its own model of church-state relations, which resembled, but was not legally linked to, the famous French principle of *laïcité* or secularism. In line with this approach, the preamble to the 1991 constitution of the Republic of Slovenia makes no reference to God or religion. Art. 7 of the new democratic constitution, which determined the role of churches and religious communities in relation to the state, set forth the following basic principles: separation between the state and religious communities; equality among religious communities; and the right of churches and religious communities to free activity (autonomy) within the legal order.⁴⁰

One thing, however, should be mentioned. Throughout history, the Catholic Church had decisively influenced the development of Slovenian national culture and policies.⁴¹

3. Axiological and constitutional foundations

Freedom of conscience and religious belief are safeguarded in art. 41 of the constitution. This provision applies to moral and philosophical views, as well as to religious convictions.⁴² According to the ECtHR (*Kokkinakis v. Greece*, 1993), freedom of thought, conscience, and religion is:

one of the foundations of a democratic society. This freedom, in its religious dimension, is one of the most important elements that create the identity of believers and their conception of life, but it is also a precious tool of atheists, agnostics, sceptics and those who do not have any relation towards faith.

This stance was emphasised most vividly in the 2011 *Bayatyan* judgement, in which the ECtHR reiterated the doctrine that the state must fill the ‘role of a neutral and impartial organiser of expression of various religions, beliefs, and convictions, thereby contributing to public order, religious harmony and tolerance in a democratic

39 Ivanc and Šturm, *Slovenia*, in *Encyclopedia of Law and Religion—Europe*, p. 379.

40 Ivanc and Šturm, *Ivanc*, 2015, p. 41.

41 Toš, 1993, p. 25.

42 Kaučić, 2002. p. 400.

society'.⁴³ Importantly, freedom of religion is recognised as both a moral and legal right. As Sparer said,

...certain fundamental human rights are inalienable. They exist regardless of whether or not they have been legally recognised. These rights...including the right to free religious expression...are part of ourselves as human beings... But certain fundamental human rights are inalienable, regardless of the arguments for legal recognition... These rights are part of our potential, what we might be as living persons... We cannot give these rights away... any more than we can give away a part of ourselves. We certainly can deny them to ourselves and to others. But when we do, we deny a part of ourselves and a part of others. We can act as if these rights do not exist; ... if we stop expressing these parts of our humanity, we become 'alienated' ... We would be suppressing a piece of ourselves or acceding to the efforts of others to suppress us.⁴⁴

When the ECtHR interprets the European Convention, it frequently argues in favour of freedom of religion as a fundamental human right, especially in the context of contemporary society.⁴⁵ Within ECtHR practice, religious freedom became an essential right of considerable importance. The ECtHR justified its actions by arguing that freedom of religion was 'one of the foundations of a democratic society. The pluralism indissociable from a democratic society, ... depends on it' (*Bayatyan v. Armenia* 2011, para. 118). Similarly, it is 'necessary to maintain true religious pluralism, which is vital to the survival of a democratic society' (para. 122, *Manoussakis and Others v. Greece* 1996, para. 44, *Metropolitan Church of Bessarabia and Others v. Moldova* 2001, para. 119).⁴⁶

Because freedom of religion constitutes an inalienable right, any violation of that right is likely to cause disturbances, violence, or strife in society. In the words of Sparer, freedom of religion is part of our potential, what we have the potential to become as living persons. Arguably, the violation of nonreligious beliefs rarely cause conflicts as violent as those caused by violations of freedom of religion. The suppression of religious beliefs has a documented tendency to provoke violence and wars.⁴⁷ Although restrictions on religious practice are sometimes justified, as a way of curbing violence and maintaining public order, the research suggests that they generally have the opposite effect. Restricting religious practice often leads to social conflict.⁴⁸ Religious freedoms generally defuse potential violence, while restrictions

43 Staničić, 2019, p. 190.

44 Sparer, 1984, pp. 512–513.

45 Staničić, 2019, p. 194.

46 Staničić, 2019.

47 Staničić, 2019, pp. 199–200.

48 Finke, 2013, p. 306

increase it. In fact, restrictions often create the very conditions that give rise to social conflicts.⁴⁹

Freedom of religion is closely linked with freedom of expression, guaranteed by art. 39 of the constitution of Slovenia. The latter permits the unrestrained expression of an individual's religious convictions; it is linked with the right to personal dignity and safety (art. 34), personality rights and the right to privacy (art. 35) and the protection of personal data (art. 38).⁵⁰ As the constitution does not mention any special limitations to freedom of conscience, it is limited only by the rights of others (art. 15/3), like all other human rights and fundamental freedoms. However, the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 9, second para.) allows this right to be limited, as prescribed by law, where this is necessary to protect public safety, the public order, health, or morality.⁵¹ Freedom of conscience and religious belief are defined in the constitution as individual human rights. However, they also relate to collective points of view, since believers may freely associate with religious communities. The freedom of religious association is embodied in the right of peaceful assembly; participation in public meetings and free association with others applies to religious communities as well as *sui generis* associations (art. 42).⁵²

Other constitutional provisions should also be mentioned. For example, art. 63 of the constitution forbids the incitement of religious discrimination, hatred, or intolerance. Arts. 46 and 123 recognise the right to conscientious objection, based on religious, philosophical, or humanitarian convictions.⁵³ Art. 46 states that the right of 'conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others'⁵⁴. Outside the arena of national defence, conscientious objection is also permitted in the field of medicine, where a medical worker may refuse any medical intervention (except in cases where urgent medical assistance is required) that violates his or her conscience or the international rules of medical ethics⁵⁵ (see the Law on the Medical Profession).

In addition, art. 16 ensures that the state cannot, even in a state of emergency, suspend or restrict the free functioning of churches, their equality, or their separation from the state.

It is hard to ascertain whether the aforementioned values and principles meet the standards set by the ECtHR, in relation to the protection of religious symbols in Slovenia. Prior to the S.A.S.⁵⁶ judgement, the answer would have been that reli-

49 Finke, 2013, p. 310.

50 Kaučić, 2002, p. 400.

51 Kaučić, 2002.

52 Kaučić, 2002, p. 401.

53 See also in Črnič and Lesjak, 2003, p. 352.

54 Today, conscientious objection is allowed by statute in only two areas: state defence and medical operations. Črnič and Lesjak, 2003.

55 Kaučić, 2002, p. 401.

56 Application no. 43835/11.

gious symbols are neither protected nor unprotected. As in most European states, the regulation of religious symbols is ambiguous. After the S.A.S. judgement, it is difficult to ascertain the ECtHR's future position on the use of religious symbols in public.

4. The model of relations between the state and the church

In both theory and practice, three general models of church-state relations have been identified: 1. The state or national-church model; 2. The cooperative or concordat model; and 3. The strict separation of church and state model (the separation model).⁵⁷

Of course, these three are not the only 'pure' models. For example, they can be elaborated and combined into the following six models of church-state relations: 1. Aggressive animosity between church and state (communist regimes); 2. Strict separation in both theory and practice (France); 3. Strict separation in theory but not in practice (USA); 4. Separation and cooperation (FR Germany); 5. Formal unity, but with substantial divisions (UK, Denmark, Israel, Norway); and 6. Formal and substantial unity (IR Iran, Saudi Arabia—where Islamic communities and the state are substantively unified).⁵⁸

One crucial question is whether state and religion are separated in all of the models above. Is the state secular in all of these models? Clearly, these questions are particularly relevant when discussing systems of state or national churches. Indeed, can it be said that the state or national-church model implies a secular state or allows any form of secularism? However, some studies have found a weak correlation between the existence of an official religious belief and actual state policy.⁵⁹ To illustrate this point, we may cite Brugger's church-state relationship model of 'formal unity, but with substantial division' in which there is no formal separation of church and state, but the two are anything but unified in practice.⁶⁰

Based on the criterion of separation, Fox sets out a basic model and three additional models of church-state relations. The basic model is divided into the separation-of-church-and-state model and the secularist-laicist model. At the basic level, the difference stems from constitutional texts, as some constitutions declare that the state is secular or lay, while claiming a separation between church and state.⁶¹

57 Sokol and Staničič, 2014, p. 44.

58 Sokol and Staničič, 2014, p. 44; Brugger, 2007, p. 31.

59 Fox, 2011, p. 384.

60 Staničič, 2019a, p. 11.

61 Staničič, 2019a, p. 12.

In the first basic model, the system of separation symbolises state neutrality towards religion; the state, at least officially, neither favours a particular religion, nor limits the presence of religion in the public sphere. The second basic model reflects a laicist system, in which the state not only refuses to support any religion but also limits the presence of religion in the public sphere. The three additional models clearly reveal the differences between the approaches to secularism discussed by Fox.⁶²

The first additional model represents the absolute separation of church and state, in which the state neither supports nor interferes with any religion. According to Fox, this model is the most extreme because it allows no state interference in religion or vice versa. The second is a neutral political model, in which the state, through its activities, does not support or impede any life plan or lifestyle; state activities are therefore neutral. In this model, the state may restrict or support religious freedoms, as long as the outcome is the same for all religions. The third model excludes ideals, barring the state from justifying its activities based a preference for any specific lifestyle. This model is focused on intent rather than outcome. Within this model, different religions can be treated differently, as long as there is no specific intention to support or obstruct a particular religion.⁶³

The Slovenian model of church-state relations was established by art. 7 of the constitution. In Slovenian legal theory, the equality of religious communities has been, at least until mid-2000, understood by the state to be an ‘undiscriminating affirmation of the whole religious field’.⁶⁴ In other words, all religious communities are equal before the law. According to Črnič and Lesjak, however, the Catholic Church understands legal equality differently—as ‘relative equality’. Of course, absolute equality is impossible in real life and actual practice. Črnič and Lesjak show through examples that absolute equality would mean that a ‘two-man religious community’ would have exactly the same rights as the Catholic Church—or that the Catholic Church would give up certain rights so as to be treated in exactly the same way as a small religious community.⁶⁵ Some argue that the Slovene model of church-state relations can be called a ‘model of separation with simultaneous cooperation’ (*model ločitve ob hkratnem sodelovanju*).⁶⁶ In other words, religious communities are separated from the art. 3 separation-of-powers system and from state institutions *stricto sensu*. However, because believers are citizens with the right to vote, the restrictions on religious communities are derived from art. 7: religious communities are not allowed to organise themselves as political parties or to act within state institutions.⁶⁷ Other commentators argue that Slovenia has adopted the French model of *laïcité* and

62 Staničić, 2019a.

63 Staničić, 2019a.

64 Črnič and Lesjak, 2003, p. 362; Dragoš, 2001, p. 41.

65 Črnič, 2003, p. 363.

66 Avbelj, 2019, commentary on art, p. 7.

67 Avbelj, 2019.

that the principle of separation establishes state secularism.⁶⁸ This means that the state must not be tied to any church and cannot privilege, discriminate against, or opt for religiosity or non-religiosity.⁶⁹ According to Kaučič, in Slovenian legal theory and practice, the principle of separation between the state and religious communities is predominantly understood and interpreted as a strict and consistent separation, modelled on states with a more pronounced separation between church and state. Such a position cannot be attributed to the constitutional order; instead, this constitutional principle derives from the legal and executive derivation, in particular the influence of the previous political system.⁷⁰

The principle of separation between church and state was previously understood in the negative sense of the church being expelled from public life. This conception was influenced by negative attitudes towards religion. For this reason, the state nowadays promotes a more positive conception of the principle of separation between the state and religious communities, as a friendly neutrality towards religious communities.⁷¹

The separation of the state from religious communities and—in this context—the concepts of secularism and state neutrality do not imply the forced secularisation of society by the state, antitheism, or secular indifference. They do not prevent the state from cooperating with religious communities, as long as this does not interfere with the constitutional principle of separation.⁷²

Some Slovene authors even believe that the principle of separation limits itself in a modern democratic state, and is therefore unnecessary. In other words, the whole of civil society, including churches, is separated from the state, raising the following questions: 1) Does it follow from this that religious institutions and organisations must be more separated from the state than economic, recreational, cultural and educational associations are and, if so, what would this mean? Alternatively, should the state view the church in the same way that it views other civil-society institutions and associations?⁷³ According to Stres, a laic state (*laična država*) does not take upon itself roles that are religious by nature. For this reason, it neither threatens nor feels threatened by religion; it therefore cooperates with religion to benefit citizens and the public good.⁷⁴

However, Slovenian authors agree that art. 7 of the constitution prescribes three principles, which define the legal position of religious communities in Slovenia: the principles of separation, the free action of religious communities, and the equality of religious communities.⁷⁵ In accordance with art. 5 of the constitution, the Religious

68 Naglič uses the term '*laïcnost*' or '*laïcité*' in French. See in Naglič, 2017, p. 16.

69 Naglič, 2017.

70 Kaučič, 2002, p. 404.

71 Kaučič, 2002.

72 Kaučič, 2002, p. 405.

73 Stres, 2010, p. 484.

74 Stres, 2010, p. 489.

75 Mihelič, 2015, 1, p. 132; Naglič, 2010, pp. 491-492. See also decision U-I-92/07.

Freedom Act regulates the state's duty to respect the identity of religious communities and to uphold open and continuous dialogue with them, while developing forms of permanent cooperation. When we consider both arts. 5 and 7 of the constitution, alongside art. 41, it is clear that the constitution does not exclude religion from the public sphere, as prescribed by the earlier socialist constitutions of the Socialist Federal Republic of Yugoslavia and Slovenia, which regulated the profession of faith as *forum internum*, excluding religious communities from public life.⁷⁶ Instead, it guarantees the freedom to manifest religious beliefs, including public manifestations of faith as *forum externum*.⁷⁷

It is said that the principle of separation is designed to establish genuine freedom of conscience and equality between individuals and religious communities. Its purpose is not to protect the state from religious or other groups and their associations, but to establish full freedom of conscience and equality for all people through a neutral stance.⁷⁸ This principle can be observed through its functional and institutional elements. Functionally, state neutrality safeguards the state and religious communities by ensuring that the state is religiously and ideologically neutral in its activities and does not identify itself with any religious or ideological community. However, state neutrality does not mean forcing religious communities to the outskirts of public life, as that would be a form of discrimination. Instead the institutional element demarcates the state, differentiating it from churches and religious and worldview groups. The principle of separation also prohibits churches from performing functions reserved to the state, based on the principle of sovereign countries. According to the Constitutional Court, reserved sovereign functions include conducting marriages, keeping registers, and issuing public documents.⁷⁹ In addition, state neutrality does not require the state to be indifferent to the religious needs of the people.

The second para. of art. 7 regulates the remaining two elements (or principles) which, in connection with state neutrality, create the principle of separation in a broader sense, substantively referring to the collective aspect of freedom of religion. The second principle is the constitutional guarantee of equality for religious communities, which obliges the state to defend all religious communities on an equal footing and, as such, is a special expression of the principle of equality (art. 14).⁸⁰ The third constitutional principle (element) is the constitutional guarantee of freedom of action for religious communities, which defends them from state interference. This guarantee defends various forms of autonomy for religious communities: the freedom

76 Avbelj, 2019. This can be seen in the communist Legal Status of Religious Communities Act (Uradni list RS, nos. 15/1976, 42/1986, 5/1990, 22/1991), which contained a provision that dealt explicitly with the separation of church and state. Thus, under the Legal Status Act, the principle of church-state separation in Slovenia means that religious communities are autonomous in their internal affairs but that public life is secular. Šturm, 2004, p. 620.

77 Šturm, 2004, p. 620.

78 Šturm, 2004, p. 620.

79 U-I-92/07.

80 Šturm, 2014, p. 620.

to establish religious communities, maintain organisational autonomy, perform religious rites, connect with other organisations or religious groups, and conduct other religious activities.⁸¹ The autonomy of religious communities encompasses legal, administrative, and court or quasi-court autonomy (the system of resolving internal disputes), as well as institutional autonomy.⁸² In addition, due to this principle, the state is free from the influence of religious communities, since no religious community is allowed to define or decide on matters under the jurisdiction of the state or political organs.⁸³ The state is also prohibited from forcing religious communities to organise themselves democratically, as other legal bodies are required to. It is also forbidden for the state to attempt to resolve religious disputes.⁸⁴

All elements of the separation principle are intertwined; only in context do they enable the full implementation of the constitutional provision and the appropriate legal interpretation. If the state were to treat religious communities unequally and/or to interfere with their autonomy, it would breach its neutrality.

81 Šturm, 2014.

82 For a somewhat different view, see Dragoš, 2014, p. 172. Dragoš argues that the freedom-of-religion principle primarily involves the right to institutional autonomy, which protects religious groups from state intervention (in religious matters) and from being either privileged or discriminated against. In addition, it protects secularised public domains from interventions by (anti) religious actors.

83 The separation principle provides three kinds of prohibition or guarantee that are binding on the state, guaranteeing non-identification, neutrality, and abdication. The principle of non-identification means that the state cannot be equated with any religion or non-religious belief system (including atheism or agnosticism), be it institutional, ideological, or symbolic. Without this condition, the state would not be able to represent all citizens to the same extent, as the largest, most binding, and strongest form of organisation (holding a monopoly over the right to exercise violence). It is essential for the state to demonstrate that it does not consider any ideological, religious, or transcendental idea to be more important, appropriate, or desired than any other, as this would suggest that other ways of making sense of the world were less appropriate. As this rule applies to the state, it likewise applies to all of the state's representatives and functionaries. Dragoš, 2014, p. 173.

The second principle needed to realise the constitutional principle church-state separation is that of neutrality. Neutrality means that the state is bound to maintain an equal distance to all actors in the religious field, whether collective or individual, organised or non-organised, large or small, traditional or modern, older or more recent, 'autochthonous' or 'imported', rich or poor, powerless or influential, unorganised or internationally organised. As soon as the state attempts to practice neutrality in relation to certain religions but not others, it is no longer neutrality, but its opposite—partiality. Dragoš, 2014.

The third principle—abdication—derives from the two abovementioned principles of separation. With the state practicing non-identification and neutrality, those in power have little temptation to interfere in internal religious matters. If the state is not associated with any (non) religious communities and keeps them all at an equal distance, the main reasons for state intervention in this sensitive domain lose salience. By renouncing its right to religious interference (without renouncing other types of interference) the state relinquishes its power over the religious sphere. Religious intervention, once appropriated by the state, is now left to religious actors, who autonomously regulate their own affairs (except, of course, when offenders cite religious reasons for violating legislation). Dragoš, 2014.

84 U-I-92/07.

According to Dragoš, Slovenia has difficulty applying these principles.⁸⁵ In his view, the Catholic Church has always been privileged, except during the communist era. It maintained its privileged position in democratic Slovenia, especially after the enactment of the Religious Freedom Act in 2007. Dragoš argues that the most ‘scandalous’ problem is the privileged state funding of the Catholic Church,⁸⁶ prescribed by the Religious Freedom Act (see art. 27), which allows the state to cover the wages of clergy employed in hospitals, police departments, prisons, homes for the elderly, and other institutions, while offering tax exemptions to religious communities. In addition, the law allows the state to transfer 1% of a taxpayer’s income tax to the religious community of his or her choice. It is hard, though, to prove that the Catholic Church is privileged, since all religious communities have equal rights under the Religious Freedom Act.

It is true that the Catholic Church enjoys the most financial gains, but this is to be expected, as it is by far the largest religious community in Slovenia. The Constitutional Court, in Decision U-I-92/07, confirmed that the state was entitled to support religious communities financially. In particular, the court said that the separation principle did not prevent the state from establishing relations with religious communities, as it would with other civil-society groups. State subsidies can therefore be given to all registered religious communities, which fit the description of organisations that support the general good. The Constitutional Court’s interpretation of the principle of separation has evolved over time.⁸⁷ Initially, the court maintained that this principle required the state to be neutral, tolerant, and not to express opinions on religion.⁸⁸ Later, the court broadened its interpretation,⁸⁹ claiming that the principle of separation primarily concerned the autonomy of religious communities (in their own sphere), the secularisation of public life, and the neutrality of the state towards religious communities. The question of neutrality was further explored in the Constitutional Court opinion (Rm-1/02) on the constitutionality of the Treaty with the Holy See, in which the court said that the separation principle prohibited the state from identifying with any religious or other belief, establishing a state religion, or promoting/prohibiting any ideological beliefs.⁹⁰ It is important to note that the court explicitly emphasised the primacy of Slovene law over canon law.⁹¹

85 According to Dragoš, the Religious Freedom Act today represents ‘the biggest deviation from the principle of separation’. It was enacted when a coalition of right-wing political parties was in power and adopted the Religious Communities Act that is currently in force’. Dragoš, 2014, p. 175. It is true that the law was passed with a one-vote majority. Naglič argues that, in the practice of the Constitutional Court, the state is not allowed to support religious communities because of the principle of state neutrality. See in Naglič, 2017, p. 17. However, Naglič notes that the constitution allows clergy to be paid for administering spiritual care to the faithful in hospitals. Naglič. 2017, p. 18.

86 Dragič, 2014, p. 183.

87 Ivanc, 2015, p. 47.

88 U-I-68/98.

89 U-I92/01.

90 Ivanc, 2015, p. 47.

91 Lesjak and Črnič, 2007, p. 71.

However, this principle also prevents the state from influencing religious matters or the internal organisation of religious communities.

The principle of separation does not prevent religious communities from freely pursuing activities in their own sphere. If the activities of the state and religious communities collide, their competence must be delimited through the internal sovereignty of the state, which must set limits without preventing religious communities from pursuing social activities.⁹² Stres concludes that the separation of church and state (in the spirit of European political culture) requires more than simply preventing authorities from using religion for their own purposes and religions from abusing the state to achieve their own objectives.⁹³

The practice of cooperation began in 1992, when the government appointed a mixed committee to hold a dialogue between the state and the Catholic Church.⁹⁴ Although the government founded its own Office for Religious Communities in December 1993, it has continued holding separate discussions with representatives of the dominant Catholic Church.⁹⁵ Certain provisions of the 1976 Law on Religious Communities were repealed, churches were granted the right to establish schools, and the (Catholic) Faculty of Theology was reintegrated into the University of Ljubljana.⁹⁶ However, the status of religious communities was regulated primarily through an outdated relic from the communist era—the 1976 Legal Status of Religious Communities Act.⁹⁷ This Act was clearly obsolete in Slovenia's new social context, as shown by the fact that religious communities found a place in public life, despite the legal prescription that faith was a private affair.⁹⁸ Although religious communities had to be registered, those that did not were not penalised. Only rudimentary data were required for registration, and religious communities were defined as legal persons under civil law. Legal personhood was obtained by applying to the Commission of the Republic of Slovenia for Relations with the Religious Community (known today as the Office for Religious Communities).⁹⁹

Moreover, in 2001, the Republic of Slovenia entered into an international treaty with the Holy See on the legal position of the Catholic Church in Slovenia (signed on 14 December 2001). This Treaty on Legal Issues¹⁰⁰ was ratified by the Parliament in 2004. It is said that the state restricted itself, while the Catholic Church gained an international document to enforce its inviolability.¹⁰¹ It is interesting to note that the first agreement between the state and religious communities in Slovenia was the

92 Ivanc, 2015, p. 47.

93 Stres, 2010, p. 492.

94 Črnič and Lesjak, 2003, p. 262.

95 Črnič and Lesjak, 2003, p. 262.

96 Črnič, et al., 2013, p. 217.

97 Uradni list SRS, nos. 15/76, 42/86 and Uradni list RS, no. 22/91.

98 Mihelič, 2015, p. 133; See also Lesjak, Lekić, 2013, p. 155.

99 Lesjak, Lekić, 2013, p. 155.

100 Uradni list RS-MP, no. 4/04.

101 Mihelič, 2015, p. 134.

2000 Agreement on the Legal Status of the Evangelical Church in the Republic of Slovenia (signed on 25 January 2000).¹⁰²

There are additional agreements between the Republic of Slovenia and various religious communities:

1. The Agreement between the Slovenian Bishops' Conference and the government of the Republic of Slovenia on Spiritual Care for Military Persons in the Slovenian Army (signed on 21 September 2000),
2. The Agreement between the Evangelical Church in the Republic of Slovenia and the government of the Republic of Slovenia on Spiritual Care for Military Persons in the Slovenian Army (signed on 20 October 2000),
3. The Agreement on the Legal Status of the Pentecostal Church in the Republic of Slovenia (signed on 17 March 2004),
The Agreement on the Legal Status of the Serbian Orthodox Church (signed on 9 July 2004).
4. The Agreement on the Legal Status of the Islamic Community in the Republic of Slovenia (signed on 9 July 2007),
5. The Agreement on the Legal Status of the Dharmaling Buddhist Congregation (signed on 4 July 2008).¹⁰³

In 2007, Slovenia's parliament passed the Religious Freedom Act¹⁰⁴ with a one-vote majority (46/90).¹⁰⁵ Although preparations began in 1998, political problems held up work on the new legislation until 2007.¹⁰⁶ The Constitutional Court sanctioned the Act, in accordance with the constitution; this important decision (U-I-92/07) went into effect on 15 April 2010.¹⁰⁷ Through this decision, the court established individual and collective ways to realise freedom of religion. To exercise religious freedom, either individual or collective, it is important to distinguish between positive and negative aspects. The positive aspect of freedom of religion includes visible practices that are significantly related to an individual's religious beliefs. By contrast, the negative aspect of religious freedom is the right to hold no religious beliefs, and the option to not join a religious community.¹⁰⁸

According to the court, an individual's perception of religious practice must not involve a confrontation with religious beliefs, if that will encroach on negative religious freedom. Examples include a mandatory oath on the Bible for people attending a political function, crosses in classrooms, and prayers and blessings at public-school

102 See in Ivanc, 2015, p. 44.

103 See in Ivanc, 2015, pp. 44, 45.

104 Uradni list RS, nos. 14/07, 46/10, 40/12, 100/13.

105 According to Lesjak and Lekić, the Act was passed through the votes of Italian and Hungarian minorities (2013, p. 158).

106 Lesjak and Lekić, 2003, p. 156.

107 This decision is analysed in detail in Naglič, 2010, pp. 483–493.

108 Naglič, 2010, p. 486.

graduation ceremonies.¹⁰⁹ The state is prohibited from deciding on matters that concern religious doctrine or the internal autonomy of religious communities; requiring a commitment to religious issues; rewarding or punishing acts that constitute a profession of religion; discriminating against human rights and fundamental freedoms; or privileging or neglecting individuals because of their religion.¹¹⁰

The impact of the Religious Freedom Act on the Slovenian model of church-state relations was huge; it marked a sharp turn in practice and legislation. Prior to its enactment, Slovenia was rightly portrayed as a country that mirrored the French *laïcité* model of church-state relations, which insists on state neutrality. After the enactment of the Religious Freedom Act in 2007, Slovenia underwent a huge change, embracing another model of church-state relations—the cooperation model—in which state neutrality did not have the same significance as in the earlier model. Moreover, according to the Religious Freedom Act, the state was obliged to enter into relations with various religious communities. However, the state entered into relations with religious communities prior to the enactment of the Religious Freedom Act (three agreements in the early 2000s), suggesting that the Slovene model of church-state relations was never really one of *laïcité*.

5. Constitutional guarantees of freedom of conscience and religion

Three main provisions of the Constitution of the Republic of Slovenia are important for freedom of conscience and religion: arts. 7, 14, and 41. The constitution guarantees other rights pertaining to religious exercise: (1) freedom of conscience, (2) the right of conscientious objection, (3) the right to peaceful assembly and free association, and (4) freedom from discrimination. Two other constitutional provisions prohibit discrimination on the basis of religion (arts 41 and 63).¹¹¹

Art. 7 is included among the general provisions of the constitution; it explicitly regulates church-state relations in Slovenia. The fact that this article, which was designed to regulate church-state relations, appears so early in the 1991 constitution, shows that it is one of the basic legal and political principles underpinning the Slovenian state.¹¹² It provides the most important institutional guarantees to religious communities, as follows:

- (1) The state and religious communities shall be separate.

109 Naglič, 2010, p. 487.

110 Naglič, 2010.

111 Šturm, 2004, p. 612.

112 Šturm, 2004.

(2) Religious communities shall enjoy equal rights; they shall pursue their activities freely'.¹¹³

The nature of art. 7 is programmatic and procedural, in relation to the description of freedom of religion in art. 41 of the constitution.¹¹⁴ According to Naglič, freedom of religion must be the basis for legal regulations of the status of churches (religious communities). This status must not be based pragmatically on political, economic, or similar premises.¹¹⁵

Art. 14 represents the constitutional principle of equality before the law; it reads as follows:

In Slovenia, everyone shall be guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, sex, language, religion, political or other convictions, material standing, birth, education, social status, or any other personal circumstance. All are equal before the law.¹¹⁶

art. 41 regulates the freedom of religion and belief; it reads as follows:

(1) Religious and other beliefs may be freely professed in private and public life.

(2) No one shall be obliged to declare religious or other beliefs.

(3) Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.¹¹⁷

Freedom of religion and other beliefs is a special form of freedom of expression (art. 39 of the constitution), freedom of association (art. 42 of the constitution) and right to private life (art. 35 of the constitution).¹¹⁸ This right protects convictions and beliefs in the field of ethics and morality, especially all theistic, atheistic and non-theistic beliefs; worldview convictions, e.g. philosophical or ideological theories and thought systems that explain man, his being, and the world in which he resides.¹¹⁹ As Ivanc notes, this provision broadly protects the freedom of self-definition, referring not only to religious beliefs but also to moral, philosophical, and other worldviews. It guarantees freedom of conscience and a person's right to have no religious or other beliefs (the right to be free from religion) and not to manifest such beliefs.¹²⁰ It also

113 Translation by Ivanc, 2015, p. 42.

114 Naglič, 2017, p. 9.

115 Naglič, 2017.

116 Translation by Ivanc, 2015, p. 43

117 Ivanc, 2015.

118 Avbelj, 2019, p. 398.

119 Avbelj, 2019.

120 Ivanc, 2015, p. 41.

gives parents the right to influence their children's upbringing in accordance, with their beliefs.¹²¹

Freedom of conscience in the Republic of Slovenia resists limitation, encompassing both positive and the negative entitlement.¹²² Freedom of religion is implemented individually and collectively. Collectively, individuals have the right to establish churches. Churches (religious communities) have the right to internal autonomy and the internal position of the faithful.¹²³ Every member of a religious community has the right, in accordance with his or her beliefs, to profess religious teachings and perform religious practices.¹²⁴ In Slovenian legal literature, there is also a consensus that freedom of religion has two faces (levels): a positive level that allows people to profess their faith publicly, and a negative level allows for freedom from religion. The first and the second paragraphs of art. 7 include a positive and negative entitlement. They include both the freedom of thought (i.e. to shape and change convictions) and the freedom of manifestation (i.e. to profess or express) such convictions in private and public life.¹²⁵ Any use of force to coerce someone into making a declaration would amount to interference in that individual's integrity and thus a denial of his or her freedom of belief. It follows from this freedom that an individual may be a member of any religious community or belong to none and cannot be prevented from joining or abandoning any religious community.¹²⁶

Freedom of religion also requires positive measures from the state to ensure the effective exercise of human rights and fundamental freedoms. As the state must ensure that individuals are not confronted with unwanted religious beliefs, religious education cannot be obligatory. The state must build and ensure tolerance among members of different religions to prevent unjustified discrimination on the basis of religion, establish a framework for acquiring legal subjectivity for religious communities, and, in special circumstances (for example, in the army or prisons) provide access to religious care.¹²⁷ In such cases, the state must allow individuals to perform individual acts of a religious nature (e.g. individual use of religious symbols), provide access to priests and books with religious content, and allow religious rites to be performed.¹²⁸

121 This provision protects the freedom of self-definition, referring not only to religious beliefs but also to moral, philosophical, and other worldviews. The article includes three provisions: (1) positive entitlement, or the assurance that '[r]eligious and other beliefs may be freely professed in public and private life'; (2) negative entitlement, or a person's right to *not* have or manifest any religious or other beliefs; and (3) the parent's prerogative, or the right of parents 'to provide their children with a religious and moral upbringing, in accordance with their beliefs'. Šturm, 2014, p. 612.

122 Šturm, 2014, p. 613.

123 See U-I-111/04, U-I-92/07.

124 Naglič, 2017, p. 11.

125 Kaučič, 2002, p. 400.

126 Kaučič, 2002.

127 Kaučič, 2002, p. 488.

128 Kaučič, 2002 See also arts. 22–25 of the Religious Freedom Act.

6. Guarantees based on other sources of universally binding law

Here, it is important to highlight the Treaty with the Holy See. Art. 2 of this Treaty acknowledges the legal personality of the Catholic Church, including the legal personality of all territorial and personal church institutions that reside in Slovenia and enjoy(ed) legal personality under canon law norms (section 2). This does not mean that the Catholic Church is a public-law person because that would violate the constitution (principle of equality), but that it is a legal person in civil law *sui generis*.¹²⁹ The legal order of the Republic of Slovenia guarantees the Catholic Church freedom of activity, worship, and catechesis. All extraordinary public services and other public religious gatherings (e.g., pilgrimages, processions, meetings) shall be reported by the competent authority of the Catholic Church to the competent national body, in accordance with the legal order of the Republic of Slovenia (art. 3).

The church authority is only able to establish, alter, and cancel church structures, in particular, church regions (archdioceses, dioceses, apostolic administrations, personal and territorial prelaties, abbeys), monasteries, parishes, and institutes of consecrated life, and societies of apostolic life. No diocese of the Catholic Church in the Republic of Slovenia is permitted to occupy a territory outside the borders of the Republic of Slovenia and no part of the territory of the Republic of Slovenia can belong to a diocese based outside the Republic of Slovenia (art. 4). Legal entities of the Catholic Church, based in the Republic of Slovenia, may, pursuant to the legislation of the Republic of Slovenia, acquire, own, exploit, and dispose of real estate and movable property; they can also acquire or waive title rights and other rights *in rem* (art. 9).

In accordance with the legislation of the Republic of Slovenia and canon law, the Catholic Church is entitled to establish and manage schools of all types and levels, secondary schools, university halls of residence, and other educational institutions. The state supports the institutions referred to in the previous paragraph, under the same conditions that apply to similar private institutions. Secondary-school and university students and the pupils of these institutions are equal in status to secondary-school and university students and the pupils of public institutions (art. 10). The state and local authorities are obliged to maintain cultural monuments and other cultural properties and archives owned by the church (art. 11). The Republic of Slovenia allows individuals to observe religious freedom in hospitals, nursing homes, prisons, and other institutions that hinder the free movement of residents. The Catholic Church is entitled to provide pastoral activities in these institutions, in accordance with the relevant laws regulating this issue (art. 12).¹³⁰

129 Mihelič, 2015, p. 135.

130 The English translation is available at: <https://bit.ly/3CuApGc>.

According to art. 4 of the Religious Freedom Act, the state is neutral in matters of religion; at the same time, art. 4 differentiates between churches and other religious communities in the context of the Slovenian legal order; art. 5 defines churches and religious communities as 'organisations of general benefit'.¹³¹ Art. 29 stipulates that the state can provide material support to religious communities because of the 'general benefit' they provide. To register, a religious community must have at least ten members who are of age and Slovenian nationals or aliens with registered permanent residence, according to art. 13.¹³²

The state acknowledges that the impressive archive of the Catholic Church represents an important aspect of Slovene culture.¹³³ For this reason, the archives of the Catholic Church have special legislative regulations.¹³⁴ The state provides financial support to the Archiepiscopal Archives of Maribor and the Diocesan Archives of Koper.¹³⁵ Regardless of state funding, however, the use of religious symbols is naturally permitted in Church archives. Of course, there are numerous religious symbols in public places, as there are at least 2,880 objects intended for worship in Slovenia, and religious motives are omnipresent in the arts.¹³⁶

The presence and use of religious symbols in the media is not affected, since art. 39 of the constitution guarantees freedom of expression. Every Sunday, Slovene television broadcasts the religious series 'Obzorja duha' and a Sunday mass. It even has a special editor for religious programs.¹³⁷ Furthermore, religious communities can freely establish their own public media, using religious symbols as they choose. According to art. 2, sect. 3 of the Media Act, bulletins, catalogues, and other media that publish information about churches and other religious organisations exclusively are not considered public media. The same act prohibits the dissemination of program content that encourages, inter alia, religious or other types of hatred and intolerance (art. 8).¹³⁸ The Catholic Church has established a radio station and several TV channels. It is relevant to mention that, due to art. 17 of the Radio and Television of Slovenia Act,¹³⁹ the President of the Republic must appoint two members proposed by registered religious communities to the program board. It is clear that religious communities have access to television and radio, as some of their religious symbols can be seen on television and heard on the radio.

Constitutional protection of the right to religious freedom includes providing religious assistance to people who work, live, or are held in various types of public

131 Črnič, et al., 2013, p. 217.

132 The original art. 13 stated that, to be registered, a religious community had to have been operating in Slovenia for at least 10 years and to have at least 100 adult members.

133 Ivanc, 2015, p. 168.

134 See art. 52 of the Protection of Documents and Archives and Archival Institutions Act, Uradni list RS, no. 30/06, 51/14.

135 Ivanc, 2015, p. 168.

136 Ivanc, 2015, pp. 170, 172.

137 Ivanc, 2015, p. 176.

138 Ivanc, 2015, p. 177.

139 Uradni list RS, nos. 96/05, 9/14.

institutions.¹⁴⁰ They are entitled to personal religious items (including books¹⁴¹) and public religious rites in those institutions. According to the Religious Freedom Act, these institutions are the Army (art. 22), police (art. 23), prisons (art. 24), and hospitals and social welfare institutions (art. 25). Also, under the Defence Act, all members of the Army enjoy the right to religious spiritual assistance during their military service.¹⁴² The general principles of religious assistance in public institutions are also regulated by other statutes, including the Police Act, Defence Act, Law on Military Service Act, Patients' Rights Act, and Enforcement of Penal Sentences Act.¹⁴³ For example, religious spiritual care in the Slovenian Armed Forces is organised by the Military Vicariate, which operates within the General Staff of the Slovenian Armed Forces.¹⁴⁴

The use of religious symbols in public spaces, apart from public schools, is not regulated in any way through formal legislation. As can be seen *infra*, it is not customary to display religious symbols in public, as this is seen as a breach of state neutrality.

7. The limits of religious expression through religious symbols

As stated *supra*, there is no formal regulation of the use of religious symbols in the public sphere in Slovenia, except in the case of religious symbols in public schools and kindergartens. Even this regulation is implicit, not explicit.

There are no specific provisions in public-school law concerning religious symbols or religious garments at public schools. The statute deals with religious elements within the overall framework of working conditions for teachers and other staff.¹⁴⁵ Art. 72 of the Education Act prohibits organised religious rites in public schools and does not address any other matters related to the religiously motivated behaviour of pupils, teachers, or staff.

However, in the case of Jarc et al. (November 2001), No. U-I-68/98, the court reviewed the question of whether the provisions of the Education Act interfered with the positive aspects of freedom of religion, the principle of equality, parental rights, or the right to free education. Initially, the court declared that the general prohibition on denominational activities in public schools was not inconsistent with the constitution or the European Convention. The only constitutional inconsistency was

140 Šturm, Ivanc, 2019, p. 557.

141 Ivanc, 2015, p. 186.

142 Šturm, Ivanc, 2019, p. 557.

143 Ivanc, 2015, p. 186.

144 Ivanc, 2015, p. 189.

145 Ivanc, 2011, p. 461.

the prohibition on denominational activities in licensed kindergartens and private schools, in relation to denominational activities taking place outside the scope of valid public programs financed through state funds.¹⁴⁶

The court instructed the National Assembly to remedy this inconsistency within one year. The legislature consequently changed art. 72 of the Education Act, allowing licensed kindergartens and schools to carry out denominational activities that did not involve public services.¹⁴⁷

According to Stres, religious symbols find themselves in different public spaces because of their cultural and religious importance. Modern lay people tend to expel them from this space more or less violently.¹⁴⁸ However, the problem of religious symbols in public institutions does not exist in Slovenia because there are simply no such symbols, although they do exist in schools, as discussed above.

Stres notes that religious symbols are formally excluded by Slovenian legislation. Art. 72 of the Organisation and Financing of Education Act states:

Activities, not related to upbringing and education, may be carried out in public kindergartens or schools only with the permission of the principal. Political parties and their members are prohibited from operating kindergartens and schools. In public kindergartens and schools and those with a concession, confessional activities are not allowed.

According to Stres, confessional activity encompasses the following: religious or confessional instruction, with the aim of educating children in a particular religion; lessons on content, textbooks, teacher education, and the suitability of individual teachers, as decided by the religious community and organised religious rites.¹⁴⁹ In this way, religion is completely expelled from one public space—schools.¹⁵⁰ It is true that art. 72, para. 5 of the Education Act allows an exemption from this strict rule; the minister may, under exceptional circumstances, allow the catechism or confessional religious teaching on the premises of a public kindergarten or school outside school hours, if there is no other suitable venue in the local community for the activity. In practice, when a public school does not have enough space (due to the large number of pupils, a natural event, or a fire, for example), church premises are used for public education.

146 Ivanc, 2011, p. 462.

147 Ivanc, 2011.

148 Stres, 2010, p. 490.

149 Stres, 2010, p. 491.

150 Stres mentions an interesting example, showing that the complete removal of religion from schools was taken to an extreme. In one case, a school was being renovated and classes were supposed to be held in church premises. There was a cross on the wall, which the pastor (*župnik*) refused to remove. The classes were moved elsewhere. *ibid.*, p. 491. Šturm and Ivanc also note that, while the legislation does not specifically discuss the presence of a crucifix or cross in school, these symbols are prohibited in practice because they violate the principle of separation. Šturm and Ivanc, 2019, p. 552.

According to Šturm, based on an understanding of the freedom of religion and the freedom of the group of religious communities, the court placed the Republic of Slovenia at the extreme edge of the group of European countries with unfriendly or intolerant models of separation.¹⁵¹

It is true that extreme laicism makes negative religious freedom absolute, demanding the withdrawal of all private religious symbols.¹⁵² However, when the Constitutional Court decided on the constitutionality of the Religious Freedom Act, it argued that negative freedom had no *a priori* advantage over positive freedom if the two came into conflict. This means that the rights of unbelievers (not to be confronted with religious beliefs or symbols) do not always or automatically take precedence over the positive religious freedom of believers to profess their faith and testify to it publicly.¹⁵³

The right to religious assistance in public institutions guarantees a priest free access to the institution (with the right to perform his work undisturbed and to visit members of the faith); participation in religious ceremonies organised in the institution; and access to books with religious content and instructions.¹⁵⁴ However, the court found that hiring religious servants to work in public institutions (apart from the army and police) was unconstitutional. It quashed the corresponding provisions of the Freedom of Religion Act, which legal theorists criticised as unconvincing.¹⁵⁵ It is obvious that, as a general rule, Slovenia prefers to keep religion, including the use of religious symbols, out of public institutions. There are no legal norms to limit the use of religious symbols in the workplace, social networks, or on the Internet. Of course, the promotion of religious hatred is prohibited by the constitution and other laws. An analysis of the available data suggests that the position of religious symbols in the public sphere is not really an issue in Slovenia.

8. The system of legal protection

According to Slovene authors, the Constitutional Court has a friendly stance towards religious communities.^{156,157} For example, churches and religious communities

151 Šturm, 2002, p. 139.

152 Stres, 2010, p. 492.

153 Stres, 2010.

154 Šturm, Ivanc, 2019, pp. 557, 558.

155 Ivanc, 2015, p. 193.

156 Stres, 2010, p. 491.

157 For example, the court found that the Military Service Act was not consistent with the constitution, insofar as the Act allowed a person to claim the right of conscientious objection at the point of conscription but not later. U-I-48/94 (25 May 1995), Uradni list RS, no. 37/95. See also Šturm, 2002, p. 124.

have been recognised as universally beneficent institutions.¹⁵⁸ The Slovenian Constitutional Court has also argued that churches and religious communities perform an important function in society.¹⁵⁹

There have been no cases involving the use of religious symbols in public institutions. Slovene legal scholars note that the Constitutional Court has created a set of rules to regulate freedom of religion and church-state relations.¹⁶⁰ According to Šturm, a modern, free democratic state system establishes individual freedom as a fundamental human right. Even questions about what to believe, one of the deepest human choices, are answered by the individual and not the state. All are equal in this freedom. For these two reasons, the state no longer identifies with a particular religious or other belief. However, to ensure the peaceful coexistence of individuals and to preserve the foundations of the social order, the state may intervene in the religiously motivated decisions of individuals when necessary. If individuals are equivalent in their religious or other beliefs, state restrictions cannot do more to support freedom of belief than prevent people from feeling excluded and neglected, from an objective observer's point of view. The more direct the link between particular behaviours and beliefs, the less the state may interfere. Prohibiting neutrality and any interference with individual freedom is therefore a key duty of the state.¹⁶¹

Content of the right

At the constitutional level, Slovenia determines each citizen's right to defend the state in a way that does not conflict with his or her views. Prohibiting the promotion of religious discrimination and the incitement of religious hatred and intolerance is the fourth aspect of freedom of religion. This prohibition covers direct and indirect discrimination. (U-I-92/07)

Approach to realizing freedom of religion

For the Constitutional Court, it is important to distinguish between positive and negative levels of individual and collective freedom of religion. The positive level includes the right to hold a religious belief and connect with a church. An individual may profess religious beliefs freely, alone or with others, publicly or privately through instruction, fulfilling religious duties, worshiping, or performing religious rites.

Individual religious freedom covers oral or written and private or public expressions of faith, including prayer and the dissemination of religious ideas. The actions

158 See U-I-107/96 (5 Dec. 1996), Uradni list RS, no. 1/97, U-I-121/97 (May 23, 1997), Uradni list RS, no. 34/97.

159 U-I-326/98 (Oct. 14, 1998), Uradni list RS, nos. 67/98, 76/98.

160 See in Naglič, 2010, 2017. His analysis of court practice is used in this part of the paper.

161 Šturm, 2002.

associated with belief, such as compliance with religious rules (e.g., worship, rituals, processions, the use of religious clothing, and symbols) are also protected. Positive aspects of freedom of religion include outwardly perceptible behaviours that are significantly related to individual religious beliefs. Negative aspects of freedom of religion include the right to have no religious belief or church association. No individual is obliged to have faith or to speak about religious themes. As a result, no one can be punished, discriminated against, or overlooked for lacking religious faith. Individuals have the right to refuse to participate in practices that constitute the exercise of religion and cannot be forced to identify with a religion (U-I-92/01).

The relationship between positive and negative rights

For the reasons explained above, negative aspects of freedom of religion are not violated as long as the state preserves an individual's freedom of choice and does not require him or her to act in a religious way or express particular beliefs, taking into account the age and maturity of the person. However, the position that religion is *a priori* harmful and causes personal, family, or social differences reflects an intolerant attitude towards freedom of religion. The state is obliged to treat all religious communities equally. (U-I-68/98)

Obligations of the state

Freedom of religion also requires the state to take positive action. According to the constitution, individuals must be given the opportunity to exercise their human rights and fundamental freedoms. State support must allow them to exercise those rights effectively, in part by preventing any forced (unwanted) confrontations with religious beliefs. The government must also build and ensure tolerance among followers of different religions, preventing discrimination between individuals on the basis of religion, for example in employment, where this may be difficult, due to the nature of different kinds of jobs.

The state has special obligations in certain special circumstances and contexts, such as the military, prisons, and hospitals. In these cases, it must make it possible for people to conduct activities of a religious nature (e.g. by using religious symbols), access priests and books with religious content, and perform religious rites as individuals. (U-I-92/07)

The state is neither obliged to support and encourage the activities of religious communities, nor to refuse to support or assist them, as long as the principle of equality is upheld (Rm-1/02)

Religious education and religious symbols

Religious content must not be obligatory for all pupils in schools (U-I-92/07). According to the Constitutional Court, religious symbols are not permitted:

Furthermore, the interference with the positive aspect of freedom of religion cannot be considered inappropriate as thereby the forced confrontation of non-religious persons or persons of other denominations with a religion they do not belong to can be prevented. This interference is also proportionate, in the narrow sense of the word, in so far as it relates to the prohibition of denominational activities in public kindergartens and schools. These are namely public (State) institutions financed by the State and are as such the symbols which represent the State externally and which make the individual aware of it. Therefore, it is legitimate that the principle of the separation of the State and religious communities and thereby the neutrality of the State be in this context extremely consistently and strictly implemented. Considering the fact that a public kindergarten or a public school do not represent the State only in carrying out their educational and upbringing activities (public services) but also as public premises, the principled prohibition of denominational activities does not constitute an inadmissible disproportionality between the positive aspect of the freedom of religion and the rights of parents to raise their children in accordance with their religious persuasion on one hand and the negative aspect of freedom of religion on the other hand. In the event that denominational activities cannot be carried out in a local community due to the fact that there are no other appropriate premises.

Art. 72.5 of Education Act envisages an exception from the general prohibition against denominational activities in public schools or public kindergartens. Thus, the statutory regulations are consistent with art. 41 of the constitution and art. 9 of EKČP.¹⁶² However, the passage above does not apply to private schools and/or kindergartens. According to the court:

...he interference with the positive freedom of religion and the rights of parents determined in Art. 41.3 of the Constitution is not proportionate in the narrow sense of the word in the part relating to licensed kindergartens and schools outside the scope of performing a public service. In this respect the adjective “public” does not refer to an institution as a premises, nor does it refer to an entire activity, but only to that part of the activity that the State finances for carrying out a valid public program. The principle of democracy (Art. 1 of the Constitution), the freedom of the activities of religious communities (Art. 7.2 of the Constitution), the positive aspect of freedom of religion (Art. 41.1 of the Constitution), and the right of parents to bring up their children in accordance with their personal religious beliefs (Art. 41.3 of the Constitution), impose on the State the obligation to permit (not force, foster, support or even prescribe as mandatory) denominational activities on the premises of licensed kindergartens and schools outside the scope of the execution of a valid public program financed from State funds. This is all the more so as there are milder measures that ensure the negative aspect of the freedom of religion. In reviewing proportionality

162 The English translation is provided by the Constitutional Court: <https://bit.ly/3Ct1Ccm>.

in the narrow sense we must weigh in a concrete case the protection of the negative aspect of the freedom of religion (or freedom of conscience) of non-believers or the followers of other religions on one hand against the weight of the consequences ensuing from an interference with the positive aspect of freedom of religion and the rights of parents determined in Art. 41.3 of the Constitution on the other. There is no such proportionality if we generally prohibit any denominational activity in a licensed kindergarten and school. By such prohibition the legislature respected only the negative freedom of religion, although its protection, despite the establishment of certain positive religious freedoms and the rights of parents to provide their children a religious upbringing, could as well be achieved by a milder measure.¹⁶³

9. Conclusions

Freedom of religion includes the right to freely profess one's religious beliefs. This, of course, includes the uncontroversial right to use religious symbols in private. However, the use of religious symbols in public is a hotly debated issue, with some people arguing that religious symbols are never acceptable in public because they can alienate people.¹⁶⁴ This paper analyses options for using religious symbols in the public sphere, which is under the jurisdiction of the state.

As discussed above, the Slovenian model of church-state relations leans towards the French model of *laïcité*; until the enactment of the Religious Freedom Act in 2007, the emphasis was on state neutrality. This is why Slovenia is one of the few European states that do not allow religious education in public schools. Based on the wording of the Education Act, professions of religion are prohibited in public schools, although the display of religious symbols is not explicitly prohibited. The consensus among most Slovene scholars is that the display of religious symbols breaches the duty of the state to be neutral towards religion.

A similar conclusion can be reached on the display of religious symbols in Slovenian public institutions, where religious symbols cannot be displayed. However, the state must allow religious people in particular circumstances (soldiers, the police, prisoners, and sick and elderly people) to access religious assistance. In practice, this can mean turning a prison space into a church or a place for worship, which clearly cannot be done without the display of religious symbols. Thus, state neutrality does not prohibit the display of religious symbols altogether.

Under art. 2, para. 2 of the Religious Freedom Act, the state must guarantee the smooth exercise of religious freedom. This can be construed to include the right to display religious symbols at work, in schools, and in other public spaces. In fact, no

¹⁶³ The English translation is provided by the Constitutional Court: <https://bit.ly/3nQmBBx>.

¹⁶⁴ As a reference point, see the *S.A.S. v. France* judgement on the ECtHR.

legal norm explicitly prohibits the display of religious symbols. The ECtHR has also confirmed that displaying a cross in a public-school classroom does not violate the Convention.

There are thus two possible interpretations of art. 41, taken in conjunction with art. 7 of the constitution. In the first interpretation, Slovenia is a secular state, in which neutrality is paramount; the display of religious symbols in public institutions violates said neutrality and is therefore prohibited. In the second interpretation, Slovenia's strict system of separation between church and state does not mean that religious symbols can never be displayed in public areas. According to the Constitutional Court ruling on the constitutionality of the Religious Freedom Act, negative freedom has no *a priori* advantage over positive freedom when positive and negative religious freedoms come into conflict.

This means that the right of unbelievers not to be confronted with religious beliefs or symbols does not always or automatically take precedence over positive religious freedom, which is the freedom of believers to profess their faith and to testify to it in public.¹⁶⁵ The right to religious assistance in public institutions guarantees that priests have free access to institutions, including the right to perform their work undisturbed and to visit members of their own religions; individuals are also allowed to participate in religious ceremonies held in the institution and to access books containing religious content and instruction.¹⁶⁶

However, the court found that the employment of religious servants in public institutions (excluding the army and police) was unconstitutional, thus quashing the corresponding provision in the Freedom of Religion Act, which legal theorists had criticised as unconvincing.¹⁶⁷ In general, therefore, it is clear that Slovenia prefers to keep religion, including the use of religious symbols, out of public institutions. Although there is no legal or otherwise envisaged ban on religious symbols in public spaces, such as parks and squares, some authors point out that no such symbols can be seen there, apart from churches. As it is clearly difficult to ascertain whether the display of religious symbols in public schools is prohibited or not, it would be useful to regulate this issue legally. The present study argues that Slovenian legislators should choose whether to ban religious symbols from public schools and kindergartens explicitly—or to allow them—despite the ban on religious education. Like most of rest of Europe, Slovenia has no other regulations on the presence of religious symbols in the public sphere and debates about their presence are not unusual. It would be therefore be in the public interest to regulate this issue on a legislative level.

165 Stres, 2010, p. 492.

166 Šturm and Ivanc, 2015, pp. 557–558.

167 Ivanc, 2015, p. 193.

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