

THE ACCOMMODATION OF RELIGION OR BELIEF IN THE CONTEXT OF EU INTEGRATION: THE LEGAL STATUS OF RELIGIOUS ORGANISATIONS IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

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ABSTRACT

This article examines the evolution of the protection of freedom of religion or belief (FoRB) and the accommodation of religious minorities within Central and Eastern European (CEE) States before and after their integration into the EU. EU integration has impacted the religious landscape of Member States, with the common labour market, increased legal and illegal migrations, and enhanced the protection of religious freedom, contributing to greater religious pluralism and necessitating appropriate accommodations for religious minorities. Since the collapse of the Soviet Union, the level of religious freedom protection in CEE countries has fluctuated. The legislation and constitutional provisions safeguarding religious freedom have undergone several changes and have been stabilised in the post-EU accession era. This paper argues that even if the European Union respects the legal status of Churches and religious communities as it is established by the national legislation of its Member States, simultaneously with the process of European integration, the development of a cooperationist model of State-religion relations occurred in Central European countries. This transformation was largely motivated by the need to assist Churches and religious communities in overcoming the impacts of decades of persecution and marginalisation under the previous regime. However, even those countries that were among the first to join the EU and have achieved a high level of religious freedom protection, still face challenges in accommodating certain religious minorities.

KEYWORDS

European integration
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1. Introduction

This paper aims to explore the influence of European integration on the legal status of Churches and religious communities in Central and Eastern European (CEE) countries, with particular attention to religious minorities. Rather than addressing traditional State-Church relations, the focus will be on how European integration and European Union (EU) membership shape the legal status of religious organisations. This study does not provide an in-depth analysis of the constitutional and legal frameworks that govern State-church relations in CEE countries. Instead, it seeks to identify the key challenges encountered by these countries in protecting the rights and legal status of religious organisations and to explore how European integration influences these issues.

In relevant American scholarship, the term ‘church’ is used as a generic label encompassing not only Churches but also religious communities and, more broadly, faith-based organisations. Although this paper focuses on CEE countries, the term ‘church’ will be employed in a similar manner. Three main reasons justify this choice. First, the term ‘church’ is recognised as a legal concept in most, if not all, European countries. Second, it holds historical significance across Europe, especially in the CEE region. Finally, it is consistently used by the European Court of Human Rights (ECtHR) and other national and supranational courts.

The process of European integration and EU membership has generally enhanced the protection of freedom of thought, conscience, and religion across the European continent. During accession negotiations with candidate countries, the European Commission annually publishes progress reports that assess the level of protection afforded to the freedom of religion or belief (FoRB), the implementation of this right, and the alignment of domestic laws with international legal standards. In addition, the European Court of Human Rights (ECtHR) functions as a court of final instance for most legal disputes concerning the freedom of religion in Council of Europe Member States. Following accession to the EU, the rulings of the Court of Justice of the European Union (CJEU) become binding on Member States, as the CJEU enforces the EU Charter of Fundamental Rights, which guarantees freedom of religion in Article 10. The CJEU has, therefore, been described as ‘the most powerful supranational court in world history’.² Prior to 2017, the CJEU had not issued significant rulings related to religion or religious freedom. However, since then, the court has delivered several landmark judgments that define the limits of the manifestation of religion or belief. Given the binding nature of its decisions, which automatically become part of the domestic legal framework of EU Member States, European integration can substantially enhance the protection of religious freedom.

For the purposes of this paper, the region of Central Europe is defined broadly, encompassing the area between Italy, Germany, Scandinavia, Russia, and the Black and Mediterranean Seas. Despite its relatively small geographical size, this region includes a surprisingly large number of States. While this multitude of States reflects the unique diversity of the region’s ethnic groups, two common features unite them: a broadly similar historical trajectory and the religious diversity of their societies. Although Christianity is the dominant religion in the region, various Christian denominations are present in all of its countries. Muslims and Jews constitute minority groups throughout the region, with

the exception of Albania and Bosnia and Herzegovina, where Muslims form significant portions of the population. Across the region, similar issues arise regarding religious freedom, and the process of EU integration has played a significant role in State-building and in shaping the regulation of the legal status of Churches and religious communities.

This paper argues that while the European Union respects the legal status of Churches and religious communities as defined by the national laws of Member States, the process of European integration in Central European countries has fostered the adoption of a cooperationist or hybrid model of State-religion relations. This shift was driven by the need to support Churches and religious communities in their recovery from several decades of persecution and marginalisation.

The paper begins with a historical overview of State-religion relations in Central Europe, focusing on the region's early steps toward European integration (2). This is followed by an analysis of the European Commission's opinions on EU membership applications, particularly their way of addressing religious freedom (3). In the next section, the paper focuses on European Commission's reports on candidate countries and their handling of religious freedom (4). The study concludes by assessing how European integration has influenced the legal status of Churches and the development of European law on religion (5), with findings summarised in Section 6.

2. Historical context

In the 19th century, the countries of the CEE region were incorporated into three major empires: the Ottoman Empire, the Austro-Hungarian Empire, and the Russian Empire. In each of these empires, religion played a significant role,³ and in some cases, it was a more important marker of identity than language or ethnicity.⁴ As a result, religion continued to play a significant role in the Central European States that emerged from the collapse of these empires during the first half of the 20th century, with the exception of regions under the Soviet rule.

A radical shift in State-church relations occurred following the end of the Second World War, with the establishment of Soviet-style dictatorships across nearly all CEE countries. Some of them, like the Baltic States, were incorporated into the Soviet Union, while others formally kept their sovereignty and experienced intense anti-religious repression driven by ideological motivations and fears of counter-revolutionary elements within society.⁵ This process of politically enforced militant secularisation has been described in relevant literature as effective,⁶ and resulted in several decades of persecution and decline for Churches and other religious organisations in CEE countries. An extreme example was Enver Hoxha's Albania, where the 1976 Constitution imposed a

3 | Between 1780 and 1848, under the system introduced by Joseph II, the Austrian Monarchy upheld religious toleration. However, following the events of 1848, a Catholic revival emerged victorious under the new regime that replaced Josephinism. Berg, 2015, p. 2. The Ottoman Empire remained Islamic during the whole period of its existence. Çevik, 2024, p. 600. For multiconfessional establishment in Imperial Russia, see: Werth, 2014, pp. 258 et seq.

4 | Çevik, 2024, p. 600.

5 | Toron and Durham, 2015, p. 16.

6 | Meulemann, 2004, p. 49; Stan, 2009, p. 90; Müller and Neundorff, 2012, p. 560.

complete prohibition on the establishment of religious communities, marking Albania as the world's first officially atheist country.⁷ Although there were notable differences in the legal frameworks governing the status of Churches in various Central European countries under communist rule, the general stance of these regimes towards religion was uniformly negative. Religion was perceived as a competing source of societal legitimacy that either needed to be marginalised or tightly controlled.

Following the collapse of the socialist system in 1989, multi-party democracy was established in CEE countries, paving the way for necessary legal reforms. In the early 1990s, many of these countries adopted new laws on religious freedom, generally embracing a liberal approach. In Czechoslovakia, the Law on Freedom of Religious Belief and the Status of Churches and Religious Societies was enacted by the Parliament on 4 July 1991.⁸ This Law improved the relationship between the State and Churches and is still valid in Slovakia.⁹ In Estonia, after the restoration of its independence, a new Constitution was adopted in 1992, followed by the Churches and Congregations Act of 1993.¹⁰ Hungary's Act IV of 1990 on the Right to Freedom of Conscience and Religion occupies a distinct position in the country's legal history, as it was the only law passed as an 'act with the force of the constitution'.¹¹ This legislative category was created in 1989 and then repealed after the 1990 elections, making the 1990 Church Act the only statute enacted under this classification.¹² In Poland, as in Hungary, religious freedom was protected through legislation enacted by the final communist parliament. The Act on the Relation of the State to the Catholic Church in the People's Republic of Poland and the Act on Guarantees of Freedom of Conscience and Religion were passed on 17 May 1989.¹³ These were first legal steps towards the protection of religious freedoms during the political transition, and they indicated a shift in State-Church relations.

After the adoption of the Declaration on the Restoration of Independence of the Republic of Latvia by the Supreme Council of the Latvian Soviet Socialist Republic on 4 May 1990, the Law on Religious Organisations was enacted. This piece of legislation was one of the few legal instruments in place to safeguard human rights during the early phase of Latvia's re-established independence.¹⁴ In 1995, this initial law was superseded by a Law on Religious Organisations, reflecting the evolving framework for religious freedom in post-Soviet Latvia.¹⁵ Lithuania is the most Catholic among Baltic States and it maintains special relations with the Roman Catholic Church which has been perceived as State or national Church. The Law on Religious Communities and Associations, passed in 1995, is still in force and recognises 9 traditional Churches which 'comprise a part of Lithuania's historical, spiritual and social heritage'.¹⁶ Bulgaria presents a unique case, as the 1949 Denominations Act remained in effect until 2002. Although some provisions were declared unconstitutional by the Constitutional Court, the Act continued to be enforced

7 | Durham and Schrarffs, 2019, p. 172.

8 | Horák, 2015, p. 240.

9 | Vladár, 2021, p. 179.

10 | Kiviorg, 2015, p. 254.

11 | Csink, 2021, p. 76.

12 | Csink, 2021, p. 76.

13 | Hanna, 2011, p. 637.

14 | Rodiņa and Kārklīņa, 2023, p. 20.

15 | Balodis, 2015, p. 491.

16 | Račius, 2020, p. 63.

by Bulgarian authorities until the new Law on Religion entered into force in 2002.¹⁷ The Ukrainian Law on Freedom of Conscience and Religious Organisations was enacted in April 1991, approximately six months prior to the country's declaration of independence.¹⁸ Despite undergoing several amendments, this law still remains in effect.

This wave of reforms of legislation that regulates the legal status of religious organisations in the late 20th century did not affect the post-Yugoslav States, where new laws on religious freedom were adopted in the first decade of the 21st century due to the conflicts following the dissolution of Yugoslavia. Among these countries, only the Former Yugoslav Republic of Macedonia enacted specific legislation by adopting the Law on Religion and Religious Groups in 1997.¹⁹ Thus, the legal frameworks governing religious freedom in Central European countries at the onset of their European integration processes were shaped by the democratic transformations and aspirations for effective human rights protection.

Before the policy shifts introduced by Gorbachev, economic and political ties between Central European and Western European countries were limited. CEE States were integrated primarily within the Soviet Union's common market, without direct relationships with the European Communities.²⁰ In 1989, however, the EU launched the PHARE program (Poland and Hungary Assistance for Restructuring the Economies) and the European Bank for Reconstruction and Development (EBRD) to stimulate economic growth across Central and Eastern Europe.²¹ The subsequent stage in building closer EU-Central European relations came through Europe Agreements, which were bilateral mixed agreements between the EU and CEE States and were aimed at expanding market access.²² While these programs and agreements were primarily intended to bolster economic ties, rather than to enhance fundamental human rights protection – including religious freedom – both parties nonetheless affirmed their commitment to core democratic principles. Specifically, they emphasised pluralist democracy grounded in the rule of law, respect for human rights and fundamental freedoms, a multiparty system with free and democratic elections, market economy principles, and social justice as the foundation for association.²³ As part of their efforts to establish closer ties with Western Europe, the CEE States have joined the Council of Europe.²⁴ Although relations between the EU and Central European countries were progressively strengthening, there was initially no clear prospect of full EU membership for these States.

17 | Petkoff, 2010, p. 148.

18 | Druzenko, 2015, p. 767.

19 | Law on religion and religious groups, Official Gazette of Macedonia, No. 35/1997.

20 | Emmert and Petrovic, 2014, p. 1374.

21 | Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, OJ L 375, 23.12.1989, pp. 11–12.

22 | Tatham, 2009, p. 78.

23 | See for example: Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, Document 21993A1231(13)OJ L 347, 31/12/1993, pp. 2–266.

24 | Djerić, 2000, p. 605.

3. Religious freedom and EU enlargement

A pivotal moment came with the 1993 European Council meeting in Copenhagen, where the so-called Copenhagen criteria were established. These first Copenhagen criteria required associated countries in Central and Eastern Europe to meet several key conditions, including, among others, achieving 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.²⁵ Respect for human rights, including freedom of religion, became a prerequisite for accession and played a prominent role in the enlargement process. Establishing explicitly political criteria reflected the Member States' recognition that, even if a country met the economic qualifications for membership, it would not be allowed to join the Community without demonstrating a commitment to core ideals – such as democracy and the protection of human rights – that were considered essential for the effective functioning of the Union. The criteria do not explicitly require any specific model of relationship between State and religious organisations. The European Commission is tasked with assessing whether candidate countries meet the established conditions.

Following the Copenhagen Council meeting, Central European States began formally applying for full EU membership. EU enlargement was a primary catalyst for the launch of the Agenda 2000 reforms. In 1997, the Commission issued its opinions on various accession applications within its Agenda 2000 communication.²⁶

Hungary submitted its application on 31 March 1994. The European Commission's 1997 Opinion on Hungary's application noted that freedom of religion was guaranteed and that the Church was separate from the State. However, the Commission also made a somewhat critical observation that the State provided financial support to recognised religious denominations.²⁷

Poland presented its application for EU membership in 1994, and the Commission, in its 1997 Opinion, acknowledged that freedom of education and religion were protected rights in Poland. However, it highlighted concerns about anti-Semitism, particularly during election campaigns, where candidates of actual or perceived Jewish heritage were subject to disparagement. In response, Polish authorities demonstrated a commitment to addressing anti-Semitism by pursuing legal action against offenders. Additionally, the Opinion commends the 1997 Polish Constitution for affirming freedom of conscience and upholding the principle of State neutrality towards various religions.²⁸

25 | European Council in Copenhagen 21-22 June 1993 Conclusions of the Presidency. [Online]. Available at: <https://www.consilium.europa.eu/media/21225/72921.pdf> (Accessed: 19 September 2024).

26 | Agenda 2000: for a stronger and wider Union. [Online]. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/agenda-2000-for-a-stronger-and-wider-union.html#document1> (Accessed: 19 September 2024).

27 | European Commission (1997) 'Commission Opinion on Hungary's Application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_13 (Accessed: 19 August 2024).

28 | European Commission (1997) 'Agenda 2000 – Commission Opinion on Poland's Application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_16 (Accessed: 19 August 2024).

The Czech Republic presented its application for EU membership on 17 January 1996, and the European Commission issued its Opinion as part of Agenda 2000. The Opinion notes that religious freedom is a guaranteed right and that 21 religious denominations are registered in the country. It also addresses State aid granted to religious groups, which is conditional on a minimum membership threshold of 10,000. Furthermore, the Opinion highlights that the Jewish community had previously received State aid before the introduction of this new threshold.²⁹

Slovakia presented its application for EU membership in 1995, and the European Commission issued its Opinion in 1997. The Commission noted that freedom of religion was guaranteed by the Constitution and that fifteen religious organisations were recognised by the State and receive financial support. The Opinion then addresses anti-Semitic broadcasts on public television, which justified the deportation of Jews from Slovakia on the grounds that they 'enriched themselves at the expense of the Slovak people'. It also mentions an incident involving a school textbook that glorified and idealized the pro-Nazi Slovak regime; this textbook was subsequently withdrawn by the Slovak authorities.³⁰

Lithuania, Latvia, Estonia and Romania submitted their applications for EU membership in 1995. In its 1997 opinions on Lithuania's, Estonia's and Romania's applications, the European Commission briefly confirmed that freedom of religion was guaranteed in those countries, without providing a more detailed analysis of their legislation.³¹ By contrast, the Opinion on Latvia's application provides a more detailed assessment, noting that freedom of religion is guaranteed by the 1995 Law on Religious Organizations, which establishes the separation of Church and State. Under this Law, only registered denominations are eligible for certain benefits and rights, and the Opinion records that 800 religious organizations have registered with the Ministry of Justice. Additionally, the Opinion specifically mentions the denial of registration for Jehovah's Witnesses due to their religious rules regarding healthcare, as well as the legal challenges to this decision in Latvian courts.³²

Bulgaria submitted its application for EU membership in 1995, and the Commission issued its Opinion in 1997. Although the 1949 Denominations Act was still in force at the time, the Commission concluded that religious freedom was guaranteed in Bulgaria. It also noted that the Constitution under Article 13 designates Eastern Orthodox Christianity as

29 | European Commission (1997) 'Agenda 2000 – Commission Opinion on the Czech Republic's Application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_17 (Accessed: 19 August 2024).

30 | European Commission (1997) 'Agenda 2000 – Commission Opinion on Slovakia's Application for Membership of the European Union'. [Online]. Available at: https://www.esiweb.org/pdf/slovakia_EC%20Opinion%20on%20SK%201997_en.pdf (Accessed: 19 August 2024).

31 | European Commission (1997) 'Commission Opinion on Lithuania's application for Membership of the European Union'. [Online]. Available at: <https://op.europa.eu/en/publication-detail/-/publication/f39fe9c5-7e96-497c-b415-2b10c5f0e4cf> (Accessed: 19 August 2024); European Commission (1997) 'Commission Opinion on Estonia's application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_12 (Accessed: 19 August 2024); European Commission (1997) 'Commission Opinion on Romania's application for Membership of the European Union'. [Online]. Available at: <http://aei.pitt.edu/43460/1/Romania.pdf> (Accessed: 19 August 2024).

32 | European Commission (1997) 'Agenda 2000 - Commission Opinion on Latvia's Application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_14 (Accessed: 19 August 2024).

the country's traditional religion, while affirming the separation of Church and State. As in its opinions on other Central European States' applications, the Commission referenced the financial support provided by the State to Churches and religious communities.³³

Slovenia submitted its application for EU membership in 1996, and the Commission issued its Opinion the following year. Although the 1976 Religious Communities Act remained in effect until 2007, with one provision still currently in force,³⁴ the Commission's Opinion only noted that religious freedom was guaranteed. Additionally, it mentioned ongoing disputes between the State and the Roman Catholic Church concerning the restitution of property nationalised during the communist era.³⁵

Croatia presented its application for EU membership in 2003, and in its 2004 Opinion, the Commission affirmed that religious freedom was guaranteed, and that the Church and the State were separate. The Commission noted that 'an agreement between Croatia and the Holy See establishes a favourable framework regarding the work and activity of the Catholic Church within society'. The Commission also recognised that similar agreements had been signed with other major religious groups in Croatia, although no such agreement existed with the Jewish community due to an ongoing dispute over property restitution. Additionally, the Opinion highlighted that optional religious instruction was offered within the educational system.³⁶

The Commission's opinions on the applications of Montenegro, Serbia, Albania, North Macedonia, and Ukraine contain no references to religious freedom, reflecting significant structural changes in these opinions. The Commission continues to monitor the level of legal protection of FoRB in EU candidate countries, publishing its findings in annual reports. The content of these reports will be analysed in the following section of this paper.

4. The impact of EU integration on religious freedom protection in EU candidate countries

Each year, the European Commission issues its 'Enlargement Package', a set of documents detailing its policies and annual assessments of EU enlargement. This package contains an Enlargement Communication and country reports that provide annual assessments of each candidate's reform status and include recommendations for future

33 | European Commission (1997) 'Agenda 2000 – Commission Opinion on Bulgaria's Application for Membership of the European Union'. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_97_11 (Accessed: 19 August 2024).

34 | Flere, 2014, p. 86.

35 | European Commission (1997) 'Commission Opinion on Slovenia's application for Membership of the European Union'. [Online]. Available at: <https://op.europa.eu/cs/publication-detail/-/publication/73208bd9-732e-44c8-ab7c-914f822a1aa0/language-en> (Accessed: 19 August 2024).

36 | European Commission (2004) 'Communication from the Commission – Opinion on Croatia's Application for Membership of the European Union'. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52004DC0257> (Accessed: 19 August 2024).

reforms. The key findings of 2024 reports regarding the protection of the freedom of thought, conscience and religion will be presented below.³⁷

In contrast to the 2023 Report on Albania, which provided a more detailed overview on religious freedom,³⁸ the 2024 Report only briefly mentions that freedom of religion is generally respected.³⁹ Notably, concerns regarding increasing attempts by foreign entities to exert influence on Churches and religious communities in Albania persist, though these are addressed within the Report's section on the fight against terrorism.⁴⁰

Similarly, the 2024 Report on Bosnia and Herzegovina provides less information on religious freedom protection compared to the 2023 Report.⁴¹ It addresses issues such as discrimination based on religious affiliation, hate speech and hate crimes based on religion, and incidents targeting minority returnees.⁴² The Report omits mention of the uncompleted agreement between Bosnia and Herzegovina and the Islamic Community, despite the country's prior agreements with the Holy See and the Serbian Orthodox Church.⁴³ Prolonged negotiations, reluctance from State authorities, and concerns from other religious groups that the draft agreement seems to prioritise the Islamic Community,⁴⁴ remain the main obstacles to its adoption.

The 2023 Report on Montenegro offered a comprehensive account of the activities of State authorities, Churches, and religious communities affecting the protection of religious freedom. It detailed State financial support to Churches, instances where the Serbian Orthodox Church breached COVID-19 measures, and religious ceremonies promoting traditional values.⁴⁵ By contrast, the 2024 Report briefly confirms that freedom of religion is broadly respected.⁴⁶ It highlights that Montenegro's Constitutional Court dismissed challenges to the constitutionality of amendments to the Religious Freedom Law and the Fundamental Agreement with the Serbian Orthodox Church, adopted after the 2020 democratic shift, in response to previous legislation aimed at nationalising religious assets obtained by religious organisations before 1918.⁴⁷

The 2023 Report on North Macedonia stresses the delay in accrediting religious secondary schools, affecting students' access to higher education from both Orthodox and Muslim schools.⁴⁸ Although a draft law on religious secondary education institutions was proposed, it has not advanced through Parliament.⁴⁹ In contrast, the 2024 Report is

37 | European Commission (2024) '2024 Enlargement Package'. [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en (Accessed: 19 August 2024).

38 | European Commission: Albania 2023 Report, p. 31.

39 | European Commission: Albania 2024 Report, p. 36.

40 | European Commission: Albania 2024 Report, p. 45.

41 | European Commission: Bosnia and Herzegovina 2023 Report, p. 39.

42 | European Commission: Bosnia and Herzegovina 2024 Report, p. 38.

43 | Official Gazette of Bosnia and Herzegovina International Treaties, Nos. 10/07 and 6/08.

44 | Išerić, 2016, pp. 71–74.

45 | European Commission: Montenegro 2023 Report, p. 42.

46 | European Commission: Montenegro 2024 Report, p. 37.

47 | Robbers, 2021, pp. 80–83.

48 | European Commission: North Macedonia 2023 Report, p. 29.

49 | Предлог на закон за установите за средно образование на верските заедници (Draft Law on Institutions for Secondary Education of Religious Communities). [Online]. Available at: <https://www.sobranie.mk/detali-na-materijal.aspx?param=f737e10f-fdb1-4184-93fc-8d67e918646b> (Accessed: 20 September 2024).

concise, stating briefly that freedom of religion or belief remains constitutionally guaranteed and is upheld in practice.⁵⁰

Both the 2023 and 2024 Reports on Serbia identify two priority areas for improving religious freedom protection. The main concern is the alignment of the 2006 Law on Churches and Religious Communities with Council of Europe standards. The 2023 Report provides more details, and focuses on the recommendations from the Advisory Committee on the Framework Convention for the Protection of National Minorities (AC/FCNM).⁵¹ The AC/FCNM has periodically reviewed Serbian legislation and emphasised that non-traditional Churches face differential treatment, especially concerning the acquisition of legal personality.⁵² Serbian Law on Churches and Religious communities indeed distinguishes between traditional Churches and religious communities, confessional communities, and other religious organisations.⁵³ However, the Law does not prescribe any exclusive privileges solely for traditional Churches and religious communities. The only notable distinction is in the registration procedure. Traditional Churches are recognised *ex lege*, whereas all other Churches must fulfill specific legal requirements and complete a registration procedure. Beyond this procedural distinction, the Law does not provide for any additional preferential treatment for traditional Churches or religious communities. This differentiation was necessary due to the introduction of a centralized register for Churches and religious communities, which previously did not exist. To enable State authorities to collect necessary data on registered religious organisations, the legislator stipulated that the registration procedure must include certain documentation by which religious organisations prove their identity.⁵⁴ This requirement did not apply to traditional Churches and religious communities, as they had already been recognised through specific State laws. Overall, Serbia's registration procedure for Churches is comparatively less stringent than in other European nations, including some in the Western Balkans, which enforce more rigorous requirements for the registration of religious organisations.

The second issue highlighted by the European Commission and the Council of Europe concerns ensuring access to religious worship in minority languages across Serbia.⁵⁵ This measure aims to enhance the inclusivity and cultural recognition of religious practices for minority communities throughout the country. The AC/FCNM has addressed the challenges faced by the Vlach community in Serbia regarding access to religious worship in their own language.⁵⁶ The Committee noted ongoing dialogue between the Vlach community and the Serbian Orthodox Church. As a result, the Serbian Orthodox Church, in cooperation with the National Council of Vlachs in Serbia, has approved the gradual introduction of the Vlach language into certain parts of worship in areas with predominantly Vlach population.⁵⁷ The AC/FCNM also highlighted that the Romanian Orthodox

50 | European Commission: North Macedonia 2024 Report, p. 35.

51 | European Commission: Serbia 2023 Report, p. 41.

52 | Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Serbia adopted on 26 June 2019, ACFC/OP/IV(2019)001, paras. 67–68.

53 | Law on Churches and Religious Communities, Official Gazette of the Republic of Serbia, No. 36/06.

54 | Đukić, 2021, p. 27.

55 | European Commission: Serbia 2024 Report, p. 43.

56 | Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Serbia adopted on 26 June 2019, ACFC/OP/IV(2019)001, para. 69.

57 | Serbian Orthodox Diocese of Timoc, 2021.

Church publicly denies the Vlach community's right to self-determine their national and religious affiliation. This issue is tied to efforts by the Romanian Orthodox Church to conduct worship and sermons in the Romanian language in Vlach-populated villages in eastern Serbia.⁵⁸ These activities have sparked tensions related to the recognition of minority, linguistic, and religious rights of the Vlach community. Additionally, members of the Egyptian minority in Serbia face challenges in accessing places of worship.⁵⁹ The use of specific languages in worship is not solely a State responsibility but falls under the autonomy of Churches and religious communities. The State cannot mandate the use of minority languages in worship without violating religious autonomy. However, the State can play a facilitative role by encouraging constructive dialogue between religious organisations and ethnic minorities. This approach squares the protection of minority rights to access religious worship in their native languages with the protection of autonomy of religious organizations.

5. EU membership and the legal status of Churches

The EU is a Treaty-based multinational organisation comprising States with diverse religious traditions and complex Church-State histories. Hans-Martien ten Napel observes that the EU has limited authority over Church-State relations within its Member States.⁶⁰ This principle is formalized in the 1997 Treaty of Amsterdam's Declaration on the Status of Churches and Non-confessional Organisations, which proclaims that 'The European Union respects and does not prejudice the status under national law of Churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organisations'.⁶¹ This formulation became Article 17 of the Treaty on the Functioning of the European Union (TFEU).⁶² Furthermore, the Charter of Fundamental Rights of the European Union (CFR) enshrines freedom of thought, conscience and religion, while prescribing that 'the Union shall respect cultural, religious and linguistic diversity' (Article 22).⁶³ Thomas Schirrmacher and Jonathan Chaplin argue that the EU's ability to influence the relationship between Member States and Churches is shaped by two primary factors: the historical traditions of each State and the legal framework established by the European Convention on Human Rights (ECHR), along with the principles developed through the jurisprudence

58 | Raduški, 2022, p. 156.

59 | Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Serbia adopted on 26 June 2019, ACFC/OP/IV(2019)001, para. 69.

60 | Napel, 2018, p. 224.

61 | Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts – Declarations adopted by the Conference – Declaration on the status of churches and non-confessional organisations, Official Journal C 340, 10/11/1997 P. 0133.

62 | Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

63 | Charter of Fundamental Rights of the European Union, Official Journal of the European Communities 2000/C 364/01.

of the European Court of Human Rights (ECtHR).⁶⁴ The substantive body of EU community law concerning religion has been steadily growing since 1975 and is expected to continue expanding. With the Court of Justice of the European Union (CJEU) increasingly addressing complex issues related to religious freedom,⁶⁵ the traditional perception of the EU as being indifferent to the legal status of religious organisations in its Member States needs to be reconsidered. This shift reflects the evolving intersection between EU law and the regulation of the legal status of religions, emphasising the EU's more active role in this area over time.

European law on religion has gradually and silently developed in the past five decades. Robbers argue that basic features of European law on Religion are regionality, neutrality and equality.⁶⁶ Doe goes further and identifies seven fundamental principles that characterize the posture of the EU towards religion: the value of religion, subsidiarity, religious freedom, religious equality (and non-discrimination), the autonomy of religious associations, cooperation with religion, and the special protection of religion by means of privileges and exemptions.⁶⁷ These principles are widely adopted by Central European States and have been reinforced through the process of European integration.

New legislation adopted in Central European States regulates the legal status of religious organisations in diverse ways, though certain patterns emerge. Most States in the region have implemented a hybrid or cooperationist approach to religion,⁶⁸ which is characterised by constitutional separation of State and Church, that allows for cooperation in different areas, such as religious instruction in public schools and religious services in public institutions.⁶⁹ This model is perceived as adequate in CEE States to help revitalize Churches and religious communities that suffered decades of persecution under authoritarian regimes.⁷⁰ By enabling cooperation between the State and religion, these countries create opportunities for religious organisations to regain the social and spiritual status that they historically had.

Typically, cooperation between the State and religious organizations is formalized in agreements addressing specific mutual interests. In Central Europe, most countries have concluded such agreements, especially with the Holy See. Notably, Czechia was among the last countries in Europe to sign an agreement with the Holy See on 24 October 2024. However, this agreement has not yet been ratified and, therefore, has not entered into force.⁷¹ The agreements signed with other religious organisations equalized their status with that of the Roman Catholic Church. However, a tendency persists for the Catholic Church to receive preferential treatment, particularly in countries with Catholic majority.⁷² Smaller religious groups sometimes face difficulties in negotiating agreements with the State. A landmark ECtHR case involved the Union of three Reformist Churches, which sought an agreement with the Croatian government. Their request was denied on grounds that they were outside 'the European cultural circle', a distinction deemed discriminatory

64 | Schirmacher and Chaplin, 2016, p. 141.

65 | See for more: Pin and Witte, 2019, p. 224.

66 | Robbers, 2004, p. 312.

67 | Doe, 2011, p. 237.

68 | Slovenia is an exception to this rule.

69 | Doe, 2011, p. 35.

70 | Toron and Durham, 2015, p. 16.

71 | Holy See Press Office, 2024.

72 | Toron and Durham, 2015, p. 20.

by the Court.⁷³ The ECtHR's rulings have encouraged States to provide similar opportunities for agreements to all religious groups and organisations.

European integration has promoted equality among religions in EU Member States. Nevertheless, there are instances where EU accession has coincided with reductions in rights previously guaranteed to Churches and religious communities. E.g. in Romania, the restitution of Church property to minority religious organisations significantly decreased after the country joined the EU.⁷⁴ This situation should be distinguished from States' efforts to modernise outdated communist-era legislation on religious organisations. As it has been already mentioned, before and after EU accession, some CEE States adopted new laws imposing stricter registration requirements for different religious groups and organisations. These laws often established multi-tiered systems of Church registration. Typically, the highest tier grants the most privileges, the middle tier provides fewer benefits but is less restrictive, and the lowest tier provides basic legal recognition with minimal requirements. Although the ECtHR has found that in certain cases the implementation of multi-tiered registration systems violate the ECHR,⁷⁵ it has never ruled that such systems inherently contravene the Convention.⁷⁶ European integration in Central Europe has not resulted in laws granting identical status to all Churches and religious communities. Instead, it fostered the introduction of multi-tiered registration systems closely tied to cooperationist models of Church-State relations.

Through European integration, CEE countries have advanced human rights protection, including freedom of religion. In the region of Central Europe, no instances of serious and systematic violations of religious freedom can be observed in general. For proving this statement, it should be mentioned that the ECtHR has found a relatively small number of violations of Article 9 of the ECHR. However, concerns have arisen about the securitisation of religion that potentially could lead to infringements on religious freedom. For example, Estonia denied to renew the residence permit of the spiritual leader of the Estonian Orthodox Church under the Moscow Patriarchate, for security reasons.⁷⁷ In Latvia, the Parliament amended the Law on the Latvian Orthodox Church to grant it the status of a fully independent (autocephalous) Church.⁷⁸ Lithuanian Prime Minister Ingrida Šimonytė has addressed Bartholomew I, the Ecumenical Patriarch of Constantinople, expressing support for an appeal made by several Lithuanian Orthodox Christians seeking to leave Moscow's jurisdiction.⁷⁹ In August 2024, the Ukrainian Parliament passed the Law on the Protection of the Constitutional Order in the Sphere of

73 | ECtHR, *Savez crkava "Riječ života" and Others v. Croatia*, Application No. 7798/08, Judgment of 9 December 2010, para. 92.

74 | Huszka, 2023, p. 1461.

75 | E.g. ECtHR, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Applications Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Judgment of 8 April 2014.

76 | Coleman, 2020, p. 142.

77 | Reuters, 2024.

78 | Cimbalo, 2022, p. 2.

79 | LRT, 2022.

Activities of Religious Organisations.⁸⁰ This piece of legislation prohibits religious organisations affiliated with the Russian Orthodox Church, on the ground of national security concerns. These actions underscore the growing trend of using security concerns to interfere with FoRB, potentially undermining the principle of State neutrality in religious matters, the autonomy of religious organisations, and the separation of Church and State. Moreover, these examples showcase that there remains a risk of backsliding and regressing in fundamental rights protection even in States which have achieved high levels of human rights protection and have been integrated into the EU.

6. Concluding remarks

The CEE countries share a common history of religious pluralism and anti-religious dictatorships in the second half of the 20th century. After 1989, democratisation prompted legislative reforms on religious freedom protection, reflecting liberal principles and aligning with democratic standards. Most CEE countries had adopted legislation on the legal status of Churches and religious communities at the end of the communist rule. The process of European integration in the first years after the fall of communism did not affect CEE countries' national legislation that regulated religious freedom protection. In some of those countries the laws and other regulations on FoRB inherited by the communist regime remained in force even after their accession to the EU.

The Copenhagen criteria established in 1993 linked EU membership to democratic values, including human rights and subsequently freedom of religion. Candidate countries from Central and Eastern Europe had to demonstrate compliance through constitutional guarantees and legal reforms, as assessed by the European Commission. While progress varied, challenges such as State-Church relations, anti-Semitism, and minority registration emerged. Financial support to religious organisations, restitution of Church property, and the status of traditional religions were also addressed. It is worth noting that certain laws on religious freedom inherited from the socialist regime were often positively evaluated, while some legislation enacted after EU accession was later deemed by the ECtHR to violate freedom of religion or belief.

The 2024 European Commission reports on candidate countries reveal a general affirmation of religious freedom and less detailed analyses of religious freedom issues in candidate countries compared to previous years. Those issues include the prohibition of discrimination based on religious affiliation, hate speech, minority rights in worship, and legal frameworks regulating the legal status of religious organisations. The 2024 reports indicate that the focus of the European Commission has shifted away from religious freedom issues. This could be explained, on one hand, by the lack of significant infringements of religious freedom in EU candidate countries in recent years. On the other hand, the 2024 reports aimed to reinvigorate the accession process and inject dynamism into

80 | Закон України про захист конституційного ладу у сфері діяльності релігійних організацій (Law of Ukraine on the Protection of the Constitutional Order in the Field of Activities of Religious Organisations). [Online]. Available at: <https://zakon.rada.gov.ua/laws/show/3894-IX#Text> (Accessed: 30 October 2024).

the European integration of Western Balkan countries, and therefore they omit the assessment of specific issues like religious freedom.

The process of European integration influences religious freedom protection primarily through the Council of Europe's human rights standards. During and after their accession to the EU, many Central European countries adopted new regulations on the legal status of religious organisations. Even though those changes do not only ensue from EU integration, there is undoubtedly an interplay between European integration and domestic legal adjustments in the sphere of religious freedom. The ECtHR and the Venice Commission have significantly contributed to reviewing new legislation related to religious freedom and their assessments have indicated breaches of Council of Europe standards, guiding States to align their laws with established human rights protection standards.

European law on religion continues to evolve but does not mandate a specific model of State-Church relations for EU Member States. While the process of European integration does not explicitly favour any existing model, most CEE countries have adopted a cooperationist approach. Cooperation, by way of agreements with laws regulating the legal status of Churches remain a key characteristic of State-Church relations in CEE countries. However, challenges remain, including the preferential treatment of dominant religions, stricter registration requirements for smaller groups, and increasing concerns about the securitisation of religion.

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