

FROM PRIVATE TO PUBLIC SPHERE: FREEDOM OF RELIGION OR BELIEF IN THE FORMER YUGOSLAVIA MEMBER STATES IN POST-SOCIALIST PERIOD

DE LA ESFERA PRIVADA A LA PÚBLICA: LA LIBERTAD DE CREENCIAS Y RELIGIÓN EN LOS ESTADOS MIEMBROS DE LA ANTIGUA YUGOSLAVIA EN LA ERA POSTSOCIALISTA

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ABSTRACT

This article deals with the freedom of religion or belief in Bosnia and Herzegovina, Croatia, and Serbia in the post-socialist period. After the dissolution of the Yugoslav Federation and the beginning of the democratization process in the 1990s, the former Yugoslav republics abandoned the socialist understanding of religion as an exclusively private matter manifested in the privacy of the home and religious objects. The new constitutional and legal provisions provide general individual and collective guarantees for the freedom of religion and its manifestation in «private or in public» in accordance with the international standards. This article gives a detailed analysis of relevant constitutional and legal provisions on freedom of religion and belief in the three former Yugoslavia member states and its transition from private to public sphere.

KEYWORDS

Freedom, religion, belief, legal system, churches, religious communities, collective, individual, Bosnia and Herzegovina, Croatia, Serbia.

RESUMEN

El artículo aborda la regulación de la libertad de creencias y de religión en Bosnia y Herzegovina, Croacia y Serbia en la etapa posterior a la dictadura socialista. Tras la disolución de la Federación Yugoslava y el inicio del proceso de democratización en la década de los noventa, las antiguas repúblicas yugoslavas abandonaron la concepción socialista de la religión como un asunto exclusivamente privado que se manifestaba en la intimidad del hogar y los espacios religiosos. Las nuevas disposiciones constitucionales y legales establecen garantías generales individuales y colectivas para la libertad de religión y su manifestación «en privado o en público», de conformidad con los tratados internacionales. En este artículo se ofrece un análisis detallado de las disposiciones constitucionales y legales atinentes a las libertades de religión y de creencias en los tres Estados miembros de la antigua Yugoslavia y su transición de la esfera privada a la pública.

PALABRAS CLAVE

Libertad, religión, creencias, ordenamiento jurídico, iglesias, comunidades religiosas, personal, colectivo, Bosnia y Herzegovina, Croacia, Serbia.

SUMMARY: 1. Introduction. 2. Normative framework and institutions for the protection of the freedom of religion. 3. Freedom of religion/belief and its expression. 4. Restrictions to freedom of religion or belief. 5. Relationship between the State and religion: separation with cooperation? 6. Legal status of churches and religious communities. 7. Autonomy of churches and religious communities. 8. Financing and property of churches and religious communities. 9. Religious education in public schools. 10. Providing religious services in public institutions. 11. Religion and legal system. 12. Conclusion.

1. INTRODUCTION

After the end of the Second World War in 1946 and the creation of a new, socialist state, there were radical changes regarding the position of religion in the states that became part of the Socialist Federative Republic of Yugoslavia. The previous system of recognized religious communities was abandoned, and a new model of strict separation of religion and state was adopted.

The new model of separation is applied in the conditions of a one-party system and the monopoly of one ideology - Marxism marked as a «model of separation with antagonism.»¹ Religion is declared a private matter of each individual. The legal status of religious communities was regulated by a special law that was adopted in 1953. Different state measures, such as agrarian reform, nationalization, and expropriation, seized a substantial part of religious communities' property and weakened their social significance.

The 1974 Constitution placed the issue of regulating the legal status of churches and religious communities under the competence of member republics, which adopted special laws for regulating this area in 1976 and 1978². However, there was no change in the adopted model of the relationship between the state and religion or in the area of expressing freedom of religion. The laws remained in force until the beginning of the democratization process in 1990 and the dissolution of the Yugoslav Federation (1991-1992), i.e., until the adoption of new laws on freedom of religion and the legal status of churches and religious communities between 2002 and 2006.

This paper will analyze the legal framework concerning freedom of religion and the legal status of churches and religious communities in Bosnia and Herzegovina, Croatia, and Serbia in the post-socialist period.

2. NORMATIVE FRAMEWORK AND INSTITUTIONS FOR THE PROTECTION OF THE FREEDOM OF RELIGION

The Constitution of the Republic of Croatia, which entered into force on 22 December 1990, guaranteed freedom of conscience and religion and free public expression of religion or other beliefs.³ Article 41 regulated that «all religious communities were equal before the law and separate from the state» and that «religious communities should be

¹ KARČIĆ, F., *Relgija i pravo: Kratak uvod*, Sarajevo, Connectum, 2011, p. 51.

² Law on the Legal Status of Religious Communities of Federal Republic of Bosnia and Herzegovina, *Official Gazette of the Federal Republic of Bosnia and Herzegovina*, no. 36/76; Law on the Legal Status of Religious Communities of the Federal Republic of Serbia, *Official Gazette of the Federal Republic of Serbia*, no. 44/1977; Law on the Legal Status of Religious Communities of the Federal Republic of Croatia, *National Gazette*, no. 14/78. and 52/88.

³ Constitution of the Republic of Croatia, *Official Gazette*, no. 56/90.

free, in compliance with the law, to publicly conduct religious services, open schools, colleges or other institutions, and welfare and charitable organizations and to manage them, and they shall enjoy the protection and assistance of the state in their activities.»⁴

Similarly, the 1990 Constitution of the Republic of Serbia in Article 41 guaranteed «freedom of religion, which includes freedom of belief, profession of religion and performance of religious rites.» The same Article also stated that «religious communities are separated from the state and are free to conduct religious activities and perform religious rites», including establishing religious schools and charitable organizations, and that «the state may grant financial assistance to religious communities.»⁵ This Constitution ceased to be valid on 8 November 2006, when the National Assembly of the Republic of Serbia promulgated a new Constitution, adopted as a response to the dissolution of the State Union of Serbia and Montenegro, for which the citizens of Serbia decided in a referendum on October 28 and 29, 2006.

The new Constitution of the Republic of Serbia from 2006 guarantees «freedom of thought, conscience, belief, and religion, the right to stand by one's belief or religion or change them by choice» (Article 43). Then, following the European Convention, the same Article guarantees «the freedom to manifest one's religion or religious beliefs in worship, observance, practice, and teaching, individually or in community with others... in private or public.»⁶ Article 44 of the Constitution defines the legal status of churches and religious communities, which are «equal and separated from the state,» free to «independently organize their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law.»

Finally, the Constitution of Bosnia and Herzegovina, which is an integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina (initialed on 21 November 1995. in Dayton (USA) and sign-

⁴ Constitution of the Republic of Croatia, Article 41.

⁵ Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 1/1990.

⁶ Constitution of the Republic of Serbia, Article. 43.

ed on 14 December 1995 in Paris)⁷ in Art. II guarantees the right to «freedom of thought, conscience and religion.»⁸ The same Article regulates that the rights and freedoms set forth in the European Convention on Human Rights and its Protocols (hereinafter: the European Convention) would apply directly in B&H and that they would have priority over all other laws.

The Constitution of the Federation of Bosnia and Herzegovina, as one of the two entities of Bosnia and Herzegovina formed by the Dayton Peace Agreement, guarantees «freedom of thought, conscience and belief» and «freedom of religion, including private and public worship.»⁹ The same Article prohibits discrimination based on «religion or belief.» It also stipulates that no person can be deprived of FB&H citizenship based on religion,¹⁰ and religion is listed as one of the elements of «vital national interest».¹¹

The Constitution of the second entity –Republika Srpska– guarantees «freedom of thought and orientation, conscience and conviction» and «freedom of religion.»¹² The Republika Srpska's Constitution is the only one in B&H which explicitly guarantees a collective aspect of the right to freedom of religion, declaring that «religious communities shall be equal before the law and shall be free to perform religious affairs and services,» including opening religious schools and performing religious education in all levels of education; engaging in economic and other activities, receiving gifts, establishing legacies and managing them, in conformity with the law.»¹³

⁷ General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) <https://peacemaker.un.org/bosniadaytonagreement95>, accessed 23 August 2023.

⁸ Constitution of Bosnia and Herzegovina, <https://www.ohr.int/ohr-dept/legal/laws-of-B&H/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf>, accessed 23 August, 2023.

⁹ Constitution of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 i 88/08, Article 2.

¹⁰ Constitution of the Federation of Bosnia and Herzegovina, Article 5 (2).

¹¹ Constitution of the Federation of Bosnia and Herzegovina, Article 17a.

¹² Constitution of the Republika Srpska, *Official Gazette of the Republika Srpska*, no. 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 31/02, 31/03, 98/03, 115/05, 117/05, Articles 25, 28 (1).

¹³ Constitution of the Republika Srpska, Article 28 (2).

These new constitutional guarantees on freedom of religion or belief in the countries that are the subject of this research could not be realized by the existing laws on the legal status of religious communities from the socialist period (enacted between 1976 and 1978). Therefore, all three states adopted new laws from 2002 to 2006 that legally operationalized the constitutional guarantee of freedom of religion for the citizens of these independent states.

The Law on the Legal Status of Religious Communities in Croatia was adopted in 2002.¹⁴ Even before the adoption of the law, the Republic of Croatia concluded international agreements with the Vatican in 1996 and 1997, which regulated issues of common interest, and since 2003, similar agreements with other churches and religious communities. In order to implement these acts, the Commission for Relations with Religious Communities was established in 2013.¹⁵

The Law on Freedom of Religion and the Legal Status of Churches and Religious Communities,¹⁶ was adopted on 28 January 2004 in Bosnia and Herzegovina. It laid the foundation for a uniform regulation of individual religious rights and freedoms and the collective rights of churches and religious communities in B&H. This Law gives the possibility of concluding agreements between the state or its entities and religious communities related to issues of mutual interest. So far, the Catholic Church concluded such an agreement with the state, i.e., the Holy See as its universal authority,¹⁷ and the Serb Orthodox Church. Negotiations on the agreement between the Islamic Community and the state are ongoing, but it was not signed until the publication of this paper. The lack of political will for signing the agreement is considered by the Islamic Community's officials as discrimination. After the Serb member of the Presidency of B&H, then

¹⁴ Law on the Legal Status of Religious Communities, *Official Gazette*, no. 83/02, 73/13.

¹⁵ Regulation on the Foundation of a Committee for Relations with Religious Communities and the Office of the Committee for Relations with Religious Communities, *Official Gazette*, no. 126/2013, 145/2013, Article 1.

¹⁶ Law on Freedom of Religion and the Legal Status of Churches and Religious Communities, *Official Gazette of Bosnia and Herzegovina*, 5/04, Article 4 (1) (hereinafter: Law on Freedom of Religion).

¹⁷ The Basic Agreement Between the Holy See and Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina – International Agreements*, 10/07.

the chair of the Presidency, Milorad Dodik, claimed that the Islamic Community required «greater rights» in the agreement, the Islamic Community in B&H issued a statement claiming that the proposal of the agreement regulate specific elements of Islamic religious practice, which the other religious communities also have and that were recognized in their agreements with the state. In addition, it is stated that the three traditional religious communities in Bosnia and Herzegovina expressed their approval of the content of the agreement's proposal and that «it was challenged only by those policies that work to further distrust and use it for daily political turmoil and political blackmail.»¹⁸ The Jewish Community has not signed the agreement with B&H either.

The Law on Churches and Religious Communities in Serbia was adopted in 2006.¹⁹ As in Croatia, unlike Bosnia and Herzegovina, this Law is focused almost exclusively on protecting the collective aspect of the right to freedom of religion.

3. FREEDOM OF RELIGION/BELIEF AND ITS EXPRESSION

Law on Freedom of Religion in B&H guarantees each person the right to the freedom of religion or belief, the freedom to adopt or change religion, as well as the freedom –individually or in community with others, in public or private– to manifest their religion or belief in any manner in worship, practice, and observance, cherishing customs and other religious activities.²⁰

Besides this, the Law on Freedom of Religion prohibits discrimination based on belief and conviction, the disturbance of religious rituals and other religious activities, assaults against religious officials, assaulting and damaging religious buildings and other property of religious communities, activities aimed at stirring up religious hatred to any religious community or its members, depreciation or mocking any religion, as well as forcing individuals to express their religion or convictions.²¹

¹⁸ MEMIŠEVIĆ, E., «Bosnia and Herzegovina» en E. Račius *Yearbook of Muslims in Europe*, Brill, 2020, p. 126.

¹⁹ Law on Churches and Religious Communities of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 36/06.

²⁰ Law on Freedom of Religion, Article 4 (1).

²¹ Law on Freedom of Religion, Article 6.

Freedom of religion or convictions is also protected by regulations of criminal codes in Bosnia and Herzegovina within the following criminal offenses: infringement of the equality of individuals and citizens,²² disturbing religious services, violation of the freedom of religion and practice of religion and denial of rights of religious communities to equality and practice of religious rituals in public; causing national, racial, and religious hatred, split, and intolerance.²³

The Law on the Legal Status of Religious Communities in Croatia focuses on the protection of the collective aspect of the right to freedom of religion. A church or religious community is defined as a community of natural persons who exercise the freedom of religion by the equal public performance of religious rites and other manifestations of their religion entered in the Register of Religious Communities in the Republic of Croatia.²⁴ It is also stated that religious communities are forbidden to impede other religious communities or citizens without a religious belief from free public expression of religion or other beliefs, as well as spreading intolerance towards other religious communities and their believers or citizens.²⁵

The protection of freedom of religion or belief and its manifestation is also secured by criminal law. Within the framework of criminal offenses against human rights and fundamental freedoms, under «violation of freedom of religion,» the Criminal Code of the Republic of Croatia includes the following criminal offenses: denying or restricting freedom of conscience and religion, public expression of religion or other belief; denying the right to equality to a religious community that operates in accordance with the law in the Republic of Croatia; denying or limiting the public performance of religious ceremonies, the establishment of schools, colleges, institutes, social or charitable institutions.²⁶ Protection of freedom of religion is also provided by

²² Criminal Code of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, Article 177; Criminal Code of the Republika Srpska, *Official Gazette of the Republika Srpska*, 49/03, Article 162.

²³ Criminal Code of the Republika Srpska, Articles 178, 300; Criminal Code of the Federation of Bosnia and Herzegovina, Article 136.

²⁴ Law on the Legal Status of Religious Communities, Article 1.

²⁵ Law on the Legal Status of Religious Communities, Article 3.

²⁶ Criminal Code, *Official Gazette*, no. 125/11, 144/12, Article 130.

prohibiting violation of equality and public incitement to violence and hatred.

The 2006 Law on Churches and Religious Communities in Serbia guarantees freedom of conscience and religion. Freedom of religion includes freedom to profess belief in God; freedom to have or to have not, preserve or change religion or religious conviction; freedom, either alone or in community with others and in public or private, to manifest religion or religious conviction in worship, teaching, practice and observance, cherishing and developing religious tradition; freedom to develop and advance religious education and culture.²⁷

Besides the prohibition of discrimination based on religion or belief, the Law prohibits coercion from declaring one's religion or belief; disturbance, discrimination, or privilege based on religion or belief; affiliation or non-affiliation to a religious community; participation or non-participation in religious services or practicing or not practicing all guaranteed religious freedoms and rights.²⁸

In addition, freedom of religion is also protected by the provisions of the Criminal Code of the Republic of Serbia within the framework of the following crimes: violation of the equality of man and citizen²⁹ violation of freedom of religion and performing religious service, prevention or hindering the performance of religious ceremonies, and coercion to express one's religious belief.³⁰

In relation to the previous socialist legislation, one can notice the frequent use of the term «public» as an area of expression of religion. This abandons the previous understanding of religion as a «private matter» and the limitation of expressing religion to an individual's private sphere and places of worship.

²⁷ Law on Churches and Religious Communities, Article 1.

²⁸ Law on Churches and Religious Communities, Article 2.

²⁹ Criminal Code, *Official Gazette of the Republic of Serbia*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19, Article 128.

³⁰ Criminal Code, Article 131.

4. RESTRICTIONS TO FREEDOM OF RELIGION OR BELIEF

The limits of the expression of religion or belief in the countries included in this research are given very broadly, following relevant international acts and practices. The Law on Freedom of Religion in Bosnia and Herzegovina stipulates that public expression of faith may be restricted only by law and following international standards «when it is shown by the competent authorities to be necessary in the interests of public safety, to protect health, public morals, or for the rights and fundamental freedoms of others.»³¹

The standards of the European Convention related to the limits of allowed restrictions to the freedom of religion are affirmed in judicial practice.³² In several decisions of the Human Rights Chamber³³, as a separate body established by the Dayton Agreement, it was found that the destruction and removal of the remains of demolished mosques in the Republika Srpska, the refusal to grant permits for their reconstruction, the prevention of burial, etc., constitutes an unjustified restriction of the right to freedom of religion, that is discrimination against the Muslim population and a violation of the right to peaceful enjoyment of possessions.³⁴

Similarly, in Croatia, following international norms, restrictions on the expression of religion or belief can only be justified if they are prescribed by law or aimed at protecting public safety, order, health, morals, and the rights and freedoms of others.³⁵

The Law on Churches and Religious Communities of Serbia also stipulates that freedom of expression of belief or religion can only be subject

³¹ Law on Freedom of Religion, Article 14 (7).

³² BEGOVIĆ, N., «Ustavni okvir i Zakon o slobodi vjere i pravnom položaju crkava i vjerskih zajednica u BiH: normativna projekcija bosanskohercegovačkog sekularizma» en *Sveske za javno pravo*, no. 18, 5, 2014, p. 7.

³³ *Islamic Community v. Republika Srpska*, case no. CH/96/29, 11 June 1999; *Islamic Community in B&H v. the RS*, case no. CH/99/2177, 11 February 2000; *Islamic Community in B&H v. the RS*, case no. CH/98/1062, 9 February 2001; *Islamic Community in B&H (Mrkonjić-Grad) v. the RS*, case no. CH/01/7701, 22 December 2003.

³⁴ Nowak, M., Vospernik, T., «Permissible Restrictions on Freedom on Religion or Belief» en *Facilitating Freedom of Religion or Belief: A Deskbook*, Martinus Nijhoff Publishers, 2004, p. 169.

³⁵ Nowak, M., Vospernik, T., *op. cit.*, p. 147-172.

to those restrictions prescribed by the Constitution, the law, and ratified international documents only if that is necessary in a democratic society, in order to protect public safety and order or to prevent inciting of religious, national, and racial hatred.³⁶

5. RELATIONSHIP BETWEEN THE STATE AND RELIGION: SEPARATION WITH COOPERATION?

In the democratization process of the former Yugoslav member states, the principle of institutional and functional separation between the state and religious communities was preserved as inherited from the socialist regime. However, unlike the socialist regime characterized by the separation system with ideological hostility towards religion, the general tendency in the relations between religion and the state is their cooperation. This is particularly reflected in the legally prescribed possibility of regulating issues of common interest by an agreement between the church or religious community and the competent state or entity authorities (e.g., religious education and spirituality in the military).

The Constitution of Bosnia and Herzegovina does not contain explicit provisions on the relationship between the state and religion. However, the Law on Freedom of Religion prescribes that churches and religious communities are separated from the state, which means that (a) the state cannot recognize the status of a state religion to any religion, or the status of a state church or religious community to any church or religious community; (b) the state does not have the right to interfere with the internal organization and the affairs of churches or religious communities; (c) no church or religious community can enjoy special state privileges in relation to other churches or religious communities, and religious officials cannot formally participate in the work of political institutions; and (d) the state may provide material support to churches and religious communities without discrimination, and in particular without discrimination based on religion or conviction.³⁷

As previously stated, the Constitution of the Republic of Croatia stipulates that «all religious communities are equal before the law and sepa-

³⁶ Constitution of the Republic of Serbia, Article 43 (3).

³⁷ Law on Freedom of Religion, Article 14 (1-4).

rated from the state.»³⁸ The Law on the Legal Status of Religious Communities allows concluding agreements between the state and religious communities on matters of common interest. As international agreements, the concordats with the Holy See established a special regime for the Catholic Church, which, according to some authors, can hardly be reconciled with the model of separation of state and religion.

On 1 January 2004, the Constitutional Court of the Republic of Croatia considered a proposal to initiate proceedings to evaluate the constitutionality of the agreements³⁹ between the Holy See and the Republic of Croatia due to non-compliance with Article 41 of the Constitution because, it is argued, «the disputed Treaties unite the Church with the state, that is, enthrone one Church as the state church.»⁴⁰ However, the Constitutional Court rejected the proposal by ruling that it was not in its competencies because it concerned international agreements.

Therefore, the state and religious communities in the Republic of Croatia are separate, but this model is complemented by the concept of cooperation on matters of common interest, which is also extended to non-dominant or non-traditional religions.⁴¹ The cooperation is especially manifested in educational, cultural, and charitable affairs. This was also confirmed by the Agreement between the Republic of Croatia and the Holy See on Legal Issues, which stipulates that «the state and the Catholic Church, each in its own order, are independent and self-sufficient.» However, they undertook «to cooperate with each other in caring for the complete spiritual and material development of man and in promoting the general good.»

³⁸ Constitution of the Republic of Croatia, Article 41.

³⁹ The Agreement Between the Holy See and the Republic of Croatia on Legal Issues; the Agreement Between the Holy See and the Republic of Croatia on Pastoral Care of Catholic Believers Members of the Armed Forces and the Police; the Agreement Between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture; the Agreement Between the Holy See and the Republic of Croatia on Economic Issues.

⁴⁰ Constitutional Court in Ruling No.: U-I-825/2001 of 14 January 2004, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2004_02_16_482.html, accessed, 23 August 2023.

⁴¹ TEMPERMAN J., *State-Religion Relationships and Human Rights Law: Toward a Right to Religiously*

Neutral Governance, Leiden, Boston, Martinus Nijhoff Publishers, 2010, p. 135.

The 2006 Constitution of Serbia proclaimed the «secularity of the state» as a constitutional principle. Article 11 stipulates that the Republic of Serbia is «a secular state,» that the «churches and religious communities are separated from the state,» and that «no religion may be established as state or mandatory religion.»⁴²

It is not entirely clear whether it is a strict separation or a model of separation with cooperation. Some authors claim that it is a model of strict separation, because of the explicit proclamation of the secularity of the state.⁴³ Another argument they emphasize is that, unlike the 1990 Constitution, it does not explicitly mention the possibility of the state providing financial support to religious communities.⁴⁴ On the other side, some authors claim that it is a model of separation with cooperation.⁴⁵

This was also decided by the Constitutional Court in the process of assessing the constitutionality of the Law on Churches and Religious Communities, which stipulates the state's cooperation with churches and religious communities and can financially support churches and religious communities «with the aim of advancing religious freedoms and achieving public good and common interest.»⁴⁶ The Constitutional Court ruled that there is a model of separation and cooperation between state and religious communities in Serbia, emphasizing that «constitutional provisions in themselves do not mean a system of complete separation of church and state, but that there is no state church and that there is no identification of the state with a particular religion and religion in general, and that churches and religious communities are free to independently determine their internal organization and religious affairs and that the state must not interfere with the adoption and application of autonomous regulations and decisions»⁴⁷.

⁴² Constitution of the Republic of Serbia, Article 11.

⁴³ MARUNKVIĆ, T., «Prilog za javnu raspravu o ustavnosti Zakona o crkvama i verskim zajednicama», en *Anali Pravnog fakulteta u Beogradu*, LIX, no. 1, 2011, p. 383.

⁴⁴ DRAŠKIĆ, M., «Ustav Srbije: Striktna ili kooperativna odvojenost crkve i države», en *Sveske za javno pravo*, no. 12, 4, 2013, p. 38-39.

⁴⁵ AVRAMOVIĆ, S., «Poimanje sekularnosti u Srbiji – refleksije sa javne rasprave u Ustavnom sudu», en *Anali Pravnog fakulteta u Beogradu*, LIX, no. 2, 2011, p. 296.

⁴⁶ Law on Churches and Religious Communities, Article 28.

⁴⁷ Constitutional Judgement on the legitimacy of the Law on churches and religious communities (Case n. I with 455/2011, Constitutional Court's Decision, January 16th 2013);

6. LEGAL STATUS OF CHURCHES AND RELIGIOUS COMMUNITIES

Churches and religious communities in B&H have the status of legal persons acquired by registration with the Ministry of Justice of B&H, according to the Law on Freedom of Religion. With reference to the method of registration, the Law differentiates three categories of churches and religious organizations.⁴⁸ The first category consists of historically based churches and religious communities (traditional religious communities): the Islamic Community, the Serbian Orthodox Church, the Catholic Church, and the Jewish Community.⁴⁹ The second category consists of churches and religious communities that acquired legal entities' status before the law's adoption.

Considering that the Law recognized the continuity of the acquired legal position of the abovementioned categories, they only need to submit an application for registration.⁵⁰ The third category consists of new churches and religious communities that attach the following documents to the registration application: a) Statute or other basic act of the religious community that shows the content and manner of confession of faith, performing religious rituals, area and manner of action; b) a document on official religious teaching; c) signatures of 300 citizens - followers; and d) a decision on the establishment of a religious community, adopted by at least 30 founders and signed by the head of the community, his deputy or other authorized representatives.⁵¹

In order to prevent unjustified delays in deciding on registration, which the European Court of Human Rights has qualified as a violation of Article 9 of the European Convention,⁵² The Law stipulates that a new re-

ĐURIĆ, V., «Zakonsko uređivanje pravnog položaja crkava i verskih zajednica u Republici Srbiji: od osporavanja do unapređivanja», en *Sveske za javno pravo*, no. 13, 4, 2013, p. 46.

⁴⁸ The explicit or factual division of churches and religious communities, with different conditions of their registration, exists among other former members of the Socialist Federal Republic of Yugoslavia. See more in: MEMIŠEVIĆ, E., «Savremeno regulisanje slobode religije ili uvjerenja u Bosni i Hercegovini, Hrvatskoj, Srbiji i Crnoj Gori», en *Sloboda vjere ili uvjerenja: Priručnik*, Sarajevo, Centar za napredne studije, 2015, p. 481–527.

⁴⁹ Law on Freedom of Religion, Article 8 (2).

⁵⁰ Law on Freedom of Religion, Article 16 (3).

⁵¹ Law on Freedom of Religion, Article 8 (18).

⁵² PODOPRIGORA, R., «Freedom of Religion and Discretionary State Approval of Religious Activity» en *Facilitating Freedom of Religion or Belief*, p. 432; BEGOVIĆ, N., *op. cit.*, p. 11.

ligious community would be considered registered if the Ministry of Justice fails to decide on the application within 60 days of filing the application.

The Law on the Legal Status of Religious Communities in Croatia grants the status of legal entities to religious communities, which they acquire in the registration process at the Ministry responsible for general administration.⁵³

Regarding the method of registration, the Law differentiated two types of religious communities. The first category consists of «existing religious communities» operating as legal entities in the Republic of Croatia on the date of entry into force of the Law on the Legal Status of Religious Communities. They are simply registered by submitting a registration request.⁵⁴ The second category consists of «newly founded religious communities.» In order to be registered, newly founded religious communities need to submit a request for registration and the following documents:⁵⁵ a) a document from which it is evident that the religious community has at least 500 followers; b) a document on official religious teaching that shows the content and manner of manifesting religion, performing religious rituals, area, and manner of activity of the religious community c) a document from which it is evident that the newly founded religious community was registered as a citizens' association for at least five years before submitting the application.⁵⁶

In the Registry, where there are currently more than forty religious communities, there is no Catholic Church.⁵⁷ The Ministry of Administration has established a special Registry of Legal Entities of the Catholic Church.⁵⁸ Moreover, the Serbian Orthodox Church in Croatia is

⁵³ Law on the Legal Status of Religious Communities, Article 6.

⁵⁴ Law on the Legal Status of Religious Communities, Article 5 (1).

⁵⁵ Law on the Legal Status of Religious Communities, Article 5 (2).

⁵⁶ Law on the Legal Status of Religious Communities, Article 21 (1).

⁵⁷ Register of Religious Communities in Croatia, <https://mpu.gov.hr/evidencija-vjerskih-zajednica-u-republici-hrvatskoj/25240>, accessed 20 August 2023.

⁵⁸ The Agreement Between the Holy See and the Republic of Croatia on Legal Issues, *Official Gazette – International Agreements*, no. 3/1997, Article 2; Register of Legal Persons of the Catholic Church, <https://mpu.gov.hr/evidencija-pravnih-osoba-katolicke-crkve-u-republici-hrvatskoj/22215>; accessed 20 August 2023.

not registered as a single religious community, but only its organizational forms are registered.⁵⁹

Churches and religious communities in Serbia have the status of legal entities, which they acquire by registering with the Ministry responsible for religious affairs, which keeps the Register of Churches and Religious Communities. The law differentiates as «the entities of corporate religious freedom»: traditional churches and religious communities, confessional communities, and other religious organizations.⁶⁰

Traditional churches are the churches with centuries-long historical continuity in Serbia, having acquired legal subjectivity according to separate legislation, which are the Serbian Orthodox Church, the Roman Catholic Church, Slovakian Evangelist Church a.v., Christian Reformist Church and the Evangelist Christian Church a.v.⁶¹ As confessional communities, the Law recognizes religious organizations registered under the Law on the legal status of religious communities («The Official Gazette of the Federal People's Republic of Yugoslavia» no.22/1953) and the Law on the legal status of religious communities («The Official Gazette of the Socialist Republic of Serbia,» no.44/1977).⁶²

As in Croatia and Bosnia and Herzegovina, the traditional and confessional churches and religious communities have been granted legal continuity acquired earlier.⁶³ However, while the traditional churches and religious communities submit only an application for registration in the Register of Churches and Religious Communities,⁶⁴ the confessional churches and religious communities and other religious communities have to submit the following documents: 1) the decision on founding the organization with names, surnames, number of identification documents, signatures of at least 0,001% of the Republic of Serbia citizens of age with residence in the Republic of Serbia according to the

⁵⁹ MILIĆ, J., «Pravni i činjenični status vjerskih zajednica u Republici Hrvatskoj», en *Hrvatska pravna revija*, no. 3, 2008, p. 9-15; LONČAREVIĆ, V., «Pravni položaj crkava i vjerskih zajednica te njihovo stjecanje pravne osobnosti u Republici Hrvatskoj». (<http://reformator.hr/oldweb/Pdf/Vjerske%20zajednice%20u%20Hrvatskoj%20Loncarevic.pdf>).

⁶⁰ Law on Churches and Religious Communities, Article 4 (1).

⁶¹ Law on Churches and Religious Communities, Article 10.

⁶² Law on Churches and Religious Communities, Article 16.

⁶³ Law on Churches and Religious Communities, Article 17.

⁶⁴ Law on Churches and Religious Communities, Article 18.

latest official census or foreign nationals with permanent residence in the territory of the Republic of Serbia; 2) the Statute or other written document of the religious community describing organizational structure, manner of managing the organization, rights and obligations of the members, procedure for founding the organization and its dissolution, a list of organizational units with an attribute of legal entity and other pieces of information of relevance pertaining to religious organization; 3) information on fundamentals of religious teachings, religious rites, religious goals and basic activities of religious organization; 4) information on permanent sources of income.⁶⁵

Due to this division of subjects of religious freedom and different conditions for their registration, these provisions (Article 4 and Article 18) of the Law were subject to constitutionality assessment. Referring to the OSCE's Guidelines on the Review of Legislation Relating to Religion or Belief⁶⁶ and the Venice Commission, which allows recognition of «historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for discrimination,»⁶⁷ the Court found that this division does not contradict the general prohibition of discrimination. Regarding the differences in the registration process, the Court pointed out that registration is not done according to the approval system but the fulfillment of the legal requirements for acquiring legal subjectivity, which traditional churches and religious communities have already fulfilled since they were recognized by special laws in the past.

7. AUTONOMY OF CHURCHES AND RELIGIOUS COMMUNITIES

The Law on Freedom of Religion in B&H allows the autonomous action of churches and religious communities, which regulate their internal organization independently in «accordance with their internal regulations, laws, and teaching.»⁶⁸ It is forbidden for the state authorities to interfere with the election, appointment, or removal of religious leaders

⁶⁵ Law on Churches and Religious Communities, Article 18.

⁶⁶ Guidelines for Review of Legislation Pertaining to Religion or Belief, <https://www.osce.org/odihr/13993>, accessed 23 August 2023.

⁶⁷ Constitutional Judgement on the legitimacy of the Law on churches and religious communities, p. 2.

⁶⁸ Law on Freedom of Religion, Article 11 (2).

and staff of churches and religious communities that they perform in accordance with their regulations and needs.⁶⁹

In addition to its core activity, the Law on Freedom of Religion in B&H enables religious communities to establish companies and manage their assets, to establish cultural, charity, health, and educational institutions that are in terms of rights equal to institutions founded by state or other authorized founders, or to engage in all activities that are not prohibited by law.⁷⁰

Article 2 of the Law on the Legal Status of Religious Communities in Croatia stipulates that religious communities autonomously and freely establish their internal organization, management authorities (the hierarchy and competence thereof; the authorities and persons who represent a religious community and its organizational forms); the content and the manner of professing religion; the type of connection with central church authorities and other religious communities; the relationships with other religious communities; and such other issues relating to their activity, in conformity with the Constitution of the Republic of Croatia.⁷¹ Besides that, religious communities are free, in accordance with the law, to publicly perform religious rites, establish schools, colleges, other institutes, and social and charitable institutions and manage them. In their activities, they enjoy the protection and assistance of the state. All other rights of religious communities are regulated by signing an agreement with the Government of the Republic of Croatia.

Even though the Croatian Law on the Legal Status of Religious Communities provides the possibility of concluding agreements between state and religious communities, the criteria for selecting religious communities were not clear. After their requests to conclude an agreement with the state were rejected, the Alliance of Churches' Word of Life, the Full Gospel Church, and the Protestant Reformed Christian Church Croatia filed a complaint against the Republic of Croatia with the European Court of Human Rights. The Court found⁷² that the crite-

⁶⁹ Law on Freedom of Religion, Article 11 (1-3).

⁷⁰ Law on Freedom of Religion, Article 10.

⁷¹ Law on the Legal Status of Religious Communities, Article 2.

⁷² Case of Savez crkava «Riječ života» and Others v. Croatia, Application no. 7798/08, Judgment of 9 December 2010, <https://uredzastupnika.gov.hr/UserDocImages//arhiva//SAVEZ.pdf>, accessed 29 August 2023.

ria for concluding an agreement on common interest were not applied equally for all religious communities, so there was a different treatment without objective and reasonable justification. As a result of this judgment, in September 2014, the Croatian Government signed an agreement with the Alliance of Churches' Word of Life', the Full Gospel Church and the Protestant Reformed Christian Church Croatia.⁷³

Churches and religious communities in Serbia are, according to the 2006 Law, «independent from the state and are equal in the eyes of the law,» «free and autonomous in defining their identity,» and «have the right to independently regulate and conduct their order and organization and to independently conduct their internal and public affairs.»⁷⁴ It is prescribed that the clergy, i.e., religious servants, are elected and appointed by Churches and religious communities and are free and independent in practicing their religious rites conducted in accordance with the autonomous legislation of churches and religious communities.⁷⁵

In addition to certain rights which were guaranteed even before the entry into force of the Law on Churches and Religious Communities, such as the prohibition of calling a priest to testify before the Court about the facts and circumstances that he learned during confession,⁷⁶ the 2006 Law also prescribes certain rights exercised in the public sphere, during the public activities of churches and religious communities, and/or require the cooperation of the state and churches and religious communities in their realization. These provisions of the Law, were challenged before the Constitutional Court.⁷⁷

Precisely, Article 8 Paragraph 4 stipulates that «the clergy, i.e., religious servants, may not be called to answer before the authorities for their acting when practicing religious rites» and Paragraph 9 stipulates that «the state protects official uniform and its pertaining parts as well as symbols of ranks and dignity of the clergy, i.e., religious servants, in

⁷³ Agreement Between the Government of the Republic of Croatia and the «Word of Life» –Network of Churches, Church of the Full Gospel and the Protestant Reformed Christian Church in the Republic of Croatia, *Official Gazette*, no. 112/14.

⁷⁴ Law on Churches and Religious Communities, Article 6 (1-3).

⁷⁵ Law on Churches and Religious Communities, Article 8, (1-3).

⁷⁶ Law on Churches and Religious Communities, Article 8 (7).

⁷⁷ ĐURIĆ, V., *op. cit.*, p. 51.

accordance with autonomous legislation of Churches and religious communities,»⁷⁸ have been challenged.

The Constitutional Court rejected the initiative for the evaluation of constitutionality as unfounded, reasoning that the goal of the provisions is to ensure freedom of thought, conscience, and religion, that is, enabling priests and religious officials to «express their opinion freely during worship.»

In comparison to the socialist period, when religious communities could only perform religious rites and religious affairs,⁷⁹ under threat of criminal sanctions for violating these regulations, religious communities in the former Yugoslavia member states are granted broad rights in accordance with international norms. The return of religion to the public sphere resulted in, as Fikret Karčić points out, having many individuals, accustomed to the earlier state, gain the impression of the domination of religion, which is especially evident in the frequent initiatives for the evaluation of constitutionality of certain provisions of laws on freedom of religion which guarantee those rights.

8. FINANCING AND PROPERTY OF CHURCHES AND RELIGIOUS COMMUNITIES

Churches and religious communities in Bosnia and Herzegovina are guaranteed the right to acquire, own, and dispose of their own property and property rights.⁸⁰ The state may provide material support to religious organizations for the «preservation of cultural and historical heritage, healthcare, educational, charity, and social services,» provided that the said services are provided without discrimination, particularly discrimination based on religion or conviction.⁸¹ Besides this, donations and income of churches and religious communities will be treated according to laws and regulations related to non-profit, educational, and charity organizations, reflecting indirect financial assistance. Unlike

⁷⁸ Law on Churches and Religious Communities, Article 8 (4, 9).

⁷⁹ KARČIĆ, F., «Razvoj državnog religijskog prava u BiH 1990-2009», en *Mustafa Imamović: 45 godina naučnog i publicističkog rada – zbornik radova*, Sarajevo, Gradačac, Institut za istoriju, Javna biblioteka „Alija Isaković«, University Press, 2010, p. 365.

⁸⁰ Law on Freedom of Religion, Article 12 (1-2).

⁸¹ Law on Freedom of Religion, Article 14 (4).

some other countries,⁸² Payments for pension, health, and disability insurance of religious officials are paid by religious communities. However, in the Law on Freedom of Religion, the state committed to regulating the pension, disability, and health insurance of religious officials by a special regulation, which has not been adopted yet.⁸³

Considering that in the Communist Yugoslavia, after the Second World War, a significant part of the property of religious communities was subjected to measures of nationalization, expropriation, and agrarian reform,⁸⁴ the Law guarantees the right to restitution of seized property throughout the territory of Bosnia and Herzegovina,⁸⁵ which will be regulated by a special law. However, such a law was not adopted before the publication of this paper.

The Law on the Legal Status of Religious Communities in Croatia stipulates that religious communities can acquire funds from income from their property, from the profits of companies that own shares or stakes, through the performance of charitable, educational, cultural, artistic, or other generally useful activities, by providing religious services, from inheritance and gifts, from voluntary contributions (in money, services or works) of natural and legal persons.⁸⁶

Funds for its activities are also provided from the state budget, the annual amount of which is determined depending on the type and importance of its religious buildings (cultural, historical, artistic...) and depending on its activities in the educational, social, health, and cultural fields, and contribution to national culture, as well as to the humanitarian and generally beneficial activities of the religious community.⁸⁷ The Law on the Legal Status of Religious Communities also prescribes that the religious communities may be granted special aid for constructing and renovating religious community facilities, and priests and other re-

⁸² Such a solution exists in Croatia and Serbia. See more in: MEMIŠEVIĆ, E. «Savremeno regulisanje...», *op cit.*, p. 500, 512.

⁸³ Law on Freedom of Religion, Article 13 (4).

⁸⁴ KARČIĆ, F., «Vakufi i reprivatizacija», en *Glasnik Rijaseta Islamske zajednice u SFRJ*, 54, no. 3, 1991, p. 267–272.

⁸⁵ Law on Freedom of Religion, Article 12 (3).

⁸⁶ Law on the Legal Status of Religious Communities, Article 17 (1).

⁸⁷ Law on the Legal Status of Religious Communities, Article 17 (2).

ligious officials exercise pension, health, and social rights following special regulations.⁸⁸

Based on the agreements concluded between the Holy See and the Republic of Croatia, a special funding regime was established for the Catholic Church. According to the Agreement between the Holy See and the Republic of Croatia on Economic Issues, it is regulated that all the property that was expropriated from the Catholic Church during Communist Yugoslavia will be returned, or, if returning the property was not possible, the church would be compensated for that property. It is also guaranteed that the church would be given an annual (monetary) amount based on the number of parishes,⁸⁹ and that the church will be treated as a charitable organization tax-wise.

Agreements with other churches and religious communities also established a system of financing from the state budget, according to which they are allocated a certain monthly amount to «properly continue their activities to promote the common good.» Therefore, it is understandable that religious communities show a great interest in concluding contracts with the state, which significantly expand their field of activity and recognize them as guardians of the «entire spiritual and material development of man and the common good.» This gives them the opportunity to integrate their values and attitudes into society, providing them with financial resources for these needs.⁹⁰

Unlike Bosnia and Herzegovina, the Republic of Croatia adopted the Law on Compensation for Property Seized During the Yugoslav Communist Rule,⁹¹ with the primary principle of natural restitution. The Fund for Compensation of Confiscated Property,⁹² was established in 1997,

⁸⁸ Law on the Legal Status of Religious Communities, Article 18 (1).

⁸⁹ Agreement Between the Holy See and the Republic of Croatia on Economic Issues, *Official Gazette – International Agreements*, no. 18/1998, Article 6 (2).

⁹⁰ Вукотић Томić, Т., «Pravni i finansijski aspekti položaja vjerskih zajednica u Republici Hrvatskoj», en *Pravni vjesnik*, 30, no. 3-4, 2014, p. 218.

⁹¹ Law on Property Restitution and Compensation, *Official Gazette*, no. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02, 81/02, 98/19.

⁹² Law on the Fund for the Compensation of Confiscated Property, *Official Gazette*, no. 69/97, 105/99, 64/00.

but it was abolished in 2017 and the Ministry of Finance of the Republic of Croatia took over its affairs.⁹³

Although the Law on Churches and Religious Communities in Serbia stipulates that churches and religious communities independently provide funds for carrying out their activities and manage their property following their own autonomous legislation,⁹⁴ it is provided that the state can financially support churches and religious communities for further advancing religious freedoms and cooperation with churches and religious communities with mutual interest.⁹⁵ In this regard, it is stipulated that religious officials are entitled to health, retirement, and disability insurance according to the law and that the funds for that may be provided for from the budget of the Republic of Serbia.

This provision has also been the subject of a constitutional review because the state «finances and promotes belief». According to the Constitutional Court's opinion, the contested Article only stipulates the possibility of financing contributions for the social security of priests from the budget.⁹⁶ In practice, such a possibility was realized by the adoption of the Regulation on the payment of contributions for pension disability and health insurance for priests and religious officials,⁹⁷ which stipulates that the payment of contributions is made to priests and religious officials of all registered churches and religious communities.

In addition, state financial assistance is provided for the construction, maintenance, and renovation of religious buildings; the establishment of professional and scientific institutions; the protection of sacred heritage; religious educational institutions; religious institutions of exceptional historical, national, and cultural significance; the cultural

⁹³ Law on the Termination of the Law on the Fund for the Compensation of Confiscated Property, *Official Gazette*, no. 117/17, Article 3.

⁹⁴ Law on Churches and Religious Communities, Article 26 (1-2).

⁹⁵ Law on Churches and Religious Communities, Article 28 (2).

⁹⁶ Constitutional Judgement on the legitimacy of the Law on churches and religious communities, p. 5.

⁹⁷ Regulation on payment of contributions for pension and disability and health insurance for priests and religious officials, *Official Gazette of the Republic of Serbia*, no. 46/2012.

and scientific institutions and programs of churches and religious communities.⁹⁸

Indirect financial support is reflected in the possibility of complete or partial exemption from tax and other dues for the performance of activities and by the provision the «natural persons and legal entities giving contributions and gifts to churches and religious communities may be exempted from paying tax dues, in compliance with the laws.⁹⁹

Serbia also adopted the Law on the Return (Restitution) of Property to Churches and Religious Communities in 2006.¹⁰⁰ The Directorate for Restitution was established in 2006, and since 2012, the Agency for Restitution has taken over its affairs.¹⁰¹

From 1 October 2006 to 30 September 2008, churches and religious communities submitted 3,049 requests for property restitution to the Directorate for Restitution. By 31 December 2010, more than 40% of the requested land and 16.31% of buildings were returned to churches and religious communities through in-kind restitution. Most of the property was returned to the Serbian Orthodox Church, which claims almost 90% of the confessional property subject to restitution.

The property was not returned to the Islamic community, with the explanation that the request for return was submitted by two subjects: the Islamic Community of Serbia and the Islamic Community in Serbia, claiming the status of legal successors of the Islamic Religious Community of Yugoslavia, which was granted legal subjectivity by the Law on the Islamic Religious Community of the Kingdom of Yugoslavia from 1930¹⁰².

⁹⁸ Law on Churches and Religious Communities, Articles 32 (6); 36 (3); 41 (2); 42; 44 (1)

⁹⁹ Law on Churches and Religious Communities, Article 30.

¹⁰⁰ Law on Restitution of Property to Churches and Religious Communities, *Official Gazette of the Republic of Serbia*, no. 46/2006.

¹⁰¹ Law on Restitution of Confiscated Property and Compensation, *Official Gazette of the Republic of Serbia*, no. 72/2011, 108/2013 i 142/2014, Article 63 (1-2).

¹⁰² Data from the official website of the Agency for Restitution, <https://www.restitucija.gov.rs/latinica/direkcija-za-restituciju.php>, accessed 20 August 2023.

9. RELIGIOUS EDUCATION IN PUBLIC SCHOOLS

The laws on freedom of religion and legal status of churches and religious communities in all three states guarantee the right to religious education in private and public schools.

The 2004 Law in Bosnia and Herzegovina guarantees the right to religious education in religious, as well as in public and private institutions of pre-school, primary schools and higher levels of education. However, the process of introducing confessional religious education in Bosnia and Herzegovina began after the first multiparty elections in 1991/92. Already in 1992, Orthodox religious education was introduced into primary schools in Republika Srpska as a mandatory subject. In 1994, the Ministry of Education of the Republic of Bosnia and Herzegovina introduced religious education in elementary and secondary schools as an elective subject for which parental consent was previously required.¹⁰³

The 2003 Framework law on primary and secondary education in B&H stipulates that schools «shall promote and protect religious freedom, tolerance and the culture of dialogue» and that students will attend religious education classes only if they are in accordance with the beliefs or beliefs of their parents.¹⁰⁴ It does not specify the possibility of restricting the rights of students to religious education nor the minimum number of students required to organize religious education classes in a particular school.¹⁰⁵

The method of organizing and conducting religious education differs in the two entities, the Brčko District and the cantons within the Federation of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina, it mostly has the status of a mandatory elective course, which, when elected, becomes mandatory for the entire academic year or, in

¹⁰³ ALIBAŠIĆ, A., «Religious Education in Public Schools in Bosnia and Herzegovina: Towards a Model Supporting Coexistence and Mutual Understanding», Policy Development Fellowship Program 2008-2009, Sarajevo, Open Society Fund, 2009 (https://osfbih.org.ba/images/Progs/00-16/PDFP/pdfp_09/eng_emina_abrahamsdotter_full.pdf), p. 8.

¹⁰⁴ Framework law on primary and secondary education in Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 18/03, Article 9.

¹⁰⁵ POPOV, Z., OFSTAD, A. M., «Religious Education in Bosnia and Herzegovina», en *Religion and Pluralism in Education: Comparative Approach in the Western Balkans*, Novi Sad, CEIR, 2006, p. 73-106.

certain cases, for the entire primary or secondary education. 106 In Republika Srpska and the Brčko District, religious education is mandatory in primary but not secondary education. In order to organize religious education classes, there must be at least 30 students of a certain religion in one school.

The Law on the Legal Status of Religious Communities in Croatia stipulates that religious education can be carried out in educational institutions and is regulated by the law and the agreements between the state and religious communities.¹⁰⁷ In the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture, signed in 1996, the Republic of Croatia was obliged to provide Catholic religious education in all public primary and secondary schools and preschool institutions in accordance with the will of parents or guardians.¹⁰⁸

Based on Article 2 of this agreement, an additional «Contract between the Government of the Republic of Croatia with the Croatian Conference of Bishops about Catholic Catechism in Public Schools and Public Preschool Institutions» was signed in 1999.¹⁰⁹ The agreement and the contract guarantee Catholic religious instruction (catechism) in all public primary schools, secondary schools, and preschool institutions as an optional subject equal to other subjects. The religious instruction is offered two hours per week, and the number of students needed to organize the class is seven. It is also agreed that all public educational institutions will take into account the «values of Christian ethics.»¹¹⁰

The possibility to organize religious instruction is also given to other religious communities, provided that at least seven students belong to

¹⁰⁶ POPOV, Z., OFSTAD, A. M., *op. cit.*, p. 78.

¹⁰⁷ Law on the Legal Status of Religious Communities, Article 13.

¹⁰⁸ Agreement Between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture, *Official Gazette – International Agreements*, no. 2/1997, Article 1.

¹⁰⁹ Contract Between the Government of the Republic of Croatia with the Croatian Conference of Bishops about Catholic Catechism in Public Schools and Public Preschool Institutions, <https://nku.hbk.hr/ugovori/ugovor-o-katolickom-vjeronauku-u-javnim-skolama-i-vjerskom-odgoju-u-javnim-predskolskim-ustanovama/>, accessed 30 August 2023.

¹¹⁰ ZRINŠČAK, S., «Church and State in Croatia: Legal Framework, Religious Instruction, and Social Expectations», en *Religion and Politics in Post-Socialist Central and Southeastern Europe Challenges since 1989*, Palgrave Macmillan, 2014, p. 139-140.

a certain denomination in a certain school or preschool.¹¹¹ Since according to the 2001 population census, 87.9% of the population declared themselves Catholic,¹¹² other religious communities can hardly exercise these rights guaranteed by law and contracts with the state.

In the case U-I-4504/2010,¹¹³ the Constitutional Court of Croatia rejected the proposal for the review of the constitutionality of Article 13 of the Law on the Legal Status of Religious Communities, which regulates the right to organize religious education in preschool education institutions at the request of parents or guardians (paragraph 1) and primary and secondary schools as an elective subject (paragraph 2).

The Constitutional Court concluded that religious education in preschool institutions and schools does not conflict with the Constitution. The Court again reiterated that separating the state and religious communities is not absolute. It stated that paragraph 2 of Article 41 of the Constitution guaranteed the protection and assistance of the state to the religious communities in their activities.

The Law on Churches and Religious Communities in Serbia guarantees the right to religious education in public and private primary and secondary schools.¹¹⁴ But, religious education in public schools was introduced even before this Law entered into force. Based on the 2001 Regulation¹¹⁵ religious education for traditional churches and religious communities was introduced in primary and secondary schools as an optional subject. An alternative subject had to be provided for students who didn't attend confessional education. After electing one of the two courses, they become mandatory for students, which is also required by

¹¹¹ Agreement Between the Government of Croatia and the Islamic Community in Croatia, *Official Gazette*, no. 196/2003, Article 10.

¹¹² LONČAREVIĆ, V., *op. cit.*

¹¹³ Constitutional Court of Croatia's Decision in the case U-I 4504/2010, <https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12583680043A4D1/%24F1LE/U-I-4504-2010%20%20dr.pdf>, accessed 30 August 2023.

¹¹⁴ Law on the Legal Status of Religious Communities, Article 40.

¹¹⁵ Regulation on the organization and implementation of religious and alternative subject in primary and secondary schools, *Official Gazette of the Republic of Serbia*, no. 46/2001.

the amendments to the Law on Elementary Schools¹¹⁶ and the Law on Secondary School.¹¹⁷

These provisions were challenged at the Serbian Constitutional Court, which ruled that the introduction of religious education does not violate the principle of separation of church and state, especially because the content of this subject is agreed upon by the Minister of Education and Sports and the Minister of Religion, based on the proposal of religious communities.

The Constitutional Court also discussed the constitutionality of Article 40 of the Law on Churches and Religious Communities, which guarantees the right to religious education in public and private primary and secondary schools. The Court also rejected this initiative for evaluating constitutionality as unacceptable, referring to the Recommendation of the Council of Europe No. 1202 from 1993, in which it was emphasized that developing students' knowledge about their religion is a prerequisite for true tolerance and overcoming prejudice¹¹⁸.

10. PROVIDING RELIGIOUS SERVICES IN PUBLIC INSTITUTIONS

Specific cooperation between the state and churches and religious communities in Bosnia and Herzegovina has been achieved concerning the satisfaction of the religious needs of persons in public institutions, especially in the armed forces and prisons. The Law on Service in the Armed Forces of B&H stipulates that military personnel have the right to perform religious activities per the specifics of each religion. The ways of organizing and conducting these activities in the Armed Forces of B&H, as well as the obligation of the state to provide financing of religious services in the army, are regulated by agreements between the Ministry of Defence of B&H and religious communities.¹¹⁹ Armed

¹¹⁶ Law on Primary Schools, *Official Gazette of the Republic of Serbia*, no. 50/92, 53/93, 67/93, 48/94, 66/94 22/02, 62/03, 64/03, 101/05, 72/09.

¹¹⁷ Law on Secondary School, *Official Gazette of the Republic of Serbia*, no. 50/92, 53/93, 48/94, 24/96 23/02, 25/02, 62/03, 64/03, 101/05, 72/09, Article 27.

¹¹⁸ Constitutional Judgement on the legitimacy of the Law on churches and religious communities, p. 6.

¹¹⁹ Law on Service in the Armed Forces of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 88/05, 53/07, 59/09, 74/10 and 42/1, Article 29.

forces members have the right to food according to national and religious customs.

The Law on Execution of Criminal Sanctions of B&H also guarantees the right of prisoners to meet their religious needs and the obligation of penitentiary institutions, in cooperation with religious communities, to create conditions for the realization of this right.¹²⁰

Religious communities in Croatia, according to the Law on the Legal Status of Religious Communities, have the right to provide pastoral care to the members in medical and social-welfare institutions and those in prisons and penitentiaries, in the Armed Forces and the police.¹²¹ The pastoral care in the Armed Forces and Police is regulated by the Agreement between the Holy See and the Republic of Croatia on Pastoral Care of Catholic Believers [who are] Members of the Armed Forces and the Police¹²² which guarantees the establishment of the Military Ordinariate in the Republic of Croatia (Article 1), which is financed by the Ministry of Defence and the Ministry of the Interior of the Republic of Croatia (Article 9). The Enforcement of Prison Sentences Act¹²³ provides that every prisoner has, under the conditions set forth in the Act, inter alia, the right to profess his or her faith and to consult an authorized cleric.¹²⁴ Article 101, provides that prisoners have the right to profess their religion using religious literature and that they have the right to contact the authorized religious representative of the religious community registered in the Registry of Religious Communities of the Republic of Croatia. It also guarantees that a prison or penitentiary where a large number of prisoners of the same faith are serving their sentences must provide their cleric, at least once a week, with an adequate place and time for worship.

The Law on the Serbian Armed Forces stipulates that the religious service is organized in the Serbian Armed Forces, which is regulated by

¹²⁰ BEGOVIĆ, N., *op. cit.*, p. 12.

¹²¹ Law on the Legal Status of Religious Communities, Article 16; Agreement Between The Holy See and the Republic of Croatia on Legal Issues, Article 16.

¹²² Agreement Between the Holy See and the Republic of Croatia on Pastoral Care of Catholic Believers [who are] Members of the Armed Forces and the Police, *Official Gazette – International Agreements*, no. 2/1997.

¹²³ Enforcement of Prison Sentences Act, *Official Gazette*, no. 14/21.

¹²⁴ Enforcement of Prison Sentences Act, Article 16 (12).

the agreements between the Ministry of Defence and churches, i.e., religious communities.¹²⁵

The Decree on the performance of religious services in the Serbian Army¹²⁶ establishes that religious services are performed by priests or religious officials of traditional churches and religious communities, who perform religious services and other religious activities following their autonomous regulations. The Law on the Execution of Criminal Sanctions¹²⁷ and the Rulebook on the House Rules of Penitentiary Institutions and District Prisons¹²⁸ recognize the right to religious ceremonies, visits by priests or religious officials, and the right to possess religious literature.

11. RELIGION AND LEGAL SYSTEM

Until the mid-20th century, religious laws were applied in Bosnia and Herzegovina to regulate marital and family issues and hereditary and endowment issues for Muslims. After the abolition of religious courts in the Socialist Yugoslavia in 1946, only civil marriages concluded before the competent state body were legally valid. After the conclusion of civil marriage, believers have been given the opportunity to marry according to religious regulations before the competent priest or religious official. However, religious marriage did not produce any consequences under the civil law. Such a situation is retained in the applicable family legislation in B&H.

The existing B&H legislation ensures consequences under the civil law for the norms of the church law or the laws of religious communities that regulate the status of legal persons within the church or religious community.¹²⁹ Besides this, Article 10 of the Basic Agreement provides that «ecclesiastical legal entities may purchase, own, use or alienate

¹²⁵ Law on the Serbian Armed Forces, *Official Gazette of the Republic of Serbia*, no. 116/07, 88/09, Article 25, 27.

¹²⁶ Regulation on Religious Service in the Serbian Army, *Official Gazette of the Republic of Serbia*, no. 22 of March 31, 2011.

¹²⁷ Law on Execution of Criminal Sanctions, *Official Gazette of the Republic of Serbia*, no. 55/14, Article 125, paragraphs 1-3.

¹²⁸ Rulebook on House Rules in Correctional Institutions and District Prisons, *Official Gazette of the Republic of Serbia*, no. 2/2010 and 6/2012, Article 50 (1-3).

¹²⁹ Law on Freedom of Religion, Article 8 (6).

movable and immovable property, and acquire and alienate property, following the provisions of the canon law and the legislation of Bosnia and Herzegovina.»

In Croatia, the Agreement between the Holy See and the Republic of Croatia on Legal Issues (1996) stipulates that «the marriage according to canon law, from the moment of its celebration, shall enjoy the benefits of civil law according to the legal norms of the Republic of Croatia if there are no civil or contrary impediments and if they meet the legal requirements established by the Republic of Croatia.»¹³⁰

It is also stipulated that the decisions of ecclesiastical tribunals to annul a marriage and decisions of the Supreme Authority of the Church on the dissolution of the marriage bond should be «communicated to the competent civil tribunal to effectuate the civil consequences of the order, according to the legal norms of the Republic of Croatia.»

In accordance with this provision, the new family law stipulates that marriage is concluded in a civil or religious form. Contracts with other religious communities also stipulate that a religious wedding has the effects of civil marriage from the moment of its conclusion. Although the state has undertaken to give «civil effects» to the decisions of the church courts, the Family Code does not regulate how to end a marriage by the decision of the church court.

In addition, the existing legislation of the Republic of Croatia provides for the civil law consequences of canon law norms that regulate the status of legal entities within the Catholic Church. The Agreement on Legal Matters stipulates that «the Republic of Croatia also recognizes the public legal personality of all church institutions that have such legal personality according to the provisions of canon law.» The competent church authority can establish, change, terminate, or recognize church legal entities according to the provisions of canon law. Contracts with other religious communities do not provide for such a possibility. In addition, Article 10, paragraph 1 states that «ecclesiastical legal entities may purchase, own, use or alienate movable and immovable

¹³⁰ Agreement Between The Holy See and the Republic of Croatia on Legal Issues, Article 13.

property, and acquire and alienate property rights, according to the provisions of canon law and legislation of the Republic of Croatia.»

In Serbia, religious and civil marriage were equal until 1946, when compulsory civil marriage was introduced. The preliminary draft of the Civil Code from 2011 proposed that «marriage be concluded in a solemn civil or religious form.» However, this requires a change to the Constitution from 2006, which stipulates that marriages are concluded before a state authority. As of the time of writing, the new Civil Code and the abovementioned changes have not yet been adopted.

As in other countries, the existing legislation in Serbia ensures the civil law consequences of the norms of church law or the internal law of the religious community that regulates the status of legal entities within the church or religious community. Namely, Art. 9 paragraphs 2-3 of the Law prescribes that the organizational units and institutions of churches and religious communities may acquire the status of legal entity in accordance with the autonomous regulations of the church or religious community and based on the decision of the competent body of the church and religious community and that «churches and religious communities may, by their acts, amend and abolish their individual comprising parts, bodies, and institutions having the attributes of legal entity» (paragraph 3).

Since this provision implies mixing state and autonomous law, this decision was challenged before the Constitutional Court. The Constitutional Court rejected the initiative to initiate the procedure for the constitutionality assessment of Art. 7 paragraph 2, with the explanation that this provision regulates only the possibility of providing assistance in the execution of decisions and, above all, the assistance of state administration bodies in accordance with the law, but not at the expense of exercising the rights guaranteed by the Constitution¹³¹.

12. CONCLUSION

After the start of the democratization process in the 1990s and the dissolution of the Yugoslav Federation, the newly independent states

¹³¹ Constitutional Judgement on the legitimacy of the Law on churches and religious communities, p. 3.

abandoned the socialist understanding of religion as an exclusively private matter, manifested in the privacy of the home and religious objects. The constitutional documents, in accordance with international norms, provide general individual and collective guarantees for the freedom of religion and its manifestation in «private or in public» – ceremonies, adherence to religious regulations, cherishing customs, and other religious activities.

Further development of general guarantees is provided in the laws on the freedom of religion and the legal status of religious communities, adopted in the 2000s. In Bosnia and Herzegovina, the Law on Freedom of Religion and the Legal Status of Religious Communities, adopted in 2004, seeks to establish, as its name suggests, a balance in the standardization of the protection of individual religious rights and the freedom and collective rights of churches and religious communities, while the laws in Serbia and Croatia are almost entirely focused on the collective aspect of the right to freedom of religion.

Even though all the former members of the Socialist Federal Republic of Yugoslavia retained the model of institutional and functional separation of the state and religious communities, which is guaranteed by the constitutions of these states, one can basically state that there is a model of separation with cooperation in the area of issues of common interest. This cooperation is particularly evident in education, culture, health, and other matters, as well as in the possibility of providing material assistance to religious communities by the state. In more detail, this is regulated by laws and special agreements concluded between the state and religious communities on issues of common interest.

However, certain numerically significant religious communities in some countries are given special treatment due to different historical, social, and political reasons. Different treatment of religious communities is reflected, inter alia, in the division of traditional and other churches and religious communities and in different conditions of their registration. However, even with certain shortcomings, the constitutional and legal provisions on freedom of religion and its expression in Bosnia and Herzegovina, Croatia, and Serbia are in line with the norms of international law.

SUMMARY

After the start of the democratization process in the 1990s and the dissolution of the Yugoslav Federation, the newly independent states abandoned the socialist understanding of religion as an exclusively private matter, manifested in the privacy of the home and religious objects. The newly adopted constitutions, in accordance with international norms, provide general individual and collective guarantees for the freedom of religion and its manifestation in «private or in public». The limits of the expression of religion or belief are given very broadly, following relevant international norms and practices i.e., only «when it is shown by the competent authorities to be necessary in the interests of public safety, to protect health, public morals, or for the rights and fundamental freedoms of others.»

Since the new constitutional guarantees could not be realized by the existing laws on the legal status of religious communities from the socialist period (enacted between 1976 and 1978), all three states adopted new laws from 2002 to 2006. Freedom of religion or belief is also protected by regulations of criminal codes in these states.

The principle of institutional and functional separation between the state and religious communities was preserved as inherited from the socialist regime. However, unlike the socialist regime characterized by the separation system with ideological hostility towards religion, the general tendency in the relations between religion and the state is their cooperation. This cooperation is particularly evident in education, culture, health, and the possibility of providing material assistance to religious communities by the state.

In comparison to the socialist period, when religious communities could only perform religious rites and religious affairs, under threat of criminal sanctions for violating these regulations, religious communities in the former Yugoslavia member states were granted broad rights in accordance with international norms. However, due to different historical, social, and political reasons in all three countries, certain numerically significant religious communities are given special treatment which is reflected, inter alia, in the division of traditional and other churches and religious communities and in different conditions of their registration.

The return of religion to the public sphere resulted in, as Fikret Karčić pointed out, having many individuals, accustomed to the earlier state, gain the impression of the domination of religion, which is especially evident in the frequent initiatives for the evaluation of the constitutionality of certain provisions of laws on freedom of religion or belief which guarantee those rights. However, the constitutional and legal provisions on freedom of religion and its expression in Bosnia and Herzegovina, Croatia, and Serbia are in line with the norms of international law.

