

Understanding Secularism in a Post-Communist State: The Case of Serbia

I. ACT ONE: RESTRICTION

For more than fifty years during the communist regime after World War II, issues of secularity were not seriously discussed and elaborated in Serbia or in other countries of the former socialist (communist) Republic of Yugoslavia. It was an ideological, rather than a legal, theoretical, or academic, matter, which was understood one-sidedly as a plain justification to remove all elements of religious life out of the public sphere. Its legal expression, the principle of separation of state and church, was promulgated as a fundamental constitutional rule shaping religious freedom issues in the country.¹ However, it was understood and interpreted not merely as a strict division of the two spheres, but as a kind of hostile separation. The overall social atmosphere was one of state atheism. As a consequence, different forms of repression, pressures, and animosities were frequently directed against churches, religious communities, and their representatives and believers. Religion was labeled by the dominant Marxist ideology as “the opiate for the masses” and was considered dangerous for society.

Victors’ justice has led to confiscation of church property, prosecution, discrimination against priests and believers, and constant control of religious life and activities of religious organizations by the communist regime. Any comprehensive or dissonant discussion on the legal position of churches and religious communities, the importance of religion and religious feelings, or claims for a right to religious freedom expression are usually labeled without hesitation as conservative, anachronistic, clerical, and contrary to socialist values.

II. ACT TWO: REVIVAL

However, after the democratic changes and delayed fall of communism in Serbia in 2000, the issue of secularity was reopened. Reaction toward long-lasting pressure on religion and belief has given ground to an opposite extreme: as in many other ex-communist countries, in the first decade after the decline of socialism, a kind of revival of religion came to pass. “New believers” appeared, religious practice intensified, presence of religion and religious topics in media became popular, while the social impact of churches and religious communities significantly increased. Approximately within the same time, not only in the ex-communist regions, religion encroached upon the “public” consciousness in ways which two decades ago might have seemed implausible.²

Intensive activity at the state level was also evident in Serbia. Religious instruction was introduced in public schools when the Government of the Republic of Serbia passed the *Decree on Organization and Realization of Religious Instruction and of an Alternative Subject in Elementary and High Schools* in July 2001.³ The Decree was used as an interim

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1. Article 174 paragraph 2 of the Constitution of the Socialist Federal Republic of Yugoslavia of 1974, as well as the later Article 41, paragraph 2 of the Constitution of Serbia of 1990, used the same neutral phrasing with a *prima facie* positive tone: “Religious communities shall be separated from the State and shall be free in the conduct of religious affairs and performance of religious rites.” Worth noticing is also that the very word “church” or “churches” was not used all through the constitutional texts.

2. Margaret Davies, “Pluralism in Law and Religion,” in *Law and Religion in Theoretical and Historical Context*, ed. Peter Cane, Carolyn Evans, and Zoë Robinson (Cambridge: Cambridge University Press, 2008), 72.

3. Official Gazette of the Republic of Serbia, No. 46/2001, 27 July 2001. According to the Decree, parents

legislation to enable religious instruction in public schools to start in the 2001/2002 school year for members of “traditional” Churches and religious communities, relating to the first-year elementary school pupils to those in the first year in high school. In 2002, two laws were passed in Parliament, similarly regulating religious instruction in public schools on a long term basis, effective to date.⁴

Along with religious instruction legislation, a new law on religious freedom was in preparation, which was finally enacted after April 2006 (mainly due to a few controversial points, such as requiring a number of followers for religious organizations to register, “sect” issues, the legal position and privileges of the Serbian Orthodox Church and other traditional churches and religious communities, etc.).⁵ Also, a few amendments on different laws on social security and health protection have guaranteed legal rights to the clergy for the first time (particularly social rights, such as medical, social, and pension insurance for priests and clerics and monks and nuns which may be funded from the State budget). Other amendments gave tax exemptions to churches and religious communities and media laws gave considerable privileges to religious organizations. Another example is the law on restitution of church confiscated property that was adopted in 2006.

When the first and the strongest wave of “re-religionization” of society had passed, the new Constitution of Serbia of 2006 introduced a bit different tone. The attitude towards religion got its expression through a few innovative norms, stating that “the Republic of Serbia is a secular state (par. 1); churches and religious communities shall be separated from the State (par. 2); no religion may be established as a state or mandatory religion (par. 3).”⁶ Those were quite innovative clauses for Serbia: the principle of secularization was explicitly proclaimed, the word “church” was mentioned in the Constitution of Serbia for the first time after the World War II,⁷ and the establishment

and other legally recognized representatives decide whether their children will attend religious instruction in primary school or not. Pupils in secondary schools (starting at the age of 14 or 15) decide for themselves on religious instruction class enrollment. Attendance is mandatory for the current school year. If the pupil does not attend religious education, he or she shall instead attend classes in a new subject named “civic education.” Pupils may also opt out all together. Classes in religious instruction or civic education are scheduled only once per week. Pupils are not to be graded in the same way as they are for other subjects, but will be given only a descriptive mark that does not affect their final grade point average.

4. *Law on Amending the Law on Elementary School* (Official Gazette of the Republic of Serbia, No. 22/2002, 26 April 2002) and *Law on Amending the Law on High School* (Official Gazette of the Republic of Serbia, No. 23/2002, 9 May 2002). The main modification was that religious instruction and alternative subjects obtained the status of elective courses. The pupil has to choose one of the two subjects but cannot opt out all together. The subject is laid down within the curricula of elementary (eight years) and high schools (four years). Evaluation of pupils is descriptive, differently than in other subjects, and the marks do not influence the pupil’s average grade. Classes are held once a week (36 hours per year). Issues of constitutionality and social justification of religious instruction in public schools in Serbia attracted quite a vivid discussion. See more: Marija Draškić, “Pravo Deteta na Slobodu Veroispovesti u Školi [Right of Children to Religious Freedom in the School],” *Anali Pravnog Fakulteta u Beogradu (Anali PFB) [Annals of the Faculty of Law in Belgrade]* 1-4 (2001): 511-23; Sima Avramović, “Pravo na Versku Nastavu u Našem i Uporednom Pravu [Right to Religious Instruction in Our and Comparative Law],” *Anali PFB* 1 (2005): 46-64; Sima Avramović, “Right to Religious Instructions in Public Schools,” *Anali PFB – International Edition* 1 (2006): 4-17; Marija Draškić, “O Veronauci u Državnim Školama, Drugi Put [On Religious Teaching in Public Schools, the Second Time],” *Anali PFB* 1 (2006): 135-51; Sima Avramović, “Constitutionality of Religious Instructions in Public Schools – Res Judicata,” *Anali PFB – International Edition* 2 (2007): 181-87. My reaction to the first text by Prof. Marija Draškić (now the Judge of the Constitutional Court of the Republic of Serbia) was published with a considerable delay due to change of the journal’s editorial board and late appearance of the volume, although the manuscript was accepted at the beginning of 2003.

5. *Law on Churches and Religious Communities*, Official Gazette of the Republic of Serbia, No. 36/2006. For analysis of the controversies related to enactment of the Law (contributions in Serbian) and for an English translation of the Law, see Sima Avramović, *Prilozi Nastajanju Državno-Crkvenog Prava u Srbiji [Church-State Law in Serbia]* (Belgrade: University of Belgrade, 2007).

6. CONSTITUTION OF SERBIA, art. 11, 2006.

7. The first constitution which changed the long-term practice of avoiding mentioning churches was the Federal Republic of Yugoslavia of 1992 (enacted after the dissolution of the Federal Republic of Yugoslavia, when the new country comprised Serbia and Montenegro). In Article 18, it was stated that “Church and state shall be separate” (¶ 1) and that “Churches shall be free and equal in conducting religious affairs and in the performance of religious rites” (¶ 2). However, the only change in wording of the new constitutional norm, in

clause was set up as never before. Nevertheless, the actual trend of religious revival was still ongoing, although it lost a bit of its strength and scope.

III. ACT THREE: REACTION

As a sound reaction to the unconstrained revival of religion and its wide inclusion in the public sphere, many voices were raised in Serbia against that tendency, mainly by different NGOs and individual intellectuals, often with a sharp tone of accusation for “clericalization of the society.” Politicians hesitated to oppose the prevalent social attitude toward expanding religious feelings in order not to harm their electoral chances, while Church officials recognized for the first time an opportunity to have a say and to raise their voices in social matters. The conflict on secularity issues with the civil sector was inevitable.

Unsurprisingly, the response of human rights activists was mainly vested in the veil of secularism. The argument was based first upon the fact that the Constitution provides for the secular state, usually with no further elaboration, with a simple claim that the principle of secularization is endangered. This leaves a lot to be understood without any additional explanation, although the very notion of secularism is not well-comprehended by ordinary people and not well-researched in the Serbian doctrine. The school of thought behind the constitutional provision reasoned that it is enough to call upon the secularity principle and that the outcome goes without saying – no interference of religious organizations in a public sphere is allowed and no impact of religion in social issues is acceptable. Any public statement of the church authorities or of individual priests in social issues, legislation, or other actual problems (particularly on the birth rate, abortion, homosexuality, drug abuse, etc.) was considered and attacked as clerical and illegal, being in opposition to the constitutionally recognized secularism. A kind of secular fundamentalism appeared in response to this definition of secularism.

Unfortunately, secularism is a very complicated, controversial, complex, and vast term and notion.⁸ In a society with very limited knowledge and academic examination of so complex a concept and of its different aspects, two extremely hostile attitudes with a poor foundation have inevitably come to tough confrontation. The argumentation *pro et contra* has basically rested and remained at an ideological, rather than thoughtful, theoretical ground. Legitimate fear of religious exaggeration gave birth to a specific comeback of socialist argumentation, although it was dressed in minimalistic and European shoes.

Another problem is that Europe is not a one-faceted secular area, and a variety of

comparison with the previous communist Constitutions, was the use of the word church/churches, while the overall formulation remained the same, with addition of the word “equal.”

8. Etymology and the concept of this French word encompasses today a basic idea that the state should act in the best interest of the whole people, in a common interest, without paying attention to any specific group particularly connected with specific religious conviction. Although secularization can be therefore simply understood as a process in which religious institutions and religion lose their social significance, there is a variety of approaches in the literature, as it includes many more concrete consequences, such as the loss of property and the political power of religious subjects, a shift from religious control to secular control, a decrease in the amount of time, energy, and other means that people devote to supernatural things, and the replacement of religious commandments by demands corresponding to strictly rational, empirical and technical criteria, as defined in Bryan Wilson, *Religion in Sociological Perspective* (Oxford: Oxford University Press, 1982), 149. Many important books revealed numerous controversies on that topic in France itself; see for example Guy Bedouelle and Jean-Paul Costa, *Les Laïcités à la Française* (Paris: University Presses of France, 1998); Emile Poulat, *La Solution Laïque et ses Problèmes* (Paris: Berg International, 1997); Jean-Paul Durand, “Droit Civil Ecclésiastique Français en 1997-1998,” *European Journal for Church and State Relations* 5 (1998): 61. For a very interesting and accurate view of secularization in France today, see Jacques Robert, “Religious Liberty and French Secularism,” *BYU L. Rev.* 2 (2003): 637-660, and Jean Baubérot, “Secularization and Secularism from the View of Freedom of Religion,” *BYU L. Rev.* 2 (2003): 451-464. See also Jean Baubérot, *La Laïcité à L'Épreuve. Religions et Libertés dans le Monde* (Paris: Encyclopædia Universalis, 2004) and particularly Alain Dierkens and Jean-Philippe Schreiber, *Laïcité et Sécularisation dans L'Union Européenne* (Brussels: University of Brussels, 2006).

different models of state and church relations are coexisting, including the state church system. In countries where the division of church and state was proclaimed as a constitutional principle, like in Serbia, there is also a variety of forms of this idea, ranging from the strict to the cooperationalist model of separation.⁹ Therefore, any claim that secularism is a part of “European values,” receives an immediate type of response – yes, but what kind of secularity? Is a secular state the one which mentions religion and God in its constitution and which practices parliamentary prayers? Is it the one where the state participates in collecting church taxes and the religious oath is an obligatory part of political or judicial process, etc.? And, inevitably, the modern slogan “post-secularism” emerges in this context (although there is generally a very poor understanding of its meaning). Infinite disputes do not seem to announce any solution to the conflict, thus controversies are alive in public discourse.

IV. ACT FOUR: LEGAL BATTLE

A. Scene One: Religious Instruction in Public Schools

As a consequence of completely different interpretations and understandings of secularism, two particular controversial topics have been challenged at the Constitutional Court of Serbia. The first was about the constitutionality of religious instruction in public schools and the second about categorization of churches and religious communities into two different groups. The first issue has been resolved, but the second was still pending as this Report was completed in 2009.

The case considering the constitutionality of religious instruction in public schools was started in 2003 by two NGOs (Yugoslav Committee of Lawyers for Human Rights from Belgrade and Forum Iuris from Novi Sad). Basic arguments were grounded on principles settled by the International Covenant on Civil and Political Rights and the Declaration of the Rights of the Child and claimed that provisions of the two Laws on Education, by introducing religious instruction into public schools,¹⁰ violated the right to freedom of thought, conscience and religion and the right not to be compelled to make a statement regarding one’s religious conviction (non-statement principle). It was also stated that religious instruction in public schools may not be a mandatory subject; nevertheless, an alternative course was offered as a choice (civic education) and that selection of the one or the other by the pupil (older than 14) or by their parents (younger than 14) endangers that said freedom. It may, as the applicants have claimed, lead to illegitimate discrimination, cause serious unfavorable consequences, and infringe on secular society.

In response, the Government of Serbia stressed that religious instruction in public schools is, according to the Laws, set up as an elective subject, along with civic education, and that no one is forced to opt for religious instruction; the curriculum, syllabus, and the content for religious instruction is constructed in cooperation of the State, churches, and religious communities and is confirmed by the Ministry of Education¹¹; opting for one of the two subjects does not necessarily mean a statement of one’s religious conviction; and the provisions are in accordance with the international conventions.

9. On different models of Church and state relationships, see, e.g., in Gerhard Robbers, *State and Church in the European Union* (Baden Baden: Nomos Verlagsgesellschaft, 1996), 324.

10. *Law on Amending the Law on Elementary School* (Official Gazette of the Republic of Serbia, No. 22/2002 of April 26, 2002) and *Law on Amending the Law on High School* (Official Gazette of the Republic of Serbia, No. 23/2002 of 9 May 2002).

11. In order to avoid sound objections that improper religious instruction in public schools may confront pupils and cause animosities instead of better understanding of different confessions, from the very beginning (2002), a particular body – the Commission of the Ministry of Religious Affairs for Religious Instruction – was formed according to Serbian legislation (by a government Decree). It comprehends representatives of the state (Ministry of Education and Ministry of Religion) and of the seven traditional religious organizations with the assigned right to offer religious instruction in public schools.

After the public hearing held by the claimants, representatives of NGOs, and experts from the academic community in June 2003, the Constitutional Court of Serbia brought the decision on 4 November 2003 rejecting the claim to declare that relevant provisions of the two laws are not in accord with the Constitution of the Republic of Serbia.¹² Through this decision, the issue of compatibility of religious instruction in public schools and the principle of secularity was legally saved. However, after the ruling of the Constitutional Court, due to evident importance of the issue and to constant public controversies, the Government and the Ministry of Education paid considerable attention to the implementation of the law and the organization of religious instruction in public schools to prevent any further possible objections that the secularization principle is endangered through the law's implementation.

Particular concern was paid to the activity of the Commission of the Ministry of Religious Affairs for Religious Instruction, which was formed according to the law to follow-up and manage the organization of religious instruction classes. It gives representatives of the State (Ministry of Education and Ministry of Religion) and of the seven traditional religious organizations the assigned right to offer religious instruction in public schools. The Commission revises and approves all the textbooks which are written by authors from the mentioned confessions. Not a single manual for religious instruction in any religion can be published and enter the circulation without consent of the six other churches and religious communities, as well as of the State representatives. In that way, full consensus considering the content and form of religious instruction in the country has to be achieved between the State and all the seven churches and religious communities, comprehending nearly 95 percent of the total population in Serbia.¹³ There is no privilege for the predominant Serbian Orthodox Church in that respect, although basic confessional and religious instruction is a multi-denominational subject. Also, in order to organize religious instruction in accordance with the cooperative and multi-denominational approach, a kind of control is established by the possibility that the school pedagogues and authorized representatives of the religious communities are entitled to visit classes of religious instruction at any time.¹⁴

Therefore, due to careful organization and constant supervision of religious instruction in public schools, both by the State and by religious organizations, the

12. The ruling was published in the *Official Gazette of the Republic of Serbia*, No. 119/2003 of 4 December 2003.

13. Out of a total number of 7,498,001 inhabitants, the latest religious picture of Serbia, according to the census of 2002, is:

Orthodox Christians	6,371,584	84.97%
Catholics	410,976	5.48%
Muslims	239,658	3.19%
Protestants	80,837	1.07%
Jews	785	0.01%
Oriental cults	530	0.007%
Other religions	18,768	0.25%
Believers of no confession	437	0.005%
Atheists	40,068	0.53%
Unanswered	197,031	2.62%
Unknown	137,291	1.83%

14. Religious instruction is taught by priests and laypersons who have certain levels of education in religion (theological education at the university level in secondary schools, theological higher school education in elementary schools), while the Ministries of Education and Religion have organized additional training seminars for those teachers. They get a position on an annual contractual basis, although the possibility of a more permanent position is discussed in the latest draft law. They are selected by the churches and religious communities and appointed and paid by the Ministry of Education. According to the Ministry of Education data in 2004, there were approximately 1500 teachers altogether (1200 Orthodox, over 200 Catholic, 50 Slovak Evangelical, 40 Muslim, 19 Reformed Church, 5 Evangelical Christian Church of Augsburg Confession, and one Jewish). In the Belgrade area, there are nearly 200 teachers in Serbian Orthodox religious instruction (mainly young persons): only about 10 of them are priests (cca. 5%), while about 90 are women teachers (cca. 45%).

prevailing public opinion (including that of the civil sector) that opposes the principle of secularity seems not to be as robustly confronted as before. After having proclaimed separation of church and state, European legal systems regularly do not conceive a vast gap between the two, including hostility and suspicion, but cooperation slowly prevails in the country. The separation does not mean an impossibility to perform common tasks and functions and does not assume absolute lack of any relations. It seems that the modern comprehension of the religious neutrality of the state gradually replaces an echo of the old Marxist mantra that “religion is the opiate of the masses.” A certain level of cooperation between the state and religions is necessary, as Silvio Ferrari points out: “Cooperation is the keynote to today’s relationship between church and state in the European Union and, after the fall of the communist regime, all over Europe.”¹⁵ Religious instruction in public schools is a representative example of benevolent neutrality, and it is present in more than 40 European countries, being organized naturally through different models.¹⁶ Simply, contemporary theory and European legal practice do not envisage separation of church and state as mutual ignorance or avoidance of any contact, or even as a kind of confrontation of the two, as had been the case in former communist states. On the contrary, it comprehends a necessity of their cooperation in issues of common interest, like in Germany.¹⁷ The joint action of state, churches, and religious communities is in attendance in different matters all over Europe, including the organization and often financing of religious instruction in state schools. And it has not been perceived as in opposition to a secular state.

A recent development in Serbia (June 2009) is an agreement that representatives of seven churches and religious communities have acquired with the Ministry of Education representatives about the curricula in the final classes of elementary and grammar schools. Following suggestions from the Toledo Guiding Principles,¹⁸ but also due to internal inputs, they agreed that starting with the 2009/2010 school year, teaching “about” religion (study of religions) will be a part of the course. In that way, both elements of confessional and cognitive religious contents will be included in the Serbian educational system.

Hopefully, altogether it will diminish vast debates that the very existence of religious instruction in public schools violates in itself the principle of state neutrality and secularism, at least when religious instruction is not a mandatory course. As long as no one is forced against his will to follow classes in religion and has a choice, the cooperational approach is an exact expression of proper separation of state, church, and religious communities.

B. Scene Two: Classification of Churches and Religious Communities

More complicated is the issue of religious institution categorization performed in Serbia by the above mentioned Law on Churches and Religious Communities of 2006. The Law recognizes seven traditional churches and religious communities: the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church, the Reformed Christian Church, the Evangelical Christian Church, the Islamic community, and the Jewish community. The 2005 Law on Finance also recognizes only these seven

15. Silvio Ferrari, “The Pattern of Church and State Relations in Western Europe,” *Fides et Libertas* (2001): 59-60.

16. For more on that, see the recent contribution by Silvio Ferrari, “L’Enseignement des Religions en Europe: Un Aperçu Juridique,” in *Des Maîtres et des Dieux: Ecoles et Religions en Europe*, ed. Jean-Paul Willaime and Séverine Mathieu (Paris: Belin, 2005), 31-39; Jean-Paul Willaime, “Different Models for Religion and Education in Europe,” in *Religion and Education in Europe*, ed. Robert Jackson et al. (Münster, Germany: Waxmann, 2007), 57-86.

17. See more in Axel von Campenhausen, “Der Heutige Verfassungsstaat und die Religion,” in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland I*, ed. Joseph Listl and Dietrich Pirson (Berlin: Duncker & Humblot, 1994), 47-84.

18. *Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools*, OSCE/ODIHR (2007).

religious groups and grants them tax exemptions. The same case was with the above mentioned laws concerning religious instruction in public schools and the providing of State funding for the seven religions. It gave pretext for the new case at the Constitutional Court of Serbia challenging provisions of the Law on Churches and Religious Communities of 2006. The case is still pending. Applicants are three churches (the Christian Baptist Church, Belgrade, the Protestant Evangelist Church, Belgrade, and the Protestant Evangelist Church, Leskovac) and two NGOs (Center for Tolerance and Interreligious Relations, Belgrade, and Coalition for a Secular State, also from Belgrade).

The claimants argue that categorization into two groups (traditional churches and religious communities and confessional religious communities)¹⁹ is discriminatory and unconstitutional, as it violates principles of equality and, in the last consequence, gives State privileges to the selected religions. Some of the claimants make concrete objections that by mentioning classification, the State takes the burden of financing religious education in public schools for selected religions, grants them tax exemptions, and creates differences in the registration procedure, etc., creating different and unequal treatment. Some of them argue that the classification is not only threefold, but that it, in fact, comprises four types of religious organizations (churches, religious communities, confessional communities, and other religious organizations) with different legal status.²⁰ They consider the following: that the notion of “traditional” churches and religious communities is unconstitutional; that such notions “introduce State religion or State religions,” which violates the secularity principle; that the classification is not only unconstitutional, but harmful for the Serbian Orthodox Church, as it is placed in the same group with religious organizations which have nothing in common in historical or canonic sense; that the law has no preamble and avoids defining its basic principles (including secularization); that Articles 17-25 on registration issues are not in accordance with international principles, as any census or evidence of belief performed by the State violates religious rights and freedom; the norm in Article 24 stating that the property of a religious association which is deleted from the Register will be treated in accordance with the regulation on citizens’ associations is also contested; that Article 7 is unconstitutional, as it provides for State assistance in implementation of legal acts issued by churches and religious communities;²¹ that it is against the constitution to guarantee to the priests immunity from prosecution for their acts performed during religious services;²² that the provision that the State may finance social rights of the priests²³ is unconstitutional, as it

19. Art. 10: “Traditional Churches are those which have had a historical continuity within Serbia for many centuries and which have acquired the status of a legal person in accordance with particular acts, that is: the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church (a.c.), the Christian Reformed Church, and the Evangelical Christian Church (a.c.). Traditional religious communities are those which had a historical continuity within Serbia for many centuries and which have acquired the status of a legal person in accordance with particular acts, that is: the Islamic Religious Community and the Jewish Religious Community.” Art. 11: “Confessional communities are all those Churches and religious communities whose legal position was regulated on the grounds of notification in accordance with the Law on Legal Position of Religious Communities (“The Official Gazette of the Federal National Republic of Yugoslavia,” No. 22/1953) and with the Law on Legal Position of Religious Communities (“The Official Gazette of the Socialist Republic of Serbia,” No. 44/1977).”

20. The problem arises out of Art. 4 stating that “Holders of religious freedom according to this Law are traditional Churches and religious communities, confessional communities and other religious organizations (hereinafter: Churches and religious communities).” However, it seems quite clear that the ratio of the norm was not classificatory, but a nomotechnical attempt to use the notion of “churches and religious communities” to denote as a generic term all kinds of religious organizations in the Law.

21. “For the enforcement of final decisions and judgments issued by competent bodies of Churches and religious communities, the state shall, upon their request, provide appropriate assistance in accordance with the law.”

22. Art. 8, ¶ 4: “Priests and religious officials shall not be responsible before public authorities for their acts in performing religious services.”

23. Art. 29, ¶ 1-2: “With the aim of improving religious freedom and with the consent of Churches and religious communities, funding of health, pension, and disability insurance of priests and religious officials may be provided for in the budget of the Republic of Serbia, in accordance with law. If the funding is provided for in the budget of the Republic of Serbia, the Government shall determine respective amounts for the realization of

allegedly violates principle of secularization and discriminates against other professions, particularly atheists; etc. Argumentation of the claims is not profoundly developed, but generally points to very delicate problems.

Every single contested issue deserves serious attention and elaboration. Nevertheless, in the variety of subjects, the crucial point of controversy appears to be the position of the “traditional” churches and religious communities and their privileges, particularly the objections on inequality in the registration procedure.

Response by the Government to the Constitutional Court of Serbia is not yet available. However, it is possible to predict that the main line of reasoning will follow what has been offered in different occasions by the State officials or church authorities in public debates and at round tables or scholarly discussions considering the new Law on Churches and Religious Communities. It will probably comprehend three chief fields: comparative legislation, theoretical and doctrinarian foundations, and case law.

1. Comparative Legislations

The matter of distinction among religions (traditional and others) was raised for the first time in public, as well as at the Constitutional Court of Serbia, in connection with the privileged funding of religious instruction in public schools for traditional religious entities. The objection to secularity was also closely attached in public discourse to that issue. However, this is not only a Serbian matter. Silvio Ferrari has rightly stated that in countries with confessional religious education, different models are possible.²⁴ In some of them, religious instruction is organized and controlled by religious communities charged with the training and selection of educators, the drafting of curricula, and the approval of materials (Austria, Belgium, Cyprus, Spain, Greece, Malta, Poland, Portugal, and the Czech Republic). In some countries (Hungary, Italy, Latvia, Lithuania, Germany, and Finland), state and religious communities cooperate in the abovementioned tasks, usually requiring a certification by the religious communities for religious instruction issues. Serbia evidently belongs to that category.

But, in all those cases, a common, general problem appears: “Confessional religious instruction is subject in organizational and economic respect to the State (which remunerates instructors and provides localities and school time). The problem is that State organization is selective and that only certain religions may be taught. Thus, the question of the selection criteria poses itself.”²⁵ In other words, it seems that it is not illegitimate to comprise in legislation a certain kind of differentiation, at least if it is based upon rational and non-discriminatory criteria, due to the fact that it is evidently not possible to organize the State paid religious instruction for one and all.

However, it is not only a matter of religious instruction in public schools where the traditional religious organizations have a favorable status. The second, more complex field is that of registration. Only traditional religious groups are entitled to the *ex lege* legal status provided in Article 10. The Ministry of Faiths, responsible to keep the Register of churches and religious communities, is supposed to enter them into the Register upon their application without any further examination so that they acquire legal subjectivity by notification. On the other hand, other religious organizations may acquire their legal personality through the procedure set by the Law (registration system).²⁶ In that

social rights of priests and religious officials, equally and proportionally to the number of believers of each Church and religious community, according to the latest census conducted in the Republic, in which process the principle of positive discrimination may be applied to Churches and religious communities with a small number of believers.”

24. Ferrari, *supra* n. 16 at 36.

25. *Id.*

26. Article 18: “For the entry of Churches and religious organizations into the Register, a notification is filed to the Ministry containing:

- (1) name of the Church or religious community;
- (2) address of the seat of the Church or religious community;

way, traditional religions are charged to be privileged at least in the two issues (religious instruction and registration), and the claim of inequality looks very plausible. What answers are to be expected then?

The first argument will probably be that the privileged status has likewise been given in comparative legislation to the so-called state or national churches in many EU and other European countries. The state religion system may look like in that respect more discriminatory, although that is usually not the case. As for the criticism on classification into traditional and non-traditional religions in Serbia and its consequence in registration issues,²⁷ the answer may also be that specific treatment of some churches and religious communities is well known in comparative European legislations on religion, as is labeling particular religions as traditional, recognized, historical,²⁸ or similar, and granting them certain privileges.

The Austrian “three tier system” set up by the legislations on registration of 1874, 1998 and 2002, distinguishes three different types of religious legal entities.²⁹ The first, and the most privileged group, are “recognized religions,” having a public law status as a public corporation (“Körperschaft”). As of 1998,³⁰ in order to acquire that status, the religious organization must have at least 2 percent of the population (about 16,000 believers) and at least 20 years of existence in the country (at least 10 years of that as a registered confessional community – belonging to the second tier).

There are also three more demands that can be quite voluntarily evaluated by the State: that they use the finances for religious purposes; that they have a positive attitude towards State and society; and that they make no forbidden disturbance of the relationship to other churches. In that way, a very exclusive group of religions was set up, with quite a lot of privileges granted by legislation. The second group of religious entities, introduced by the Law of 1998, are labeled as “confessional communities,” having a form of private law entities. They can be registered if they have at least 300 believers of Austrian residence but they have a limited number of rights and privileges. They have a formal chance to acquire the status of recognized religions, but due to the strict requirements, the list is *de facto* closed. The third group is “religious associations” with no legal recognition and registration, so they cannot be involved in legal transactions, but they may apply to

(3) name, surname and capacity of the person authorized to represent and act on behalf of the Church or religious community.

Religious organizations, excluding those mentioned in Article 10 of this Law, need to file an application with the Ministry containing the following for entry into the Register:

(1) the decision by which the religious organization has been established, with names, surnames, identification document numbers, and signatures of at least 0.001% adult citizens of the Republic of Serbia, having residence in the Republic of Serbia according to the last official census or foreign citizens with permanent place of residence in the territory of the Republic of Serbia;

(2) a statute or other document of the religious organization containing: a description of the organizational structure, governance method, rights and obligations of members, procedure for establishing and terminating an organizational unit, list of organizational units with the capacity of a legal person, and other data relevant for the religious organization;

(3) presentation of the key elements of religious teachings, religious ceremonies, religious goals, and main activities of the religious organization;

(4) data on permanent sources of income for the religious organization.”

27. This criticism is coming not only from some NGOs and independent intellectuals, but also from the Venice Commission, expressed in the Comments on the Draft Law on Churches and Religious Communities of the Republic of Serbia (by Belgian expert Louis-Léon Christians) of April 2006; see [http://www.venice.coe.int/docs/2006/CDL\(2006\)030-e.asp](http://www.venice.coe.int/docs/2006/CDL(2006)030-e.asp). However, the overall tone of the comments on *Registration and Basic rights* is more positive, of course, with a number of concerns left (“The legal condition of the Orthodox Church has been revised The number of believers is lower than previously The general applicability of art. 1, 2, 3 of the new draft has significantly improved the previous one on this topic.”).

28. In Hungary, four “historical” religious groups (Roman Catholic, Reformed, Lutheran, and Jewish) receive 93 percent of state financial support provided to religious groups. Only those religious organizations also receive tax breaks.

29. For more on that, see Herbert Kalb, Richard Potz, and Brigitte Schinkele, *Religionsrecht* (Vienna: WCT University Press, 2003), 93-135, as well as Richard Potz, “State and Church in Austria,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden Baden: Nomos Verlagsgesellschaft, 2005), 396-401.

30. Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften, Nr. 19/1998.

acquire the status of confessional communities.

The “three tier system” is applied in Romania as well, in accordance with the recent law on religions of 2006.³¹ It differentiates between recognized religions (“recognized cults”), religious associations with private law status, and religious groups without legal entity position. Recognized religions are provided for by the law itself, while the second category – religious associations – must have at least 300 believers to be registered. In order to climb up to the level of recognized religion, a religious association has to perform registered religious activities for at least 12 years in the country and have at least 22,000 believers, i.e., 1 percent of the total population. It also means, as in the case of Austria, factual impossibility for religious associations to join the first group.

A specific kind of “three-tier system” is used in Russia. The Law on Freedom of Conscience and Associations of 1997 introduced three categories of religious communities (groups, local organizations, and centralized organizations) with different levels of legal status and privileges. “Religious groups” are not registered, and consequently, they do not have the legal personality. “Local religious organizations” can be registered as such if they have at least 10 followers and are either a branch of a “centralized organization” or have existed in the locality as a religious group for at least 15 years. Finally, the top groups are “centralized religious organizations,” which can be registered by combining at least three local organizations of the same denomination, resulting in practice with a much higher requirement number than simple mathematics may suggest (30 in theory).

The Czech Republic adopted a new law in 2002³² which introduced a new system of registration that established a “two tier system” (similar to Serbia). To be registered in the lower, first organizational level, a religious organization is supposed to have at least 300 Czech residents and its activity in compliance with the usual formal limitations and some (rather strict) conditions concerning the public order and security.³³

The second, privileged organizational level offers to religious organizations a bundle of special rights, including State funding. This status may be achieved only if they have been registered at the “first level” for at least ten years, published their annual report for at least ten years, fulfilled their obligations towards the State and others, and have signatures of at least 1 percent of Czech residents, i.e., at least 10,000 followers.

In the Slovak Republic, according to the 2007 Registration Law, in order to be registered it is necessary to obtain signatures of at least 20,000 members – citizens or permanent residents – who must submit an “honest declaration” attesting to their membership, knowledge of articles of faith and basic tenets of the religion, personal identity numbers and home addresses, and support for the group’s registration.³⁴ The explanatory documents of the law claim that religious minorities who do not satisfy the requirements may register under the law governing citizens associations.³⁵

Worth mentioning is also the example of Belgium, where the Government grants special, “recognized” status to Catholicism, Protestantism (including evangelicals and Pentecostals), Judaism, Anglicanism (separately from other Protestant groups), Islam, and Orthodox (Greek and Russian) Christianity. Only representative bodies for these religious groups receive subsidies from the Government. The Government also supports the

31. Law on Religious Freedom and the Common Regime of Religious Communities, Act No. 489/2006.

32. Law on Churches and Religious Societies, Act No. 3/2002.

33. Jiří Rajmund Tretera, “State and Church in Czech Republic,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden Baden: Nomos Verlagsgesellschaft, 2005), 46.

34. Registration of religious groups is not required, but only registered religious groups have the legal right to build places of worship and conduct public worship services and other activities. Registered groups receive government benefits. Along with the dominant Catholic Church, religious instruction in public schools are state paid for 11 other churches and religious communities.

35. However, the nongovernmental organization (NGO) Human Rights Without Frontiers claimed that the act governing registration of citizens associations specifically excludes religious organizations and churches. Additionally, a separate instructional document that the Ministry of Interior issues to potential applicants confirms that it will reject an application from a religious group, <http://www.state.gov/g/drl/rls/irf/2008/108471.htm>.

freedom to participate in secular organizations.³⁶ Although Belgian law recognizes a theoretical equality between all religions, “one cannot deny that some receive different treatment from others. Several religions have obtained official recognition by, or by virtue of, a law. The main basis for such recognition is the social value of the religion as a service to the population.”³⁷

Let us finish the overview with a paradigmatically secular European country. It seems evident that even in France, *laïcité* (or secularism) does allow for differences in status of religious communities. “Despite the principle of non-recognition of churches, religious groups are subject in French law to some special rules.”³⁸ Religious associations (*associations cultuelles*) are capable of receiving the property of the former public church establishments suppressed in 1905 and have benefited progressively from advantages under tax law. After World War I, a new specific form of religious organization was set forth for the Catholic Church which could establish Diocesan associations (*associations diocésaines*) under a special set of model provisions. The *Conseil d’État* recognized this special status as being in conformity with French law. In the recognition of new religious groups asking for registration as religious associations, French courts, and the *Conseil d’État* in the first place, have not recognized as “religious” every group which tries to present itself as such so that the possibility of being registered as a religious association is quite distinctive.³⁹ Historical context is definitely very important criteria in categorization and registration of religious groups in France.

Many more different classifications of churches and religious communities are offered in comparative European legislations. Many countries have different requirements for allocating certain privileges or a particular status to specific religious organizations. Therefore, the real issue is not if it is acceptable to lay down differences in principle or not, as it may allegedly violate equality and secularity, but if criteria for the selection are rational, sound, fair, realistic, and more or less, objective.

Selection criteria for classification of religious organizations comes out most sharply in the registration context, and the discrimination issue may be at stake above all at that point. Considering the comparative patterns mentioned above, it seems that the Serbian registration demands (as the only selection criteria) are not more burdensome than in some other EU or other European countries. The registration requirement number of 0.001% is evidently much more liberal. Therefore, the differentiation of traditional churches and religious communities, whose legal status is guaranteed *ex lege*, does not harm, by itself, the right of other religious groups to be registered.⁴⁰ Also, it seems clear that the solution set up by Serbian legislation does not establish State churches and that it does not violate the principles of equality and secularism.

2. Theoretical and Doctrinary Foundations

The issue of equality of religious groups and its violation by ranking or by establishing particular rights for some of them was often elaborated in legal doctrine. The prevailing attitude is that equality of religious organizations does not mean that they are all the same and identical, but that it comprehends adequate exercise of rights guaranteed by legislation. Equal treatment in legal practice and doctrine is not identical treatment, but

36. See <http://www.state.gov/g/drl/rls/irf/2008/108437.htm>.

37. Rik Torfs, “State and Church in Belgium,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden Baden: Nomos Verlagsgesellschaft, 2005), 9.

38. Brigitte Basdevant-Gaudemet, “State and Church in France,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden Baden: Nomos Verlagsgesellschaft, 2005), 162.

39. Id.

40. Of course, an important issue is implementation of the Law. After the Law was passed, the Ministry of Religions has refused to register some religious groups (Jehovah’s Witnesses, Montenegrin Orthodox Church and a few others), while the Serbian Baptist Union has started a case at the Supreme Court as they decided not to apply for registration, but to challenge the law. However, possible difficulties in application of the Law do not justify the claim that the norm granting special position to traditional religious entities is unconstitutional.

a more sophisticated treatment in accordance to the specificities of the issues at stake. It seems to be in accord with the ancient legal proverbs of Roman natural philosopher Pliny the Elder that *nihil est tam inaequale, quam aequitas ipsa* – “nothing is so unequal like equality itself.” Equality among religious groups therefore means adequate use of all the rights in an equal way within the limits of common sense and legislation.

Or, to put it in the words of Gerhard Robbers:

Non-discrimination prohibits unequal treatment without valid reasons. Equal treatment does not mean identical treatment. In regard to the constitutional side of religious freedom this is already being expressed in the recognition of the identity of religious constitutions and in the respect for religious diversity. It is the very motto of the Union ‘United in Diversity’ that coins the understanding of equality and non-discrimination within the Constitution for Europe. It so matches with the common constitutional traditions of the Member States and international instruments. Equality within non-discrimination means to treat equal what is equal and to treat unequal what is unequal according to the amount of inequality. Whenever there are valid reasons the Union can and must distinguish. There is no discrimination when there is a valid reason for different treatment.⁴¹

A few other important contributions by German authors claim that parity and equality guaranteed by constitutional and legislative norms does not mean absolutely identical position in accomplishment of religious rights.⁴² “The idea of equal rights makes possible a system of adequate attribution of positions. Equality does not mean identity, but adequacy, appropriate rights and positions. From the perspective of equality, differences are possible as long as they are legitimate. Differences have to be based on legitimate reasons.” And, also: “To safeguard religious liberty, the correct paradigm is equal rights, not identical rights. The paradigm of identical rights cannot appreciate the societal function of a religion, its historical impact, or its cultural background. Identical rights would preclude a multitude of manifestations of positive religious freedom. For instance, if an identical right to sit on youth protection boards was granted to each and every religious denomination, any utility of these boards would be crushed by their enormity.”⁴³

As long as other churches and religious communities may enjoy full religious freedom without any limitations, the very existence of special status guaranteed to traditional religious groups does not necessarily cause problems for minority religions. Finally, as to the claim that the very use and the very notion of traditional churches and religious communities is discriminatory by itself and that it leads to violation of secularity principle, the General Comment No. 22, paragraph 9 to Article 18 of the International Covenant on Civil and Political Rights, issued on 30 July 1993, could be quoted as a guideline: “The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27, nor in any discrimination against adherents to other religions

41. Gerhard Robbers, “Living Values: The Constitution for Europe and the Law on Religion,” in *Religion and Society: Emerging Questions*, ed. Rik Torfs, Michael P. Hilbert, and Gerhard Robbers (Leuven: Peeters, 2005), 19-32.

42. Martin Heckel, “Die Religionsrechtliche Parität,” in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland I*, ed. Joseph Listl and Dietrich Pirson (Berlin: Duncker and Humblot, 1994), 589-622; “Das Gleichbehandlungsgebot im Hinblick auf die Religion,” in id. at 623-650.

43. Gerhard Robbers, “Religious Freedom in Germany,” *BYU L. Rev.* 2 (2001): 666. At the same time, “it is absurd to suggest that formal equality means actual equality. Similarly, the fact that the state does not officially prefer one particular religion over another (and underlines this with a myriad of doctrines, decisions, and rules) does not mean that there is no substantive preference.” Davies, *supra* n. at 79.

or non-believers.”⁴⁴

3. Case Law

At the national level, an important argument will probably be that the Constitutional Court of Serbia already decided in 2003 that selection of seven traditional churches and religious communities to have State-paid religious instruction in public schools is not discriminatory and does not violate the principle of equality of religious communities.⁴⁵ It was stressed in the decision that contested provisions do not deprive any of the religious communities to organize religious instructions on their own, but they also do not impose burden to the State to finance religious instruction for all and every religious community. Although the ruling was issued in the case concerning religious instructions, the Constitutional Court has clearly stated that designation of seven religious organizations is not to be perceived as discriminatory and unconstitutional. Therefore, the *res judicata* objection in the actual case may become a very powerful strategy.⁴⁶ At the international level, distinction between different religious groups and their different treatment is not prohibited if it is well founded, as stated recently in the International Court of Human Rights judgment:

96. The Court reiterates that Article 14 does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of that Article (see “*Case relating to certain aspects of the laws on the use of languages in education in Belgium*” (merits), judgment of 23 July 1968, Series A no. 6, § 10, and *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). A difference of treatment is, however, discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Van Raalte v. the Netherlands*, judgment of 21 February 1997, Reports 1997-I, § 39).⁴⁷

In other words, any kind of different treatment is not necessarily considered to be discriminatory, if it is based upon objective and reasonable justification. In search for criteria that are in compliance with that logic, the Serbian legislation has avoided those which were often utilized in comparative European legislation, such as long presence (how long?) or number of followers (how high?).

In granting “traditional” status to some churches and religious communities, the Serbian legislature has leaned upon more or less objective and reasonable criterion. It is connected to the legal status of religious organizations and the legal situation before World War II, which was violently changed during the communist regime. Allegedly, a kind of *restitutio in integrum* principle was applied, being based upon ideas of restoration

44. General Comment No. 22: The right to freedom of thought, conscience and religion (art. 18), 30 July 1993.

45. Decision of the Constitutional Court of Serbia on constitutionality of the *Law on Amending the Law on Elementary Schools* (Official Gazette of the Republic of Serbia, No. 22/2002 of 26 April 2002) and *Law on Amending the Law on High School* (Official Gazette of the Republic of Serbia, No. 23/2002 of 9 May 2002), Official Gazette of the Republic of Serbia, 119/03 of 4 December 2003, 15.

46. On that point, see Sima Avramović, “Constitutionality of Religious Instructions . . .,” supra n. 4.

47. *Religionsgemeinschaft der Zeugen Jehovas and others v. Austria*, Application no. 40825/98, judgment of 31 July 2008.

of status which was historically acquired by religious groups (including the right to State-paid religious instruction in public schools), having been lost due to communist deprivation. Restitution of lost rights to religious organizations is considered to be on the same footing as the right to restitution of property through denationalization of assets.⁴⁸ Only those religious groups who have been deprived of rights are eligible to ask for what has been taken from them. This is why every single church and religious community to whom the law grants position of “traditional” is mentioned in a separate article with precise reference to the previous legislation having been devoted to every one of them.⁴⁹ As some religious groups have objected or have pretended to be included into the category of traditional, during the drafting process, they were all called upon to submit proof of whether their position was regulated before World War II by a separate law or not.

Of course, that kind of historical reasoning may also be contested, but in comparison with criteria applied in some other European legislations, it gives more solid ground for the conclusion that the criterion is more objective and that the norm is not discriminatory. As Ferrari has rightly stated, any criteria for selection of religious groups may cause an objection.⁵⁰ It may only be disputable if they are set forth clearly, being firmly and appropriately established in reasonable justification, enabling in the same time all other religious communities to enjoy the same rights. The only decisive point is whether all religious groups are free to exercise all the rights and freedoms without limitation and obstacles. Different legislative positions of particular traditional churches and religious communities will not in that case result in discrimination.

V. ACT FIVE: EXPECTED EPILOGUE

Although solutions in Serbian legislation have not received proper attention in comparative literature, there are two main streams in its evaluation by the scholarly public. On the one hand, there is sharp criticism, particularly on registration issues, which were expressed even before the draft law was adopted. The text of Austrian lawyer Reinhard Kohlhofer has a significant title: “Away with Legal Discrimination – Serbia Shouldn’t Follow Austria.”⁵¹ On the other hand, the author responsible for the analysis of the Serbian legislation within the REVACERN project, Annamária Csiziné Schlosser, is

48. Before the Second World War, the mentioned seven churches and religious communities had, according to pre-war legislation, *ex lege* legal personality, as well as the right to state-paid religious instruction. Those criteria may seem more objective and reasonable than quite voluntary ones like “long-lasting” presence or number of followers.

49. Art. 11 regulates the *Serbian Orthodox Church* position as follows: “The continuity of legal personality acquired by virtue of the Document on Spiritual Authority (Decree of the National Assembly of the Principality of Serbia of May 21, 1836) and of the Law on the Serbian Orthodox Church (“The Official Gazette of the Kingdom of Yugoslavia,” No. 269/1929) is recognized to the Serbian Orthodox Church. The Serbian Orthodox Church has had an exceptional historical, state-building and civilization role in forming, preserving and developing the identity of the Serbian nation.” Art. 12 takes into account the *Roman Catholic Church*: “The continuity of legal personality acquired by virtue of the Law on the Concordat between the Kingdom of Serbia and the Holy See (Decision of the National Assembly of the Kingdom of Serbia of 16 July 1914, “The Serbian Gazette,” No. 199/1914) is recognized to the Roman Catholic Church.” Art. 13 is about the *Slovak Evangelical Church (a.c.), the Reformed Christian Church, and the Evangelical Christian Church (a.c.)*: “The continuity of legal personality acquired by virtue of the Law on Evangelist-Christian Churches and Reformist Christian Church of the Kingdom of Yugoslavia (“The Official Gazette of the Kingdom of Yugoslavia,” No. 95/1930) is recognized to the Slovak Evangelical Church (a.c.), Reformed Christian Church, and Evangelical Christian Church (a.c.)” Art. 14 regulates position of the *Jewish Community*: “The continuity of legal personality acquired by virtue of the Law on Religious Community of Jews in the Kingdom of Yugoslavia (“The Official Gazette of the Kingdom of Yugoslavia,” No. 301/1929) is recognized to the Jewish Community.” Finally, Art. 15 defines the status of the *Islamic Community*: “The continuity of legal personality acquired by virtue of the Law on Islamic Religious Community of the Kingdom of Yugoslavia (“The Official Gazette of the Kingdom of Yugoslavia,” No. 29/1930) is recognized to the Islamic Community.”

50. Silvio Ferrari, *supra* n. 24.

51. Reinhard Kohlhofer, “COMMENTARY: Away with Legal Discrimination - Serbia Shouldn't Follow Austria,” *Forum 18 News Service*, 2004 September 02, http://www.forum18.org/Archive.php?article_id=403.

of an opinion that the Serbian legislation influence of the Austrian model in registration issues is weaker than in the case of the new laws in Romania and the Czech Republic.⁵² Also, she asserts that “if we consider the two main requirements of the Venice Commission against registration systems, i.e. ‘the registration system should not become a requirement for basic rights of religious freedom and the registration system has to be non discriminatory’ - the procedural rules of the law on providing legal status law seems to fulfill them.” Finally, according to that evaluation “the new law is a great result of the Serbian legislation despite the critics, and it is also a great step towards legal security and the equality of churches.” But, a very important warning follows: “From the aspect of human rights, the application of the law and further laws on churches cause and probably will cause more difficulties than the new law itself.”⁵³

Nevertheless, the issue of traditional churches and religious communities is still disputable and open. The expected ruling of the Constitutional Court of Serbia may fundamentally change achieved results. By eventual acceptance of the claim that the distinction among traditional and other churches is unconstitutional and that it violates principles of equality and secularization, the whole concept of the law would collapse, including the established practice of religious instruction in public schools for traditional religions, introduced by the democratic Serbian government led by assassinated Prime Minister Djindjic. It would by all means provoke a harsh reaction by a majority of the voters. The reality of traditional religions, without any legislative preference for the dominant Serbian Orthodox Church among the seven (although it encompasses about 85 percent of the total population), and particularly the performance of the State-paid religious instruction in public schools for traditional religions, is strongly planted in the social perception and public discourse as legitimate.

After decades of religious restriction, revival, and reactions to overstated expressions of religion, there is hope that the ruling of the Constitutional Court of Serbia has a chance to promote a new phase – one of religious tolerance and a new way of conceptualizing secularism in Serbia. It would include prevention of any kind of religious discrimination and full respect for religious freedom, but also a more modern understanding of the secularity principle and the fostering of legitimate participation of churches and religious communities in public life, along with appreciation for the historical context, social peculiarities, and realities of the country.

52. A. Csiziné Schlosser, “Legal Status of Churches and Religious Communities in Serbia according to the New Law (with a comparative analysis),” *REVACERN - Religions and Values: Central and Eastern European Research Network, 2007-2009*.

53. *Supra* n. 12.