

Freedom of thought, conscience and religion in the Republic of Serbia

Legal framework

Freedom of thought, conscience and religion is guaranteed under Article 43 of the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06). The Constitution provides everyone the right to stand by one's own belief and religion or to change them by one's own choice. No person shall be under obligation to declare his/her religious or other beliefs and everyone shall have the freedom to manifest their religion or religious beliefs by performing rituals, attending religious service or teachings, individually or in community with others as well as to manifest their religious beliefs in private or in public.

The manner in which the freedom of thought, conscience and religion may be exercised is governed by provisions contained in several Laws. In terms of exercising the freedom of religion, the most important is the Law on Churches and Religious Communities (*Official Gazette of RS* No. 36/06). Article 1 of the Law stipulates that the freedom of religion includes: freedom to have or not to have, to keep or alter one's religion or religious conviction, or freedom of belief, freedom to profess one's faith in God, freedom to manifest individually or in community with others and in public or in private one's religion or religious conviction in worship, observance, religious teaching and education, cherishing and developing of religious tradition; freedom to develop and advance religious education and culture. Citizens have the freedom of association and public assembly for the purpose of manifesting their religious beliefs in accordance with the Constitution and the law and they are free to join churches and religious communities in accordance with the law. The state is not allowed to interfere in the enforcement of autonomous regulations of churches and religious communities.

Holders of religious freedom in the Republic of Serbia are traditional Churches and religious communities, confessional communities and other religious organizations. The distinction between traditional churches and religious communities, confessional and other religious organizations made, for the purpose of registration, by the Law on Churches and Religious Communities is in compliance with international standards, comparative formulae and the practice of the European Court of Human Rights, whose decisions state takes into account, as well as administrative or judicial decisions regarding registration or activities of pertinent religious organization in one or several member states of the European Union.

The Law on Churches and Religious Communities, is in full compliance with the principles as well as the *terminology contained* in the General Comment 22 of the UN Committee for Human Rights adopted at the 48th session of that body in 1993, and according to which *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 or non-believers (paragraph 9)*. The Law on Churches and Religious Communities, recognizing churches and religious communities, does not diminish the enjoyment of rights of the non-traditional churches and religious communities, nor does it discriminate on the grounds of religion.

Comparative law recognizes formulae that categorize churches and religious communities differently in the process of acquiring legal personality, which undoubtedly points to the fact that their differentiation in the acquiring of legal personality does not imply in itself differentiation in the scope and type of rights that they enjoy. Furthermore, some EU member-states have state churches (i.e. Great Britain, Finland, Greece), and some have special agreements regulating their relationship with the Roman Catholic Church, by which it is singled out from other churches and religious communities with flock size and the recognition of social and historical importance as the most often cited argument. Also, the existence of such differences does not represent discrimination according to the understanding of the European Court of Human Rights. Despite the Court insisting that states should remain neutral and unbiased in the process of church and religious community registration, it has not found a single infringement of the Convention by the very fact of the existence of religious communities with different legal status.⁴ Furthermore, it has accepted the stance that arrangements favouring certain religious communities are not in collision with the Convention's requirements in principle.⁵

The process of registration of new churches and religious communities is very easy and simple. The Law on Churches and Religious Communities stipulates that in addition to the Registration Request, Statute, the Religious Organization's Decision of Establishment, a description of basic religious teachings and records of regular income sources, a church or religious community can be established by at least 100 members that is 0.001% adult citizens of the Republic of Serbia, or foreign citizens with full residency rights on the territory of the Republic of Serbia, meaning that the possibilities for establishing new churches and religious communities are wide and attainable. Such a registration process can in no way be characterized as difficult because the formula contained in the Law is more liberal in comparison to the formulae in force in a list of states, including EU member states.⁶

Concerning the issue whether the Law on Churches and Religious Communities imposes the requirement of registration to churches and religious communities recognized prior to the Law's adoption, which has been the subject of several interpretations, the former Ministry of Religious Affairs and the Government of Serbia have taken the position that eventual uncertainties in view of the legal status of certain religious communities (confessional communities which were recognized prior to the Law's adoption) in the process of registration should be resolved by authentic interpretation of the Law which would be adopted by the National Assembly. The proposed authentic interpretation is just the way to enable the continuity of the recognized legal personality of not only traditional churches and religious communities, but also confessional communities, whose legal status was regulated by application in conjunction with previous Laws. At the proposal of the former Ministry of Religious Affairs, the Government of the Republic of Serbia has regulated the Proposal for Authentic Interpretation and has directed it to the National Assembly for adoption by which an certain type of amending of the Law has actually been undertaken.

⁴ Metropolitan Church of Bessarabia v. Moldova, n. 45701/99 p. 116;

⁵ Alujer Fernandez & Caballero Garcia v. Spain n. 53072/99

⁶ Comparative law recognizes different criteria for registration. For example, concerning the number of church or religious community members as a condition for registration we cite the following European states: Belgium – 10,000 members, Slovakia – 20,000 members, Austria – 16,000 members, Romania – 22,000 members, Croatia – 500 members, Bosnia-Herzegovina – 300 members, the Czech Republic – 300 members, Armenia – 200 members, Slovenia and Hungary – 100 members. This condition is often followed-up with the requirement that churches and religious communities function, for a longer period of time, as religious communities or religious citizens' groups.

Practice

The former Ministry of Religion has been cooperating with all the Churches and religious communities very effectively. This statement is supported by consultations that were held with certain religious communities, in the first place the confessional ones, the purpose of which was to arrive at an adequate solution pursuant to the Law on Churches and Religious Communities to finalize registration procedures that had been started. The result of such an approach is that in the previous years many a small religious community has been entered into the Register: the Free Church of Belgrade, the Jehovah's Witnesses – a Christian religious community, the Testament Church of Zion, the Union Seventh Day Adventists Reform Movement, the Protestant Evangelical Church "Spiritual Centre" and Christian Evangelical Church. In addition, apart from the traditional (the Serbian Orthodox Church, the Roman Catholic Church, the Slovakian Evangelist Church A.C., the Christian Reformist Church, the Evangelist Christian Church A.C., the Jewish Religious Community, the Islamic Religious Community), the Diocese of the Romanian Orthodox Church "Dakija Felix" and herein listed Churches and religious communities, the following have been entered in the Register of Churches and Religious Communities as well: Christian Adventist Church, the Evangelist Methodist Church, the Church of Jesus Christ of Latter-day Saints, Evangelic Church in Serbia, the Church of the Love of Christ, Spiritual Church of Christ, Union of Christian Baptist Churches in Serbia, the religious community of Christian Nazarene, the Church of God in Serbia, the Church of Brothers in Christ in Serbia and Protestant Christian Community in Serbia, based on which it can be concluded that religious pluralism in the Republic of Serbia is well advanced. The former Ministry of Religion had been making available certain funds for promoting the publishing activities of these religious communities and has been inviting them to participate at scientific symposiums and round table conferences at which the issues addressed pertain to the development of religious rights and position of the Churches and religious communities in our society. Pursuant to positive regulations, some of them have founded pre-school institutions, secondary schools and faculties.

Churches and religious communities in the Republic of Serbia have, owing to a long-lasting tradition of respect and understanding for each other, established a relation of cooperation both between themselves and with the state as well. Therefore, the constitutional principle of separation of the church from the state does not implicitly include the prohibition of cooperation. On the contrary, the state promotes and fosters the freedom of religion, cooperates with the Churches and religious communities and advances their position in the society, provides protection for religious elements in the cultural and ethnic identity of national minorities, furthers religious education and provides assistance with the inclusion in the educational system, provides support and help in the building of religious structures and in the protection of sacral cultural heritage, provides assistance with the protection of legal and social position of churches and religious communities, exercise of their rights established under the law, regulation and improvement of social and economic status of holders of religion (the clergy, the monks and nuns, religious officials, pupils and students of religious schools), maintains the Register of Churches and Religious Communities and so forth. Appreciation for religious beliefs in the public sphere is the most relevant with regard to the respect of employees' rights to miss work at the time of their religious holidays as well as with regard to the respect of the conscientious objections. Conscientious objection has been defined as another constitutional category. When pleading conscientious objection, a recruit may submit a request for doing his military service unarmed or for doing alternative civilian service.

It would be necessary to emphasize that a number of religiously motivated incidents in the Republic of Serbia has been significantly reduced and that the level of inter-religious cooperation has been substantially raised.

Some religious communities are challenging the constitutionality of the Law on Churches and Religious Communities before the Constitutional Court. There are three such religious communities: The Christian Baptist Church, the Protestant Evangelical Church from Belgrade and the Protestant Evangelical Church "Spiritual Centre" from Leskovac. It should be noted that the Protestant Evangelical Church "Spiritual Centre" from Leskovac was registered on April 26, 2010 as a result of applying for entry into the Registry of Churches and Religious Communities and submitting the legally required documentation. The Christian Baptist Church and the Protestant Evangelical Church could immediately be entered into the Registry of Churches and Religious Communities if they were to submit the legally required documentation. However, these religious communities refuse to submit the legally required documentation and consider that they should be entered as traditional churches and religious communities. The former Ministry of Religious Affairs cannot modify the appropriate legal formula and is of the position that the stubborn refusal of the named religious communities to submit the legally required documentation does not present a basis for claims that the Law is discriminatory, or that many religious communities have difficulties during registration. In cases of churches and religious communities not entered into the Registry there can be in no case any arbitrary application of the Law by the Ministry, but rather of evasion of respect for the Law by the interested parties, that is of incomplete or incomprehensible documentation submitted with the registration request. Registration has occurred in all cases where the legally required documentation was submitted in the administrative process of registration of churches and religious communities. The legality of the final acts of the Ministry can be challenged before court in an administrative dispute, so that the issue of whether or not the Ministry applies the Law on Churches and Religious Communities arbitrarily is ultimately an issue of judicial dispute in which the rights and interests of parties can be protected, and in which, in the Republic of Serbia, as in all other countries which abide by the rule of law, the decision lies with independent, impartial and legally-founded courts.

The former Ministry of Religious Affairs has not registered a single church or religious community by formal consent of another church or religious community. The Rulebook on the Registry of Churches and Religious Communities' Management (*Official Gazette of RS* No. 64/06), stipulates that the registration of the appropriate organizational unit of the Romanian Orthodox Church is carried out in accordance with the Serbian Orthodox Church, but such a formula is rather an ascertainment of requisite of registration of the **appropriate** organizational unit of one church (Romanian Orthodox Church), more than it represents the approval of the Serbian Orthodox Church set as a condition for the registration of any church, including that one. The Republic of Serbia's authorities use this opportunity to inform that the Romanian Orthodox Church Vicariate in the Republic of Serbia has remained in unhindered existence before the entry of the said provision into the Rulebook and that such a provision was included in that by-law in order to enable the **mandatory registration of the agreed Romanian Orthodox Church's organizational form** following the two Churches' long negotiations. In other words, the state has accepted the obligation of registering the appropriate organizational form of the Romanian Orthodox Church, and negotiations between the two churches were not on the subject of existence, that is the registration and entry of the Romanian Orthodox Church in the Registry, but rather on the reciprocal organization of the two Orthodox Churches in neighbouring countries.