NIHIL EST TAM INAEQUALE QUAM AEQUITAS IPSA: THE ISSUE OF CONFESSIONAL COMMUNITIES IN SERBIA

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ABSTRACT

This study analyses the positions of churches and religious communities in the Serbian legal system. The 2006 Law on Churches and Religious Communities introduced the so-called 'multi-tier system', under which there are multiple legal categories of religious organisations. This study analyses the legal position of religious communities that have acquired a legal personality in accordance with socialist legislation, which defines 'confessional communities'. Some refuse to undergo registration under the new regulations for fear of losing their acquired rights. Special attention was paid to the legal solutions that have attempted to regulate their status more closely, as well as the reasons behind the decision not to allow their automatic registration ex officio.

KEYWORDS

freedom of religion
freedom of association
confessional community
registration of religious organization
registration requirement
Serbia
Law on Churches and Religious Communities

1. Introduction

Freedom of religion is one of the fundamental principles of modern Serbian statehood. Since 1827, it has been prescribed that foreigners living in Serbia have the right to their priests and chapels.[2] Freedom of religion is guaranteed to foreigners only due to the religious and national homogeneity of the first Serbian state. The first Constitution of the Principality of Serbia established in 1835 guaranteed freedom of worship to all religions.[3] From the middle of the 19th century, Serbia protected freedom of religion for

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2 | Petrović, 1827, p. 428.
3 | The Constitution of the Principality of Serbia, 1835, Art. 97.

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https://doi.org/10.55073/2021.2.19-32

members of Christian non-Orthodox confessions.[4] The 1860 Criminal Code criminalized offences directed against all religions. 'Manners and rites of worshiping God' and 'all the things dedicated to God's service' enjoyed special criminal justice protection.[5] Several constitutional projects were initiated during the drafting of the new constitution under Prince Mihailo. Of these, the 1868 Constitutional Project provided Serbia's first protection of freedom of conscience.[6] However, this provision was not included in the final text of the Constitution, which was adopted in 1869. The 1888 Constitution contained a rather advanced solution in this area, decreeing that 'Freedom of conscience is unlimited'.[7] All subsequent Serbian constitutions have contained identical provisions. Although the constitution guaranteed the freedom to perform religious rites, it lacked detailed provisions on the right to profess religious beliefs.

The situation changed after the formation of the Kingdom of Serbs, Croats, and Slovenes. The new state was ethnically and religiously heterogeneous. The 1921 Constitution guaranteed freedom of conscience and religion, as well as the right to the public confession of religion, which was limited to members of adopted religions.[8] The 1931 Constitution contained the same provisions.[9] The public expression of religious belief was regulated by a special law on inter-confessional relations.

The draft of the 1925 Basic Law on Religions and Interreligious Relations contains several regulations that protect the public expression of religious belief.[10] These include Arts. 34 and 36, which prohibited the performance of activities that interfere with liturgical services or ceremonial processions and stipulated that no religious community (either recognised or not) could be forced to stop 'bell ringing, playing or singing' in situations when the regulations of other religions would ban it. The authors of this legal project strove to regulate inter-religious relations in an ethnically and religiously heterogeneous state in a way that was advanced for the time. Unfortunately, none of their projects were given legislative power.

The protection of freedom of religion and state–Church relations changed significantly after the Second World War. The new ideology sought to eliminate all religious organisations and religion in general from public spaces and to confine them to the private sphere. The 1946 Constitution of the Federal People's Republic of Yugoslavia officially implemented a system of separation of church (i.e. religious communities) and state.[11] Freedom of conscience and religion was formally guaranteed, but not the freedom of public expression of religious beliefs (Article 25 of the Constitution). The later Yugoslav constitutions also seek to confine religion to the private sphere. Article 46 of the 1963 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) stipulates that religion may be freely practiced and that it represents a 'private matter of person'.[12] Article 174 of the 1974 Constitution of the

4 | The Collection of Laws and Regulations and Regulatory Decrees Promulgated in the Principality of Serbia from the Beginning until the End of 1853, pp. 78-79.
5 | The Criminal Code for the Principality of Serbia, Art. 207.
6 | Pržić, 1925, p. 212.
7 | The Constitution of the Kingdom of Serbia, 1888, Art. 18.
8 | The adopted religions in accordance with this Constitution were those which, on the basis of the regulations of previous states, gained legal recognition in any part of the state territory. The Constitution of the Kingdom of Serbs, Croats and Slovenes, Art. 12.
9 | The Constitution of the Kingdom of Yugoslavia, Art. 11.
10 | The Draft Basic Law on Religions and Interreligious Relations, Arts. 33-34.
11 | The Constitution of the Federal People's Republic of Yugoslavia, Art. 25.
12 | The Constitution of the Socialist Federative Republic of Yugoslavia (1963), Art. 46.

SFRY contains the same provisions.[13] During communist rule in Yugoslavia, there was a clear tendency to confine freedom of religion exclusively to the private sphere.

In the Kingdom of Yugoslavia, regulations governing the positions of religious organisations were prepared from 1918 to 1941; ironically, the first one came into force during communist rule. The Special Law Regulating the Position of All Religious Communities was passed in 1953.[14] Unfortunately, the 1946–1953 period was characterised by the open persecution of clergy, discrimination against believers, and militant atheist propaganda. The 1953 Law formally prohibited such actions, but the reality for churches and religious communities changed very slowly. The law stipulated that citizens could not be prevented from participating 'in religious rites and other expressions of religious feelings'. However, the performance of religious rites was limited to areas designated by religious communities, and the practice of rituals outside those areas required a permit from competent authorities (Article 13). This law was amended in 1965 due to its coordination with the 1963 Constitution of the Socialist Federative Republic of Yugoslavia.[15] The amendments mainly prescribed sanctions for violating the provisions of that law and specifying the character and elements of illegal acts.

After the constitution was changed in 1974, the regulation on the legal position of religious communities was transferred to the jurisdiction of the federal republics. The Law on the Legal Status of Religious Organisations for the Territory of the Socialist Republic of Serbia was passed at the end of 1977.[16] It guaranteed freedom to religious communities, while citizens were guaranteed the freedom to participate in religious rites and other forms of expression of religious belief. The legal performance of religious rites in accordance with Article 13 was confined to premises designated by religious organisations for that purpose, as well as to public spaces connected to religious buildings. Religious organisations were obliged to report such premises to competent municipal administrative bodies and submit evidence of fulfilment of the legally prescribed conditions for their use as public premises. Any performance of religious rites outside such premises was to be reported to the competent administrative body, except for rites concerning family celebrations, baptisms, and funerals (Article 14). The 1977 law on the Legal Status of Religious Communities further restricted freedom of expression of religious belief. It was intended to limit religiosity to the private sphere as well as to premises belonging to religious organisations and intended exclusively for religious activities.

2. Restrictions on freedom of religion

The 2006 Constitution of the Republic of Serbia stipulates that any restriction on freedom of religion must be prescribed by law, as is necessary in a democratic society, and must strive to achieve one of the legitimate aims mentioned in the Constitution.[17] In this respect, the Serbian Constitution does not deviate from international regulations governing restrictions on basic human rights. Moreover, the Constitutional Court of

13 | The Constitution of the Socialist Federal Republic of Yugoslavia (1974), Art. 174.
14 | Law on the Legal Status of Religious Communities (1953).
15 | Law on the Legal Status Of Religious Communities Amendments.
16 | Law on the Legal Status of Religious Communities (1977).
17 | Constitution of the Republic of Serbia, Art. 43.

the Republic of Serbia applies the methodology of the European Court of Human Rights when considering whether a right has been violated; thus, the rules restricting religious freedom in Serbian law are the same as those in European human rights law.

Criteria for restrictions on freedom of religion must be established by law in order to prevent arbitrariness in state bodies' assessment of their legitimacy.[18] Accessibility and foreseeability are the two conditions that a general legal act must meet in order to establish limitations on freedom.[19] This means that the limitation must be publicly available, published in the official gazette, and prescribe precise binding rules, as well as the consequences of their violation. This preserves the principle of legal certainty.

In a democratic society, the principle of 'necessity' implies that interference in a right is a 'pressing social need', that it is 'proportionate to the legitimate aim pursued', and that there is 'no other means of achieving the same end that would interfere less seriously with the fundamental right concerned'.[20] According to the European Court, a democratic society has two characteristics: pluralism, tolerance, and broadmindedness;[21] and the rule of law.[22] The European Court has developed the 'margin of appreciation' doctrine[23] in view of the inevitable differences between supranational human rights law and specific national legal orders.[24] Under this doctrine, state bodies have a certain degree of discretion,[25] subject to the supervision of the European Court: 'Such supervision concerns both the aim of the measure challenged and its 'necessity'; it covers not only the basic legislation but also the decision applying it, even one given by an independent court'.[26] The margin of appreciation narrowed after the former communist states acceded to the Council of Europe,[27] although it still provides significant elbow room that has helped the state fulfil the obligation of neutrality and impartiality in religious issues.[28] In any case,

18 | The case law of the ECHR shows that the establishment of discretionary powers does not have to violate this rule if 'the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference'; Case of Refah Partisi (the Welfare Party) and others v. Turkey, Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, 57.

19 | 'In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable'; Case of the Sunday Times v. The United Kingdom, Application no. 6538/74, 49.

20 | Case of Wingrove v. The United Kingdom, Application no. 17419/90, 53. Case of Glor v. Switzerland, Application no. 13444/04, 95, Case of Association Rhino and Others v. Switzerland, Application no. 48848/07, 65, Case of Biblical Centre of the Chuvash Republic v. Russia, Application no. 33203/08, 58.

21 | To, 49.

22 | Case of the Sunday Times v. The United Kingdom, Application no. 6538/74, 8.

23 | Torron, 2005, p. 599.

24 | 'By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the "necessity" of a "restriction" or "penalty" intended to meet them'; Case of Handyside v. The United Kingdom, Application no. 5493/72, 48.

25 | Harris, OBoyle, Wabrick, 2011, p. 11.

26 | Case of Handyside v. The United Kingdom, Application no. 5493/72, 49.

27 | Torron, 2005, pp. 601-602.

28 | Marković, 2019, p. 323.

the right of state bodies to decide on the rights guaranteed by the European Convention is not unlimited and is subject to review by the European Court.

As mentioned, the legitimate aims for which the right to freedom of religion may be restricted, as stated in Serbia's constitution, do not differ significantly from the legitimate aims contained in Article 9, para. 2 of the European Convention. It is not difficult for most respondent states to prove the existence of a legitimate aim, and the European Court generally accepts that any interference with rights protected by the Convention has a legitimate aim.[29] Thus, each legitimate aim need not be addressed in detail.

It has been argued that the wording 'public morality' used by the European Convention is more appropriate than the constitutional formulation 'morality of a democratic society'.[30] However, the European Court stated very early on that

> ...it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterized by a rapid and far-reaching evolution of opinions on the subject.[31]

The Serbian constitution includes the prevention of incitement to religious, national, and racial hatred among the legitimate reasons to restrict the freedom of expression of religion or belief. A similar regulation is contained in the International Covenant on Civil and Political Rights.[32] The constitutional provision guaranteeing the right of parents to provide their children with religious education in accordance with their beliefs was taken over from the same Covenant.[33] This indicates that the Serbian constitution has accepted various international regulations concerning the protection of freedom of religion in order to regulate it as comprehensively as possible. The registration requirements stipulated by Serbia's Law for Confessional Communities constitute a restriction on the right to religious freedom, particularly its communal aspect. Below, this study examines whether these restrictions violate the Serbian Constitution and the European Convention on Human Rights.

3. The 2006 Law on Churches and Religious Communities

The drafting of Serbian legislation on the legal status of churches and religious communities began after the political changes that occurred in 2000. Finally, a new political system was established, and the principles of the market economy; rule of law; and the protection of political, civil, and human rights and freedoms were acknowledged. In

29 | Murdoch, 2012, p. 35.
30 | Đurđević, 2008, p. 215.
31 | Case of Handyside v. The United Kingdom, Application no. 5493/72, 48.
32 | International Covenant on Civil and Political Rights, 16 December 1966, art. 18: 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'.
33 | Constitution of the Republic of Serbia, Art. 43. International Covenant on Civil and Political Rights, 16 December 1966, art. 18: 'The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.

these new circumstances, churches and religious communities became significant social factors. In fact, a partnership was established between the state and traditional churches and religious communities. This relationship was given an appropriate legal form. A new law on religious freedom was drafted in 2001 to fill the gap created in 1993 and to correct the rift in the relations between the state and religious organisations that occurred after the Second World War.[34]

Amid Serbia's democratisation, its society changed ideologically and culturally, following the example of modern European democracies. The most significant change is the remarkable social expansion of traditional churches and religious communities.[35] In Serbia's 2002 census, only 0.53% of the population declared themselves atheists. In addition, the vast majority of those who professed to be believers belonged to one of Serbia's seven traditional churches and religious communities.[36] In the 2011 census, over 99% of those who declared themselves believers also expressed an affiliation with traditional churches and religious communities.[37] Another important characteristic of the religious landscape of the Republic of Serbia is the connection between ethnic and religious affiliation.[38] The extent of this intertwining of religious and ethnic identity is seen in the names of churches that contain an ethnic determinant (e.g. the 'Serbian Orthodox Church', the 'Slovak Evangelical Church'). Although religious affiliation may be a factor in ethnic identity, it cannot be identified.[39] In any case, this connection between ethnic and religious identity is an aggravating factor affecting the drafting of legislation on the legal status of churches and religious communities.

The 1953 Law on the Legal Status of Religious Communities does not require the registration of religious organisations, although their legal personality under civil law has been recognised.[40] The 1977 Law on the Legal Status of Religious Communities was valid only in the Socialist Republic of Serbia. This law required citizens who established a religious organisation to report it to the municipal body in charge of internal affairs.[41] During the period when both laws were in force, there were no special conditions that religious communities had to meet in order to be registered, nor were there any procedures which needed to be carried out by state bodies. Some authors have therefore concluded that the application had a recording character instead of a constitutive one,[42] and that it was only a declaration of existence.[43] In accordance with this interpretation, religious communities have acquired legal personality through their very establishment.[44] Without entering into a theoretical discussion about the nature of the application that the founders of religious communities were obliged to submit before the locally competent police authority, the fact remains that such applications served as proof of possession of legal personality. The 1977 Law on the Legal Status of Religious Communities ceased to be valid pursuant to the

34 | Avramović, 2007, p. 15.
35 | Radulović, 2014, p. 94.
36 | *Population: census, households and dwellings in 2002: Religion, mother tongue and nationality or ethnicity by age and gender: data by municipalities*, 2003, p. 12.
37 | *Religion, mother tongue and ethnicity, Data by municipalities and cities*, 2013, p. 38.
38 | Radulović, 2014, p. 95.
39 | Radulović, 2014, p. 96; Đurić, 2014, p. 62.
40 | Law on legal status of religious communities, Art. 8.
41 | Law on legal status of religious communities, Art. 7.
42 | Đurđević, 2008, p. 185.
43 | Božić, 2019, p. 52.
44 | Đurđević, 2008, p. 185.

provisions of the 1993 Law on the Repeal of Certain Laws and Other Regulations.[45] Between 1993 and 2006, there were no regulations governing the registration and legal status of churches and religious communities. Their legal personality was not disputed, although it was not regulated. New religious organisations could opt to register and acquire the status of a legal entity in accordance with the regulations on citizens' associations.[46]

4. Classification of religious organizations

The 2006 Law on Churches and Religious Communities regulates the legal position of religious organisations in the Republic of Serbia and the procedures and conditions by which they are recognised (i.e. registered), while their freedom of action is guaranteed. Serbian legislators have implemented one of the variations of the multi-tier system, by dividing all religious organisations into three distinct categories: traditional churches and religious communities, confessional communities, and 'other religious organizations'.[47] This division was controversial and was one of the main reasons why the constitutionality of the Law on Churches and Religious was challenged. Several key factors need to be discussed before such a *prima facie* discriminatory differentiation between religious organisations, contrary to constitutional and international rules asserting their equality, can be rejected. The first is the question of the freedom of unregistered religious organisations to act; the second concerns the criteria and legal principles on which the division between religious organisations is based; and the third concerns the objective circumstances of the system applied in socialist Yugoslavia.

Regarding unregistered religious organisations, it should first be pointed out that their existence and activities are not prohibited by the Law on Churches and Religious Communities. The intention of the law was to enable as many religious organisations as possible to be registered under the Register of Churches and Religious Communities, but no legal obligation to register was introduced. Freedom of religion is not subject to any restrictions for anyone, regardless of the legal status of their organisation. However, as in other European countries,[48] unregistered religious organisations face difficulties in exercising certain rights. Since such organisations cannot be identified in legal transactions, they cannot own their own property or bank accounts, and may be a party to court proceedings only in exceptional cases.[49] Regarding the rights and obligations of religious organisations that are not registered, Serbian legislation is fully harmonised with international standards, which do not allow the prohibition or sanctioning of the activities of unregistered religious entities.[50] This is supported by the Rules on the Contents and Manner of Keeping the Register of Churches and Religious Communities, which stipulates that a religious organisation that does not want to undergo registration can still enjoy the religious freedoms guaranteed under the Constitution of the Republic of

45 | Law on the Repeal of Certain Laws and Other Regulations, Art. 1.
46 | Avramović, 2007, 14.
47 | Law on Churches and Religious Communities, Art. 4.
48 | Guidelines on the Legal Personality of Religious or Belief Communities, p. 24.
49 | Đurđević, 2008, p. 184.
50 | Đurđević, 2008, p. 13.

Serbia and international conventions on human rights.[51] Thus, a religious organisation may independently decide whether to submit a request for entry into the Register; the decision not to register produces certain consequences, which are known in advance.

Churches and religious communities categorised as 'traditional' receive the most favourable legal treatment in the Republic of Serbia.[52] These churches and religious communities meet two conditions: First, they enjoy centuries-old historical continuity; second, they acquired legal personality on the basis of special laws.[53] A wide range of evidence can be used to demonstrate the centuries-old historical continuity of traditional churches and religious communities, including regulations concerning their activities.[54] Their legal position was regulated by special laws in the period before World War II. Five churches and two religious communities are listed under the Law on Churches and Religious Communities, together with legal acts on the basis of which they acquired legal personality.[55] The circle of traditional churches and religious communities is closed because it is not possible for religious organisations currently outside it to meet both criteria and join it. Thus, the distinction between traditional and other religious organisations is based on objective criteria, which prevents state bodies from arbitrarily deciding on whom should receive the most favourable status provided by the legal system.[56] These criteria are derived from one general legal principle. During communist rule, traditional churches and religious communities were violently and illegally deprived of the numerous rights that they had acquired on the basis of previous laws. Just as legislators were obliged to order the return of forcibly and unlawfully confiscated property following the end of World War II,[57] there is also an obligation to regulate the restitution of rights and privileges that have been unlawfully taken away. The recognition of their legal personality *ex lege* represents a kind of *restitutio in the integrum*.[58]

When the Law on Churches and Religious Communities was adopted, some religious organisations acquired legal personalities on the basis of the liberal regulations created after 1953, in addition to the religious organisations that had acquired legal personalities before World War II. These religious organisations were legally declared 'confessional communities'.[59] Their legal personality is not recognised *ex lege*; however, the law required that they be registered under the new conditions if they wanted to retain it.[60] A particularly sensitive issue arising from such a legal solution is that of the continuity of legal personality. If continuity is interrupted, the confessional community could lose its acquired rights.

The Law on Churches and Religious Communities does not stipulate that the legal personality of confessional communities acquired in accordance with Yugoslav legislation

51 | Rules on the Content and Manner of Keeping of the Register of Churches and Religious Communities, Art. 7.
52 | Serbia implemented one variation of the multi-tiered registration systems; Coleman, 2020, p. 125.
53 | Law on Churches and Religious Communities, Art. 10.
54 | Collection of Laws, Decrees and Orders of the Ministry of Education and Religious Affairs, pp. 67-69, 116-118.
55 | Law on Churches and Religious Communities, Arts. 11-16.
56 | Guidelines on the Legal Personality of Religious or Belief Communities, p. 11.
57 | Law on Restitution of Property to Churches and Religious Communities.
58 | Avramović, 2011, p. 289
59 | Law on Churches and Religious Communities, Art. 16.
60 | Đurđević, 2008, p. 187.

will be recognised following their registration. This issue is regulated by the Rules on the Content and Manner of Keeping the Register of Churches and Religious Communities. These Rules stipulate that 'the date of first application [submitted by the religious community] shall be entered into both the Register and the decision on the registration of a religious organization according to previously valid laws and regulations'.[61] This means that the date on which an application by a religious organisation is submitted in accordance with Yugoslav legislation is taken as the date of establishment from which the continuity of legal personality runs, rather than the date of its entry into the Register in accordance with the applicable Serbian legislation. This guarantees that the continuity of legal personality will not be interrupted, and that the confessional communities that do undergo registration will not lose their acquired rights.

Since confessional communities and traditional churches and religious communities possessed the same legal personality when the new law was adopted, it can be argued that confessional communities have been subjected to discrimination due to the differences in their legal treatment.[62] All churches and religious communities are equal under the Constitution of the Republic of Serbia.[63] However, their equality does not mean that they are identical.[64] There are objective differences between traditional and confessional churches and religious communities; this leads to differences in legal treatment, which do not constitute discrimination. Equality implies different treatment for different groups.[65] Discrimination can coexist with equal treatment among groups. This attitude is best expressed by Pliny's legal proverb *Nihil est tam inaequale, quam aequitas ipsa*.[66] Most European countries recognise several different categories of religious organisation, which have different rights and privileges.

Objective circumstances also arise from the system of registration applied in the former Yugoslavia, which imposed different legal treatments across confessional communities. Yugoslav legislation lacked any notion of a central register of religious communities. The intention to introduce such a central register was the main reason why a special category of confessional community was established. Once a central register is created, entry into it is conducted under certain conditions (i.e. only when certain facts entered into the register are known to the competent authority). Confessional communities applied to local police authorities throughout the former Yugoslavia, but no central records on their applications were kept. The state authorities of the Republic of Serbia have no information on or records of these applications. In fact, state bodies are not able to determine which religious organisations actually belong to confessional communities. Registering them in the Register of Churches and Religious Communities requires that they submit the data about them that the state does not possess.[67] By contrast, data on traditional churches and religious communities are available to state authorities. This is the main legal difference between the confessional and traditional churches and religious communities, and forms the basis of the differences in the registration procedures used for them.

61 | Rules on the Content and Manner of Keeping of the Register of Churches and Religious Communities, Art. 7.
62 | IUz- 455/2011.
63 | Constitution of the Republic of Serbia, Art. 44.
64 | Avramović, 2011, p. 286.
65 | Religionsgemeinschaft der Zeugen Jehovans and others v. Austria, Application no. 40825/98.
66 | Avramović, 2015, p. 636.
67 | IUz- 455/2011.

5. Conclusions

Most Central European states have enacted new legislation pertaining to the legal status of churches and religious communities. These legislative improvements were necessary in order to replace the anachronistic, outdated, and (in some fields) hyper-liberal laws inherited from former communist regimes. Several significant obstacles and legal challenges remain that make the enactment of new legislation difficult.

One of them involves the de-registration and re-registration of religious organisations recognised by the state on the basis of the liberal provisions of outdated laws. The Act on Churches and Religious Communities of the Republic of Serbia (2006) introduces three categories of religious organisation: 'traditional churches and religious communities', 'confessional communities', and 'other religious organisations'. Confessional communities comprise those churches and religious communities whose legal position was regulated according to the laws of Yugoslavia and the Socialist Republic of Serbia. Confessional communities obtain 'legal person' status by being entered into the register, under the same conditions that apply to new religious organisations; by contrast, traditional churches and religious communities are registered *ex officio*, and the state recognises the continuity of their legal status. The basis of this differentiation is the mere fact that state authorities do not possess the information necessary for their registration.

Distinguishing between different categories of religious organisation is a controversial issue concerning the protection of the freedom of religion. In principle, their distinction does not have to be contrary to international standards for the protection of freedom of conscience and religion. Religious organisations are equal, but equality does not imply identical legal positions, or rights and privileges. Religious communities should have identical rights to the extent to which the communities are identical. If there is a legal difference between them, identification in terms of rights would constitute discrimination. On the other hand, distinguishing between religious organisations that are equal must not present grounds for discrimination against certain categories of religious organisation. Any distinction should be based on objective criteria derived from general legal principles. Judicial review of the justification of such decisions must apply the proportionality test used by the European Court of Human Rights in its case law.

The Serbian Law on Churches and Religious Communities bases the distinction between traditional and confessional religious organisations on their objective legal differences. On the one hand, the state possesses all the information on traditional churches and religious communities necessary for their entry into the Register; on the other hand, it lacks the information required for confessional communities, since some of them were registered outside the state's current borders. It is important to emphasise that the bylaw stipulates that the legal personality of (re)registered confessional communities shall be recognised from the moment an application is submitted in accordance with the previous legislation. In this way, the continuity of the legal personality, legal security, and exercise of the acquired rights of all confessional communities are guaranteed.

This study analyses one of the variations in multi-tier systems, whereby religious groups can belong to different categories of legal entity in stratified systems of church–state relations. Since these systems exist in a number of European countries, it would be desirable to analyse the positive practices that have emerged from them. Positive examples could be used to improve church–state relations and multi-tier systems throughout Europe.

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