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SPECIFIC TREATMENT OF TRADITIONAL CHURCHES AND RELIGIOUS COMMUNITIES PROVIDED FOR IN THE ACT ON CHURCHES AND RELIGIOUS COMMUNITIES OF THE REPUBLIC OF SERBIA*

Legal comparison shows that European states provide for a variety of status of religious communities in their legal systems. Such differences, based in valid reasons, are consistent with international law. States use more specified terminology in ordinary law than is used in their respective constitutions in concretizing the perspectives set by their constitutions; this is not discriminatory and is consistent with international law. Differences between traditional churches and religious communities and other religious organizations in information required for registration are based in valid reasons; these differences are not discriminatory and are consistent with international law. Such differences are in accordance with the principle of a secular state.

The Traditional Churches and Religious Communities of Serbia have asked me to provide my opinion on the following issues:

1) Is the legal distinction between Traditional Churches and Religious Communities, on the one, and other Churches and Religious Com-

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munities in the Republic of Serbia on the other hand, in itself, and in substance of the Law on Churches and Religious Communities which determines the legal status of Churches and Religious Communities in Serbia, in accordance with the Constitution of the Republic of Serbia and international and European standards, and particularly is it in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms?

2) Is the distinction, in the issue of registration of Churches and Religious Communities prescribed by Article 18 of the Law, between Traditional Churches and Religious Communities, on the one hand, and other Churches and Religious Communities, on the other hand, discriminatory in substance of the Constitution of the Republic of Serbia and international and European standards, and particularly from the perspective of the European Convention on the Protection of Human Rights and Fundamental Freedoms?

This opinion is based primarily on the European Convention on the Protection of Human Rights and Fundamental Freedoms and on legal comparison; from this viewpoint and with the perspective of a non-Serbian lawyer, the issues raised in relation to the compliance with the Serbian constitution are looked into.

1. THE LAW

1.1. The most relevant provisions of the Act on Churches and Religious Communities of the Republic of Serbia

Holders of religious freedom

Article 4

Holders of religious freedom according to this Act are traditional Churches and religious communities, confessional communities and other religious organizations (hereinafter: Churches and religious communities).

Legal personality of Churches and religious communities

Article 9

Churches and religious communities registered in accordance with this Act have the capacity of a legal person.

Organizational units, bodies and institutions of a Churches or religious communities may acquire the capacity of a legal person in accordance with autonomous regulations of the pertinent Church or religious community, and based upon a decision of the competent authority of the pertinent Church or religious community.

Churches and religious communities may alter or terminate their organizational units, bodies and institutions with the capacity of a legal

person by their internal decisions, and demand that they be erased from the Register.

Churches and religious communities, as well as their organizational units and institutions possessing the capacity of a legal person, shall use in public exclusively the official name under which they are registered.

Traditional Churches and religious communities

Article 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.

The Serbian Orthodox Church

Article 11

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 Act 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 civilizational role in forming, preserving and developing the identity of the Serbian nation.

The Roman Catholic Church

Article 12

The continuity of legal personality acquired by virtue of the Act on the Concordat between the Kingdom of Serbia and the Holy See (Decision of the National Assembly of the Kingdom of Serbia of July 26, 1914, "The Serbian Gazette", No.199/1914) is recognized to the Roman Catholic Church.

The Slovak Evangelical Church (a.c.), the Reformed Christian Church, the Evangelical Christian Church (a.c.)

Article 13

The continuity of legal personality acquired by virtue of the Act 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.).

The Jewish Community

Article 14

The continuity of legal personality acquired by virtue of the Act 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.

The Islamic Community

Article 15

The continuity of legal personality acquired by virtue of the Act 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.

Confessional communities

Article 16

Confessional communities are all those Churches and religious communities whose legal position was regulated on the grounds of notification in accordance with the Act on Legal Position of Religious Communities ("The Official Gazette of the Federal National Republic of Yugoslavia", No. 22/1953) and with the Act on Legal Position of Religious Communities ("The Official Gazette of the Socialist Republic of Serbia", No. 44/1977).

Procedure of registration of religious organizations

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;

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 Act, for the entry into the Register need to file an application with the Ministry, containing the following:

1) decision by which the religious organization has been established, with names, surnames, identification document numbers and signatures of founders 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) statute or another document of religious organization containing: description of 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 the religious teaching, religious ceremonies, religious goals and main activities of the religious organization;

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

1.2. The most relevant provisions of the Constitution of the Republic of Serbia of 2006

Article 1

Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.

Article 11

The Republic of Serbia is a secular state.

Churches and religious communities shall be separated from the state.

No religion may be established as state or mandatory religion.

Article 21

All are equal before the Constitution and law.

Everyone shall have the right to equal legal protection, without discrimination.

All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited.

Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

Article 43

Freedom of thought, conscience, beliefs and religion shall be guaranteed, as well as the right to stand by one's belief or religion or change them by choice.

No person shall have the obligation to declare his religious or other beliefs.

Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public.

Freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and

health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.

Parents and legal guardians shall have the right to ensure religious and moral education of their children in conformity with their own convictions.

Article 44

Churches and religious communities are equal and separated from the state.

Churches and religious communities shall be equal and free to organize independently their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law.

Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

1.3. The European Convention on Human Rights and Fundamental Freedoms

Freedom of thought, conscience and religion

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Prohibition of discrimination

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. EVALUATION

2.1. Legal comparison

Many, if not most, European states provide for more than just one status for religious organizations. They do so in view of the impact of religious communities in terms of tradition, identity of the country, historical role of religions, religious demography, and the needs and wishes of religious communities themselves. This is independent from differences in basic structures such as systems with a state church, separation of state and religious communities or closer cooperation between the two spheres

The systems of England, Denmark, Norway and Finland that have state churches attribute a special status to this state church. The European Court of Human Rights has upheld the system of state churches with special positions of individual churches and declared them consistent with the European Convention of Human Rights. Also separation systems and those promoting cooperation between state and religions provide for differentiation in status of religious communities or their respective legal persons. The most prominent example is France which therefore is examined in more detail below.

(1) In France, being the prototype of separation in Europe, the 1905 law of separation proclaims separation of state and church and prohibits any funding of religious communities; these basic principles have the status of constitutional law.[2] The 1958 French constitution defines the country as a 'république laique'.[3]

The French idea of separation has for long developed into positive accommodation of religious needs.[4] In France, laïcité as a legal principle, today, means neutrality and tolerance, that the state does not make any difference between individual religious beliefs and does not intervene into religious institutions.[5]

[2] Loi de la séparation of 09.12.1905; see Brigitte Basdevant Gaudemet, "State and Church in France", in: Gerhard Robbers (ed.), *State and Church in the European Union*, Nomos, Baden Baden, 2005[2], p. 157 et seq.; Maurice Barbier, *La laïcité*, Paris 1995; Jean Paul Durand, "Droit public ecclésiastique et droit civil ecclésiastique fran çais", in: Patrick Valdrini et alt., *Droit canonique*, Paris 1999[2], p. 427 et seq.

[3] See Article 1 Sentence. 2 Constitution1958; Preamble Constitution 1946; Arti cle 10 Declaration of Human and Citizens' Rights of 1789; for the norms see Bernard Jeuffroy, François Tricard (ed.), *Liberté religieuse et régime des cultes en droit français. Textes, pratique administrative, jurisprudence*, Paris 1996; Jean Boussinesq, *La laïcité française*, Paris 1994.

[4] See Jean Morange, "Le droit et la laïcité", *Revue d'éthique et de théologie mo rale*, le Supplément, 1988, No 164, p. 53 et seq.; Jean Rivero, *La notion de laïcité*, D. 1949, chr., op. 137 et seq.

[5] A. Boyer, *Le droit des religions en France*, Paris 1993, p. 105 f.

The French law provides a variety of different forms of associations by which religious communities can have access to legal entity status according to their specific religious needs[6] and by which tax privileges and public funding become possible.[7] The legal status of religious buildings marginalizes the prohibition of state funding of religious communities:[8] The state is the owner of all religious buildings of the Roman Catholic Church that were constructed before 1905,[9] it is responsible for their maintenance[10] and makes them available for use by the Roman Catholic Church free of charge;[11] the local parish priest receives a (small) remuneration by the state for looking after the building.[12]

The state must not directly fund the construction of new religious buildings; however, the state can guarantee for loans by religious communities and demise plots of land at a symbolic interest rate for the construction of religious buildings.[13]

Large amounts of state subsidies support cultural activities of religious communities and pay for community rooms attached to the cult rooms, based on a dictintion between cult and culture. This laicist reduction of the religious to the ritual has made possible far reaching funding, not only of the Roman Catholic Cathedrale of Evry, but – foremost – of the mosque of Paris as early as 1921, and more recently the mosque of

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[6] See Loi de la séparation of 09.12.1905 with additions by the laws of 02.01.1907, 13.04.1908, and 31.12.1913; see Brigitte Basdevant Gaudemet, "A propos des associa tions cultuelles. Etapes d'une législation", in: *L'année canonique* 33, 1990, p. 101 et seq.; Jean Gueydan, "Les religions face au droit d'association français", in: *Praxis juridique et religion* 1987, p. 117 et seq.; Brigitte Basdevant Gaudemet, Francis Messner, "Statut juri dique des minorités religieuses en France", in: *European Consortium for Church State Research* (ed.), *The Legal Status of Religious Minorities in the Countries of the European Union*, Milan 1994, p. 115 et seq.; A. Boyer, p. 143.

[7] See A. Boyer, p. 104.

[8] See M. Flores Lonjou, F. Messner (eds.), *Les lieux de culte en France et en Europe Statuts, pratiques, fonctions*. Peeters, Leuven 2007; Magalie Lonjou, "Les lieux des cultes", in: *Actes, les cahiers d'action juridique*, Nr. 79/80, "Les religions en face du droit", April 1992, p. 25 et seq.

[9] Circulaire du ministre de l'Intérieur, 13.08.1959, Nr. 388.

[10] Article 5 Law of 13.04.1908 and Law of 25.12.1942; CE 22.01.1937, *Ville de Condé Sur Noireau*; CE 26.10.1945, *Chanoine Vaucanu*, Lebon, p. 212.

[11] Article 5, 1 Law of 20.01.1907; Article L 131 2.2° Code des communes; Arti cle 26 Law of 1905.

[12] On the remuneration paid to guardians of church buildings see Circulaire of 07.02.1990.

[13] Law of 25.12.1992; Réponse ministère de l'Intérieur, JO, Débats Assemblée nationale, 18.04.1988, p. 1674; Article 11 Law of 29.07.1961; Rapport Marchand (Rap port d'information déposé en application de l'article 145 du règlement sur l'intégration des immigrés), Assemblée nationale, No 1348, 2e session ordinaire, 1989/90, p. 77.

Rennes.[14] This dynamic limitation of the prohibition of funding religion is based in an understanding of the positive, providing nature of human rights, also of freedom of religion or belief. It serves to compensate for a factual inequality of religions that have only recently come into the country and thus have had no worshipping places in 1905. It is an expression of a new, compensating laïcité that promotes public peace, regulates religion, and aims at integration.[15]

There is a lot of variety within the dominant laicist system in France. Local law that still is based in the 1801 Napoleonic concordat governs the status of religions in the three eastern departments of Alsace-Lorraine.[16] The Catholic, Protestant and Jewish communitites have the status of public law corporations, organized by acts of state; their clergy is directly paid by the state, and the crucifix is exhibited in school rooms and other public buildings.[17]

These general observations lead to more specific details of differentiation in organizational status provided for religious communities. These differentiations follow historical developments and special needs of individual religious organizations, often based in their specific theology and teaching.:

Despite the principle of non recognition of churches, religious groups are subject in French law to some special rules.[18]

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[14] On the support of church hospitals, care for the elderly, youth care, church schools, and universities see A. Boyer, p. 131, 158.

[15] Jean François Flauss, "Le principe de laïcité en droit français. Evolutions récen tes", *Le quotidien juridique*, 20.12.1990, No 150, p. 10; Rapport Marchand (Rapport d'in formation déposé en application de l'article 145 du règlement sur l'intégration des immi grés), Assemblée nationale, No 1348, 2e session ordinaire, 1989/90, p. 77, p. 78.

[16] A. Boyer, p. 131, p. 197; see also Francis Messner, "Le droit local des cultes alsacien mosellan en 1996", in: *European Journal for Church and State Research* 1997, p. 61 et seq.; Francis Messner, "Les associations cultuelles en Alsace Moselle", in: *Praxis juridique et religion* 1988, p. 60 et seq.; the provisions of the Napoleonic concordat have to be seen together with the Organic Articles unilaterally introduced by Napoleon about the Catholic and Protestant churches of 1802 and the provisions concerning the Jewish cult communities, in substance the French laws on religion in force before 1871, in addi tion to that numerous German modifications from the time when Alsace Lorraine be longed to the German Reich of 1870/71. On the development of the concordat see Bri gitte Basdevant Gaudemet, *Le jeu concordataire dans la France du XIXe siècle*, Paris 1988; Jean Julg, *L'Eglise et les Etats Histoire des concordats*, Paris 1990, p. 81 et seq., 133 et seq.

[17] Imperial Decree of 22.04.1902 in conjunction with Decree of 26.11.1919; *A. Boyer,* Le droit des religions en France, Paris 1993, p. 192.

[18] For the following see Brigitte Basdevant Gaudemet, "State and Church in France", in: Gerhard Robbers (ed.), p. 162 et seq.

a) *Religious Associations (associations cultuelles)*. Article 4 of the Law of 1905 provides for the formation of associations cultuelles, capable of receiving the property of the former public church establishments suppressed in 1905. The relevant associations are subject to the Law of 1 July 1901, which governs all associations, and must comply with some additional rules set out in the Law of 1905: article 19 requires them to be "exclusively for the pur-pose of the church". These associations cultuelles have benefited progressively from advantages under tax law, which means that the status is now sought after. Since 1905, Protestants and Jews have made use of the law and established associations cultuelles, which remain active today, in accordance with all the provisions of the Law of 1905.

b) *Diocesan Associations (associations diocésaines)*. The Roman Catholic Church refused to put the Law of 1905 to use. To fill the legal void, the Law of 2 January 1907 provided that the public exercise of religion could be advanced by associations conforming simply to the Law of 1901, or by meetings, called on an individual initiative, under the Law of 1881 on the freedom of public assembly.

Since 1924 the French bishops have put into place associations diocésaines which are associations cultuelles, complying with the Laws of 1901 and 1905, even if meeting the expenses of the Church is no longer mentioned as the "exclusive" object of the association. The rules of Canon Law are also followed, the associations acting "under the authority of the bishop, in communion with the Holy See and in conformity with the constitution of the Catholic Church" (article 2 of the model statutes).

This development had repercussions on the legal status of the Catholic religion, as the new bodies had as their purposes the organisation of the exercise of the religion and the management of the property used for that purpose. So, in the matter of the ownership of church buildings, following the Law of 1905 the buildings of the Protestant churches and of the Jews were vested in the relevant associations cultuelles. The Laws of 2 January 1907 and of 3 April 1908, on the other hand, transferred the ownership of existing Catholic church buildings, and responsibility for their repair, to the State (cathedrals and bishops' houses to the state; parish churches and presbyteries to the communes). By contrast, after 1924 it fell to the associations diocésaines to decide upon and to finance the construction of new places of worship, and as owner to ensure their good repair.

These vicissitudes of history explain the coexistence of associations cultuelles under the Law of 1905, associations for the purposes of a church under the terms of the Law of 1907 and which conform to the requirements of the Law of 1901, and also associations diocésaines, complying with the Laws of 1901 and 1905 but also meeting additional crite-

ria. In addition, the freedom of association provided under the Law of 1901 has allowed the development of a multitude of associations, notably for charitable and educational purposes, which work in liaison with the religious authorities but which do not have exclusively religious purposes and are therefore not "cultuelles". The Muslims currently use this legal form of the Law of 1901: the presence of a Koranic school justifies the qualification as "cultural" notwithstanding the fact that alongside the school there is the mosque, managed by the same cultural association. The distinction between an association which is cultuelle and one which is cultural reflects an essentially legal distinction: the former is governed by the Law of 1905, the latter by the Law of 1901. The financial and fiscal régimes differ.

The State can guarantee sums borrowed by associations cultuelles or associations diocésaines for the construction of new places of worship. In the same spirit is the appearance since 1930 of a form of mortgage funding by the commune to an association cultuelle, generally for a term of 99 years with a peppercorn rent of 1 franc a year. First used for the construction of churches in the Paris area, the practice has spread, without administrative objection.

The tax régime applying to associations cultuelles and diocésaines is favourable. Article 238 bis of the General Tax Code allows enterprises and individual taxpayers to deduct, up to a certain limit, donations to the work of organisations serving the public interest. The Conseil d'État, in an opinion of 15 May 1962, held that this applied to associations cultuelles in respect of funds devoted to the construction and maintenance of church buildings, or to certain works of a philanthropic, educational, social or family nature.

Failing being an association cultuelle, a group working in the Church field is generally constituted as an association under the Law of 1901, authorised to solicit subventions from the State, local authorities, and other public bodies. These associations can only receive donations from individuals, who benefit from no tax exemption. Donations in favour of associations recognised as of utilité pratique enjoy tax exemptions.

(2) England has the Anglican High Church of England; church measures have to pass through state parliament for adoption, and Her Majesty the Queen appoints the bishops of the church on the suggestion of the Prime Minister. However, there is no state financing of the Established church; it must rely completely on her own means, but on the other hand the High Church of England has never been expropriated in history.[19]

[19] David McClean, "State and Church in the United Kingdom", in: Gerhard Robbers (ed.), p. 553, et seq.

(3) Denmark has the Lutheran Church as the "Peoples Church"; state parliament or the government takes all legal decisions within the church, while being obliged to respect the status of the Evangelical-Lutheran Church and its doctrine.[20]

(4) Finland has two churches with a specific status, the Lutheran Church and the Greek Orthodox Church. The Church Act of the Lutheran Church with its clearly denominational provisions is an Act of (state) Parliament; an Act of Parliament also regulates the confession and structure of the Orthodox Church.[21]

(5) In Greece, the state constitution guarantees that the dogma of the Greek Orthodox Church is the prevailing religion, the Church of Greece remains inseparably united in doctrine with the Ecumenical Patriarchate of Constantinople and with all other Orthodox Churches, the Church is self-governing and it is autocephalous. The term "prevailing religion" means that the Orthodox Christian faith is the official religion of the Greek State, and the Church, which embodies this faith, has its own legal status as a legal person under public law, the state treats this church with special concern and in a favorable manner, which does not extend to other faiths and religions.[22]

(6) Norway has a state church with a special status. In Sweden, after disestablishment of the Church of Sweden, the Lutheran Church still has a special status.

(7) Austria is another example of different categories of religious organizations.[23] This system has been examined by the European Court of Human Rights.[24]

The Austrian Basic Law of 1867 (Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger) uses in its Article 15 and 16 the term "recognized churches and religious communities" without mentioning any further terminology. The Austrian ordinary law, however, also speaks of "publicly-registered religious communities" that have a different status.[25] The ordinary law distinguishes recognized religious communities,

[20] Inger Dübeck, "State and Church in Denmark", in: Gerhard Robbers (ed.), p. 55, et seq.

[21] Markku Heikilä, Jyrki Knuutila, Martin Scheinin, "State and Church in Fin land", in: Gerhard Robbers (ed.), p. 519, et seq.

[22] Charalambos Papastathis, "State and Church in Greece", in: Gerhard Robbers (ed.), p. 117, et seq.

[23] For the following see Richard Potz, "State and Church in Austria", in: Gerhard Robbers (ed.), p. 396 et seq.

[24] See below.

[25] Act on the Legal Status of Registered Religious Communities (Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften), Federal Law Gazette BGBl I 1998/19.

publicly registered religious communities, and religious communities forming private law associations according to the Association Law (Vereinsgesetz).

The European Court of Human Rights has found no violation of the European Convention of Human Rights in this terminology.[26]

Under Article 14 of the Basic Law 1867 everybody is granted freedom of conscience and belief. The enjoyment of civil and political rights is independent from religious belief; however, the manifestation of religious belief may not derogate from civic obligations.

Article 15 Basic law provides that recognized churches and religious communities have the right to manifest their faith collectively in public, to organize and administer their internal affairs independently, to remain in possession of acquired institutions, foundations and funds dedicated to cultural, educational and charitable purposes, however, they are, like all other societies, subordinated to the law.

Article 16 Basic Law entitles the supporters of non-recognized religious communities to domestic manifestation of their faith unless it is unlawful or contra bones mores.

The Act of 20 May 1874 concerning the Legal Recognition of Religious Societies[27] provides in its Section 1 that all religious faiths which have not yet been recognized in the legal order may be recognized as a religious society if they fulfill the conditions set out in the Act. Section 2 provides that if the above conditions are met, recognition is granted by the Minister for Religious Affairs. Recognition has the effect that a religious society obtains legal personality under public law and enjoys all rights which are granted under the legal order to such societies.

Examples of recognized religious societies show a variety of recognition acts:

Recognition by international treaty: The legal personality of the Roman Catholic Church is, on the one hand, regarded as historically recognized, and, on the other hand, explicitly recognized in an international treaty, the Concordat between the Holy See and the Republic of Austria (Federal Law Gazette II, No. 2/1934 – Konkordat zwischen dem Heiligen Stuhle und der Republik Österreich, BGBl. II Nr. 2/1934).

Recognition by a special law: The following are examples of special laws recognizing religious societies:

(a) Act on the External Legal Status of the Israelite Religious Society, Official Gazette of the Austrian Empire, No. 57/1890 (Gesetz über

[26] Case of Religionsgemeinschaft der Zeugen Jehovas and others v. Austria, Application no. 40825/98, 31 July 2008.

[27] Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften), RGBl (Reichsgesetzblatt, Official Gazette of the Austrian Empire, 1874/68.

die äußeren Rechtsverhältnisse der Israelitischen Religionsgesellschaft, RGBl. 57/1890);

(b) Act of 15 July 1912 on the recognition of followers of Islam [according to the Hanafi rite] as a religious society, Official Gazette of the Austrian Empire No. 159/1912 (Gesetz vom 15. Juli 1912, betreffend die Anerkennung der Anhänger des Islam [nach hanefitischen Ritus] als Religionsgesellschaft, RGBl. Nr. 159/1912);

(c) Federal Act on the External Legal Status of the Evangelical Church, Federal Law Gazette No. 182/1961 (Bundesgesetz vom 6. Juli 1961 über die äußeren Rechtsverhältnisse der Evangelischen Kirche, BGBl. Nr. 182/1961);

(d) Federal Act on the External Legal Status of the Greek Orthodox Church in Austria, Federal Law Gazette No. 229/1967 (Bundesgesetz über die äußeren Rechtsverhältnisse der Griechisch-Orientalischen Kirche in Österreich, BGBl. Nr. 182/1961);

(e) Federal Act on the External Legal Status of the Oriental Orthodox Churches in Austria, Federal Law Gazette No. 20/2003 (Bundesgesetz über äußere Rechtsverhältnisse der Orientalisch-Orthodoxen Kirchen in Österreich, BGBl. Nr. 20/2003).

Recognition by a decree (*Verordnung*) under the Recognition Act 1874: Between 1877 and 1982 the competent ministers recognized a further six religious societies.

Registration of religious communities is in addition regulated by the Act on the Legal Status of Registered Religious Communities[28].

While the European Court of Human Rights has insisted that the State has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs, it has found no violation of the Convention of Human Rights by the mere fact of providing for a variety of status for religious communities as such.[29]

(8) Belgium also has a system of variety of status.[30] Belgian law recognizes equality between all religions, this does not hinder that some religious communities receive different treatment from others. Several religions have obtained official recognition by, or by virtue of, a law. The

[28] (Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften), Federal Law Gazette BGBl I 1998/19. The Religious Communities Act entered into force on 10 January 1998.

[29] Case of Religionsgemeinschaft der Zeugen Jehovas and others v. Austria, Application no. 40825/98, 31 July 2008, § 97; .see also Metropolitan Church of Bessarabia and Others, Application No. 45701/99, 13 December 2001, § 116).

[30] For the following see Rik Torfs, "State and Church in Belgium", in: Gerhard Robbers (ed.), p. 13 et seq.

main basis for such recognition is the social value of the religion as a service to the population. Currently, six denominations enjoy this status: Catholicism, Protestantism, Judaism, Anglicanism (Law of 4 March 1870 on the organization of the temporal needs of religions), Islam (Law of 19 July 1974 amending the law of 1870) and the (Greek and Russian) Orthodox Church (Law of 17 April 1985 amending the same law of 1870). A change to the Constitution on 5 June 1993 has added groups of non believing humanists to the financial responsibilities of the State.

As well as the six recognized religions, there is a whole range of unrecognized ones.

(9) Germany, in its federal constitution, has established a system of religious organizations that distinguishes between various types of religious organizations and attributes different rights and obligations to them. The law distinguishes between religious societies with private law status and religious societies with the status of a corporation of public law. In addition, there are also associations whose purpose is to foster a philosophical creed ("Weltanschauungsgemeinschaften").

Art. 140 GG (*Grundgesetz* – Basic Law of 23 May 1949) in conjunction weith Art. 137 WRV (*Weimarer Reichsverfassung* – Constitution of the German Reich of Weimar of 11 August 1919) provides:

Article 137

(1) There shall be no state church.

(2) The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich shall be subject to no restrictions.

(3) Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

(4) Religious societies shall acquire legal capacity according to the general provisions of civil law.

(5) Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organization, it too shall be a corporation under public law.

(6) Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law.

(7) Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.

> (8) Such further regulation as may be required for the implementation of these provisions shall be a matter for Land legislation.

Religious organizations with the status of a public law corporation have a number of special rights and special duties specified in ordinary law. Neither the German Federal Constitutional Court nor the European Court of Human Rights has ever challenged this system.

(10) European Union law, in its developing law on religion, and in addition to the many systems that provide for a variety of status for religious communities, supports the idea of variety. The Treaty on Functioning of the European Union provides in its Article 17:

> 1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
>
> 2. The Union equally respects the status under national law of philosophical and non-confessional organizations.
>
> 3. Recognizing their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations.

This provision shows that the European Union, while insisting in non discrimination and equal treatment, respects the differences in status of religious communities in its Member States. The European Union law itself uses different terms for different religious and belief communities. It does so for the very reason that the identities and specific contributions of religious communities have to be recognized. This includes the respect for the differences in cultures and traditions in the Member States and the contributions that the very different religious communities have made to the development of theses cultures and traditions.

(11) OSCE Requirements can be found in the OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief that state: "In many countries, a variety of financial benefits ranging from tax-exempt status to direct subsidies may be available for certain types of religious entities. In general, the mere making available of any of the foregoing benefits or privileges does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated".[31]

The OSCE/ODIHR Guidelines thus do not object to differential treatment of churches and religious communities as such. Different treat-

[31] *Guidelines For Review of Legislation Pertaining to Religion or Belief* prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through law (Venice Com mission), Adopted by the Venice Commission at its 59th plenary session (Venice, 18 19 June 2004), welcomed by the OSCE Parliamentary Assembly at its annual session (Edin burgh, 5 9 July 2004), p. 18.

ment may relate to substantive issues like tax exemptions and state subsidies.

As to equality and non-discrimination, the OSCE/ODIHR Guidelines state: "States are obliged to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status. Legislation should be reviewed to assure that any differentiations among religions are justified by genuinely objective factors and that the risk of prejudicial treatment is mini minimized or totally eliminated. Legislation that acknowledges historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for discrimination".[32]

2.2. Application of principles

2.2.1. Use of different terminology

Objections could arise from the fact that the Act on Churches and Religious Communities uses terms in respect of religious organizations that are not used by the Constitution of the Republic of Serbia. However, constitutional law in general does not predetermine the specific language that is used by ordinary law. This would also not possible, because constitutions cannot foresee all the many different issues and needs that come up in ordinary law; they must restrict themselves to the basic lines and principles. What ordinary laws do in this respect when they introduce more specific language and categories is that they fulfill their constitutional task of "concretization". They provide more concrete structures for taking up the needs of specific fields of life in applying and specifying the broader principles laid down by the constitution.

It is not objectionable that ordinary laws use more specific language and distinctions than is explicitly provided for in constitutional law. This result is supported by examples in many states. The examination of the variety of different systems provided above has shown in some detail that European states do in fact use language and terminology in ordinary law that differ form the terms given in their respective constitutions. They do so in organizing in more concrete detail within the perspectives set by their constitutional law.

[32] *Guidelines For Review of Legislation Pertaining to Religion or Belief* prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through law (Venice Com mission), Adopted by the Venice Commission at its 59th plenary session (Venice, 18 19 June 2004), welcomed by the OSCE Parliamentary Assembly at its annual session (Edin burgh, 5 9 July 2004), p. 10.

2.2.2. Differences in status

a) Articles 4, 9 to 16 Act on Churches and Religious Communities make explicitly reference to the historical role of the respective churches and religious communities.

This is in accordance with the aforementioned statement of the OSCE/ODIHR Guidelines. The provisions do not exclude any other religious community or church from the specific mentioning that have a historical role or impact equivalent to those institutions that are especially mentioned in the Act.

b) Distinctions between a variety of categories of religious organizations are in accordance with the European Convention of Human Rights and comparative international standards. I can also see no violation of the Constitution of the Republic of Serbia. There is no legal obligation to use only the terms and categories mentioned in the constitution.

States can introduce different categories of religious organizations and attribute to them different rights and obligations. Such differentiation must be based in valid reasons. The different treatment of traditional Churches and religious communities, confessional communities and other religious organizations provided for in the Act on Churches and Religious Communities is based on valid reasons. It is in accordance with the European Convention of Human Rights and comparative international standards. I can also see no violation of the Constitution of the Republic of Serbia.

2.2.3. Procedure of registration of religious organizations

Article 18 Act on Churches and Religious Communities provides for the registration process of religious bodies. The provision states that Traditional Churches and religious communities for the entry into the register have to file a notification containing 1) name of the Church or religious community; 2) address of the seat of the Church or religious community; 3) name, surname and capacity of the person authorized to represent and act on behalf of the Church or religious community. This applies to 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.), the Islamic Religious Community and the Jewish Religious Community.

Other churches and religious communities have also to indicate further information. This includes: 1) decision by which the religious organization has been established, with names, surnames, identification document numbers and signatures of founders 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 per-

manent place of residence in the territory of the Republic of Serbia; 2) statute or another document of religious organization containing: description of 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 the religious teaching, religious ceremonies, religious goals and main activities of the religious organization; 4) data on permanent sources of income of the religious organization.

This unequal treatment must be justified by valid reasons. If valid reasons for different treatment exist, no violation of equal treatment clauses and non-discrimination provisions takes place. Such reasons can be found in the fact that the traditional churches and religious communities have already been recognized by specific laws in the past. In relation to these bodies it is clear for the Serbian legal order that they fulfill the requirements which justify the conditions set out in Article 18 Section 2 Act on Churches and Religious Communities. These conditions can be seen in a guarantee of permanent existence, stable organizational structure, religious character of the organization, and loyalty to the basic legal order of the country. Such conditions lay at the very basis of registration and recognition of religious organizations throughout Europe and beyond. They are not discriminatory.

Article 11 Section 2 Act on Churches and Religious Communities states in specific relation to the Serbian Orthodox Church: "The Serbian Orthodox Church has had an exceptional historical, state-building and civilizational role in forming, preserving and developing the identity of the Serbian nation." This provision recognizes a role of this church in the development of the culture of the Serbian nation. It relates exclusively to the past. In doing so, the provision acknowledges a mere fact. This fact can hardly be disputed in its factual truth. This acknowledgement does not bring about any special privilege. It is not discriminatory.

2.2.4. The secular state

Article 11 Constitution of the Republic of Serbia does not lead to any other result. According to that provision, the Republic of Serbia is a secular state.

The term secular has a variety of meanings in the legal orders in Europe and throughout the world. Comparing these manifold meanings one can say with good reasons that secular does not mean any anti-religious affection. Rather, the term secular signifies the idea that there is no state church, no identification of the state with a specific religion or with religion as such, and that the state does not unduly intervene into the affairs of religious communities. In this meaning, the term also stands for

neutrality of the state in religious matters and for the autonomous existence of religious communities. This understanding is supported by the following two sections of Article 11 Constitution of the Republic of Serbia. This understanding mirrors a European-wide principle of state-religion relationship shared by the large majority of European legal systems. It is supported also by the standing practice of the European Court of Human Rights in respect of religious state neutrality and autonomy of religious communities. The description of European systems outlined above shows that different treatment of religious communities which is based on valid reasons does in no way contradict these basic principles. It has been shown above that for the different treatment provided for in the Act on Churches and Religious Communities and examined above valid reasons exist. Seen from a comparative perspective, the notion of a secular state does allow for the different treatment as examined.

3. RESULT

1) The legal distinction between Traditional Churches and Religious Communities, on the one, and other Churches and Religious Communities in the Republic of Serbia on the other hand, in itself and in substance of the Law on Churches and Religious Communities is in accordance with the Constitution of the Republic of Serbia and international and European standards, and particularly in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms.

2) The distinction, in the issue of registration of Churches and Religious Communities prescribed by Article 18 of the Law, between Traditional Churches and Religious Communities, on the one hand, and other Churches and Religious Communities, on the other hand, is not discriminatory in substance of the Constitution of the Republic of Serbia and international and European standards, and particularly in the perspective of the European Convention on the Protection of Human Rights and Fundamental Freedoms.