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On the Road towards Religious Pluralism? Church and State in Serbia

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Legislation on Religion

The Current Legal Situation

In the last 15 years since the breakup of Yugoslavia Serbian society has been struggling to come to terms with its new identity. This struggle has been intensified by the wide variety of confessions in the country. The vast majority (about 85 per cent) of the population belongs to the Serbian Orthodox Church, but Roman and Greek Catholics, Jews, Muslims and Protestants (Lutherans and Calvinists) have also been present in the country for centuries. In the last 100 years Baptists, Pentecostals and other Christian groups have gained some followers and many other new religious or quasi-religious communities have appeared in recent times. One of the challenges has been redefining the role of religion in the new non-socialist state. The political and legal transformation that has taken place particularly since the fall of Milošević in 2000 has still not come up with solutions to outstanding problems in the area of church-state relations. The present article aims to examine various legal and societal aspects of the relationship between these two realms, to take a look at the state of religious freedom and tolerance in society and to examine the Serbian situation within the European context.

The Legal Framework at the Federal Level

In order to examine the existing legal framework relating to religion and religious communities in the Republic of Serbia, we first have to look at laws at the federal level. Just as in Tito's Yugoslavia, so also in the state union of Serbia and Montenegro the constituent republics create their own policies towards religion and religious communities. The competency of the federal structure consists of laying down the fundamental rights of its citizens.

The federal state of Serbia and Montenegro was created on 4 February 2003 by the signing of the Constitutional Charter of the State Union of Serbia and Montenegro (*Ustavna povelja Državne zajednice Srbija i Crna Gora*), which replaced the 1992 Constitution of the Federal People's Republic of Yugoslavia. Article 9 of the Charter places the regulation and protection of human and minority rights in their respective territory with the member states, and stipulates that 'the attained level of human and minority rights, individual and collective and civil freedoms may not be lowered'

(Article 9 Para. 2). It further states that the state union will monitor the exercise of human and minority rights, as well as their protection (Article 9 Para. 3) and promises that 'the provisions of international treaties on human and minority rights and civil freedoms applying to the territory of Serbia and Montenegro shall be directly enforced' (Article 10). With the creation of the new state union, the previously existing Federal Ministry for Religious Affairs was abolished, and religious affairs in Serbia and Montenegro are now regulated separately by the governments of the constituent republics. In Serbia this is done through the Republican Ministry for Religious Affairs.

Soon after the creation of the new state union, on 28 February 2003 the federal parliament accepted the Charter on Human and Minority Rights and Fundamental Freedoms (*Povelja o ljudskim i manjinskim pravima i građanskim slobodama*, referred to in its official English translation as *Declaration on Human and Minority Rights and Freedoms*), which forms an integral part of the Constitutional Charter (Article 8, Constitutional Charter of the State Union of Serbia and Montenegro). It proclaims 'freedom of thought, conscience, belief and religion' (Article 26 Para. 1) and prohibits discrimination on the ground of religion (Article 3 Para. 3) and the instigation of religious hatred (Article 51). The Charter also reiterates the separation of the state and religious communities (Article 27 Para. 1), reinforcing the freedom of the latter to regulate their own internal affairs (Article 27 Para. 2). Article 29 guarantees freedom of opinion and expression, while Articles 31 and 32 guarantee freedom of assembly and association respectively. The Charter encourages a general spirit of tolerance in society, and emphasises the right of persons belonging to national minorities 'to express, keep, cherish, develop and publicly manifest their national and ethnic, cultural and religious identity' (Article 52). The rights enumerated by the Charter are supposed to be situated in the legal framework of the constituent republics, as it is up to them to introduce specific legislation framing these rights and responsibilities. A Federal Ministry of Human and Minority Rights (*Savezno ministarstvo za ljudska i manjinska prava*) has been created; it is responsible for implementing these stipulations, and has a department that monitors religious rights in the country. The Ministry has been engaged in a high-profile nationwide media campaign, appealing for tolerance in society.

The 2001 Draft Law on Religious Freedom

Although the basic rights and principles relating to religious freedom and religious communities are enshrined in the abovementioned laws, their implementation is not at the moment provided for by any legal source at republican level. It is precisely this legal vacuum that the Draft Law on Religious Freedom (*Predlog zakona o verskoj slobodi*, henceforth 'draft law') aimed to fill in 2001. As the first attempt at bringing about much-needed legislation after the fall of Milošević, it sought to regulate the legal position of religious communities and their scope of operation in the country and aimed to establish the basis for church-state relations as respect for human rights, including freedom of religion, in accordance with international legal instruments.¹

Work on the draft, which was originally intended to regulate church-state relations at the federal level, began in January 2001, only a few months after the fall of the Milošević regime. The Federal Ministry (later Secretariat) for Religious Affairs was involved in an ongoing dialogue with representatives of many different religious communities during the preparation of the law, which was undertaken by a group of law professors from Belgrade University and in close cooperation with internationally recognised experts in the field. The draft law came very close to being accepted by the Federal Parliament, as it had already passed through the lower house, but it never made it through the upper house,

where it was brought up at the very last meeting before Parliament was dissolved in the face of new elections. Boris Milosavljević, who was deputy federal secretary for religious affairs at the time of the writing of the draft law, states that its aim was to ‘bring about harmonization of Yugoslav legislation with that of the European Union’, of which the country desires eventually to become a member (Milosavljević, 2002, p. 316).

The preamble of the draft law enumerated seven so-called historical religious communities: the most important of these was the Serbian Orthodox Church, followed by the Islamic community, the Roman Catholic Church, the Jewish community, the Evangelical Christian Churches of the Augsburg Confession,² and the Reformed Christian Church. These religious communities were recognised for their longstanding contribution to society, and were selected because each one of them possessed a special agreement with the state before the Second World War. The draft law called for the establishment of a central registry and a uniform registration procedure for religious communities, through which they would gain a specific legal status. For those religious communities which the draft law recognised as historical, it would automatically have secured their legal position, which means that they would not have had to go through the process of registration. In spite of the fact that the draft law was never passed, this hierarchy of religious communities has been acknowledged by other laws since then and has been used by them as a basis. This, as we shall see, has already created problems.

The Two Draft Laws of 2004

After the assassination of Prime Minister Zoran Đinđić and the ensuing political crisis the early parliamentary elections in Serbia on 28 December 2003 brought a new coalition government to power. The Serbian Radical Party (*Srpska radikalna stranka*), which has embraced Orthodoxy as a very important facet of Serbian identity and has been pursuing a nationalistic political line, won the greatest number of seats but failed to form a governing coalition.³ Instead, the Democratic Party of Serbia (*Demokratska stranka Srbije*), led by Vojislav Koštunica, now the prime minister, who has openly expressed his support and preference for the Serbian Orthodox Church on many occasions, formed a coalition government with three other parties.

On 6 July 2004 the Republican Ministry for Religious Affairs presented a draft for a new Law on Freedom of Belief, Churches, Religious Communities and Religious Associations. The draft was sent to the ‘traditional’ religious communities for their comments; they all supported it. Several human rights organisations (among them the Helsinki Committee for Human Rights), the United States government and smaller religious communities, including the Baptists, Adventists, Evangelicals and Krishnaites, criticised the draft heavily and asked for its withdrawal. They alleged that the draft created a strict hierarchy among religious communities, giving privileges to the seven ‘recognised’ religions and allowing much fewer rights to others. Under the provisions of this draft new religious communities would not have been able to register as religious organisations but only as citizens’ associations, needing at least 1000 adult members who would all have to be citizens of Serbia and Montenegro. Critics of the draft also claimed that it lacked clear definitions of the terms it used, and that it contradicted several stipulations of the new draft constitution of the Republic of Serbia, as well as other legal instruments. The issue which proved most explosive, however, was that of legal immunity for priests and religious ministers. In the view of the critics of the draft this provision would have violated the legal separation of church and state, and could have led to various abuses, protecting and benefiting primarily certain members of the Serbian Orthodox Church.

The Belgrade Centre for Human Rights stated that compared to previous draft laws on religious freedom this new draft bill was a step backward. In its view the draft tried to reinstate the legal status of religious communities from almost a century ago while not taking into account present circumstances. Accepting the draft bill, in their view, might have led to violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Professor Milan Vukomanović pointed out that the seven religious communities recognised by the draft bill were essentially mono-ethnic and viewed the legal acceptance of multicultural religious groups as a threat to their own cultural and national identity; he maintained that the draft bill reflected these feelings (Vukomanović interview, 2004b).

In autumn 2004 a newer, slightly modified draft law was made public by the Ministry for Religious Affairs under the name Law on Religious Organisations. Although a few changes to the text had been made based on the suggestions of religious communities, it showed no significant steps toward resolving the most debated issues.

The 2005 Draft Law on the Legal Position of Religious Communities

A draft version of a Law on the Legal Position of Religious Communities was made public by the Ministry for Religious Affairs in March 2005. This new draft reflects many of the suggestions and proposals which religious communities, intergovernmental and nongovernmental organisations have made and the pressure which the international community placed on the Ministry. The text contains considerable changes compared to previous versions, perhaps the most important one being that it does away with the compulsory registration of religious communities and removes the earlier required minimum number of members for registration. This means that even one person alone will be able to found his own religious organisation. Despite many positive developments compared to previous drafts, small religious communities continue to criticise the fact that it retains the hierarchy of religious communities present in previous versions, which in their view may lead to discrimination against certain smaller and newer religious groups.

Although there is still an urgent need for legislation finally to be introduced in this field, at a meeting on 20 June 2005 the minister for religious affairs, Milan Radulović, stated that he planned to wait for a full consensus of religious communities on the draft before he passed on the document to the government and eventually to Parliament.

I shall now examine some of the most important aspects of church-state relations in Serbia today in order to describe in more detail the areas that these draft laws have been aiming to regulate and to highlight the most outstanding and problematic issues.

Freedom of Religion

Freedom of religion in theory is guaranteed by existing legislation at both federal and republican levels (Article 26 Para. 1 of the Charter on Human and Minority Rights and Fundamental Freedoms, and Article 41 Para. 1 of the Constitution of the Republic of Serbia). It is one of the principles upon which church-state relations rest. With the end of Marxist-inspired Yugoslav ideology and a restrictive attitude towards religious expression, freedom of religion took on a new, broader meaning. Reality, however, often shows a different picture, one in which restrictions are still present. I shall discuss a few specific problems in this field later in this article.

Separation of Church and State

The separation of church and state is one of the other main principles that legislation lays down at both federal and republican levels (Article 27 Para. 1 of the Charter on Human and Minority Rights and Fundamental Freedoms, and Article 41 Para. 2 of the Constitution of the Republic of Serbia).

The Legal Position of Religious Communities and their Registration

According to Professor Sima Avramović, the long absence of legal sources regulating the registration of religious communities means that the current situation can be best described as chaotic. Some religious communities are registered at the federal, some at the national, and others at the local level, and a number of them (including a few of the largest religious communities whose special agreements with the state were forcibly abolished by the communist regime) are not registered at all. Certain religious communities have registered with the Ministry of Justice and others with the police, whether at the federal, national or local level. There is no central registry that has information on exactly how many religious communities have been registered in the country (Avramović interview, 2004). The lack of legal regulation has also meant that officials have sometimes made it difficult for smaller religious communities to register or have refused them registration altogether. The registration process foreseen by the draft laws aims to resolve this situation by providing a new beginning for all religious communities.

All draft laws since 2001 have called for the setting up of a Public Registry of Religious Communities (*Registar verskih zajednica*), where they can register and obtain legal status. Religious communities designated as 'historical' would be exempt from this. According to the latest draft law of 2005 religious communities (whether currently registered or not) will not be obliged to register through the Registry. If they choose not to do so, they will be able to function as citizens' associations. However, with the financial and taxation advantages which registered religious communities are expected to enjoy, they will be put at a disadvantage. Even now religious communities with no legal entity are not able to purchase vehicles and other supplies, for example, and this hinders their work.

The Financing of Religious Communities

According to the Constitution of the Republic of Serbia, 'the state may grant financial assistance to religious communities' (Article 41 Para. 4). This principle of possibility but not obligation was also expressed in Article 25 Para. 5 of the 1946 Federal Constitution, and as a result a certain amount of state financing of the traditional churches became a practice which continues to this day. During communism the constituent republics of Yugoslavia tended to support their own majority religious communities. Serbia, therefore, provided a considerable amount of financial support primarily for the Orthodox Church. This was usually done on an irregular basis and for special projects such as the renovation or construction of religious buildings, for example the building of the St Sava Memorial Church in Belgrade. Because of the economic difficulties in Serbia over the past decade this financial support for religious communities in the republic has slowly dwindled.

Indicating a new commitment from the government, the new Serbian minister of religious affairs, Milan Radulović, announced in 2004 that a total of €2.1 million had

been set aside to be given to religious communities that year. In contrast with earlier practice, Radulović planned to use this money to support religious, cultural, educational and publishing activities by religious communities (Radulović interview, 2004b). Although the vast majority of government funds still goes to the Serbian Orthodox Church, the Ministry of Religious Affairs has been supporting the other traditional religious communities as well. Religious communities may also receive public funds from local governments but once again such financial help usually only goes to the recognised communities as they are the only ones allowed to compete for such funding.

Since the introduction of value added tax at 20 per cent in Serbia on 1 January 2005 only the so-called 'historical' religious communities have been able to enjoy tax, customs and other benefits (on their religious activities, services and humanitarian aid). No such benefits exist in a regulated fashion for other religious communities, which have to pay customs duty on aid they receive from foreign countries, taxes on their religious activities and often higher utility costs – at the same level as profit-making companies.

Property Ownership and the Return of Nationalised and Confiscated Property

The issue of property ownership and the return of property confiscated or nationalised after the Second World War to the Serbian Orthodox Church was first raised in the face of the dissolution of Yugoslavia. Although this was a very important concern, Klaus Buchenau claims that it was one of the main topics the regime at the time continued to avoid (Buchenau, 2003, p. 96). The first draft law for the return of confiscated property to the Serbian Orthodox Church was adopted by the National Assembly of the Republic of Serbia on 18 April 1991, but President Slobodan Milošević vetoed it and the draft was eventually held back from a repeat vote in the Assembly. A similar draft, which included other religious communities, was drawn up and presented to the Federal Assembly in 1993, but never passed (Milosavljević, 2002, p. 324). After the change of government in October 2000 religious communities again hoped that these past injustices would be rectified by law. A new draft law was drawn up in 2001 but the process was never completed and thus this very important issue remains unresolved. Finding a solution to it should be one of the priorities of the new government. Without a solution, religious communities will continue to struggle financially and be more dependent on the state, whose budget is already stretched too thinly. If religious communities were able to utilise their property it would certainly mean a significant increase in income for a number of those affected by this matter.

The Serbian government decided in 2005 that the process of returning property to religious communities would be separate from that pertaining to individuals. A committee has been formed with representatives of all religious communities who have claims and has begun to make a comprehensive list of all such property in cooperation with government authorities. No information about the projected deadline for the completion of this process and the actual return of properties has been made public.

Employment Issues

The employment status, social security and pension payments of religious ministers constitute yet another issue waiting to be resolved. Religious leaders have expressed their desire to raise the employment status of religious ministers and others employed by churches to the same level as that of everyone else. Under communism the state provided a certain percentage of the salary for religious ministers of the recognised religions, but this is now almost nonexistent, except in the case of Kosovo. The

responsibility to provide for their ministers and to pay their social security contributions and pension funds rests with the religious communities themselves and this is not possible if they are not properly registered. According to the laws regulating religious instruction in state schools, the state provides the financial means for religious instructors of the recognised religious communities.

Religious Instruction in State Schools

Religious instruction in state schools has been perhaps the most hotly debated and controversial issue in relations between church and state in the last few years in Serbia. The desire to return religious instruction to state schools arose immediately after the fall of Milošević on 5 October 2000. Federal and republican Ministries for Religious Affairs alike began organising a dialogue about this topic, including representatives of various religious communities, legal experts and members of nongovernmental organisations at a series of events held between March and July 2001 (Milosavljević, 2002, p. 327). Eventually a law was prepared for adoption at the republican level. The intention was to introduce religious instruction in the first grade of primary schools and the first year of secondary schools by the beginning of the 2001–02 school year. The dialogue with the religious communities, which were giving continual feedback and suggestions to the ministries (the Ministry of Education and Sport was also involved), abruptly came to an end in July 2001. After a meeting with representatives of the Holy Synod of the Serbian Orthodox Church on 4 July, prime minister Zoran Đinđić announced the following day to the participants in the ongoing dialogue the decision that religious instruction would be introduced by 1 September 2001.⁴ The government's Directive on the Organisation and Creation of Religious Instruction and Alternative Subjects in Primary and Secondary Schools (*Uredba o organizovanju i ostrvarivanju verske nastave i nastave alternativnog predmeta u osnovnoj i srednjoj školi*) was issued; it came into force on 4 August 2001, and on 25 April 2002 the National Assembly of the Republic of Serbia passed the Laws on Changes to the Law on Elementary and High School Education (*Zakon o izmenama i dopunama zakona o osnovnoj školi* and *Zakon o izmenama i dopunama zakona o srednjoj školi*).

Professor Milan Vukomanović from the University of Belgrade, who participated in the discussions in 2001, calls this decision premature and politically motivated. He even questions the constitutionality of the new laws (Vukomanović interview, 2004a). He says that there is no existing legal basis for the seven religious communities to be recognised as historical by the government directive on religious instruction (Article 1 Para. 2). Professor Vukomanović is not alone in challenging the constitutionality of the new laws: in 2003 the citizens' association Forum Iuris and the Yugoslav Committee of Lawyers for Human Rights turned to the Constitutional Court of Serbia, claiming that certain articles of the laws in question were in contradiction with the Constitution, as well as international human rights protection instruments.⁵ The Constitutional Court upheld the constitutionality of the laws on 4 November 2003.

The government directive on religious instruction in state schools makes religious instruction an alternative subject taught for one hour per week (Article 10): pupils can choose to attend civic education instead. The decision is made by the parents or legal guardian for pupils in primary schools, while secondary school students decide for themselves, with the obligation to inform their parents about their decision (Article 2 Paras 1, 2). Article 8 Para. 5 says that the state provides finances for religious instruction given by the seven recognised religious communities, regardless of the number of students interested at a particular school. Other religious communities are

free to organise their own religious instruction in state schools if there is sufficient interest from the students, but at their own expense and at times which do not conflict with school activities. The content of religious instruction is decided by the minister of education and sport, in agreement with the suggestions of the recognised religious communities (Article 5 Para. 2). Apart from covering the catechism of the given religion, about one third of the curriculum should include information on other religions. Teachers of religious instruction are recommended by the religious communities before being confirmed by the minister of education and sport (Article 8 Para. 3). The government directive establishes a control body, a commission comprising representatives of the religious committees, the Ministry of Education and Sport and the Ministry for Religious Affairs.

Education of Clergy

The Serbian Orthodox Church, the largest religious community in Serbia, has several institutions providing theological training for its clergy (as well as laymen) at various levels. The Orthodox Theological Faculty belonged to the University of Belgrade (a state-run institution) until 1952, when the Serbian government decided that the faculty would no longer be part of the university. On 9 January 2004 the government of the Republic of Serbia decided to annul that decision, and since then the Theological Faculty has been reincorporated into the University of Belgrade.

The Theological-Catechetical Institute of the Roman Catholic Church in Subotica and Novi Sad provides training in Croatian and Hungarian for clergy and laymen alike in a four-year programme. Catholic leaders have expressed their desire in recent years for the founding of a Catholic university, which will most probably be in Subotica. The Islamic community has its own Islamic Pedagogical Academy in the town of Novi Pazar, in the Sandžak region, where a high concentration of Muslims can be found. Other religious communities also have institutions providing theological training, including the Adventists (in Belgrade), and Baptists (in Novi Sad) but these are not officially recognised. The draft law reinforces the already-existing freedom for religious communities to establish their own schools (Article 15).

Religious Assistance in Public Institutions

Only in recent years has there been a growing openness to the idea of religious assistance in places such as hospitals, and the issue is now being regulated through special laws. Since the army is a federal institution in Serbia and Montenegro, decisions regarding religious assistance in the military fall under the competence of the federal authorities. Boris Tadić as federal minister of defence announced in December 2003 that he would form a team to regulate religious issues affecting the army of Serbia and Montenegro, in cooperation with the recognised religious communities. The plans included the introduction of instruction on Serbian Orthodoxy at the Military Academy, and the opening of the Military Medical Academy for religious assistance by priests. Religious ministers, primarily of the Serbian Orthodox Church, are already present in many hospitals and other medical institutions.

Conscientious Objection

Military service is obligatory in Serbia and Montenegro. The Charter on Human and Minority Rights and Fundamental Freedoms of the State Union of Serbia and

Montenegro allows conscientious objection, with the possibility of a civil form of service for those who opt out of military service for reasons of religious conviction (Article 28 Paras 1, 2 of the Charter on Human and Minority Rights). This is a sign of progress, as previous laws did not allow the refusal of military service on religious grounds, and punished offenders with prison sentences. Since the issue of conscientious objection is under the competence of the federal authorities it had to be resolved at the federal level. In 2003 the Council of Ministers enacted a directive to allow civil service in social or humanitarian institutions, which came into force on 15 November 2003. On 22 December 2003 the first conscientious objectors began their civil service and by December 2004 about 20 per cent of all new recruits had opted for this way of fulfilling their military obligation.

Religious Communities and the Media

The legal source for the use of the media by religious communities is the Broadcasting Act (*Zakon o radiodifuziji*) which the National Assembly of the Republic of Serbia passed on 18 July 2002. It allows religious communities with the status of legal personality to gain permission to broadcast (Article 41 Para. 1). Again, this is an example of how the not-yet-passed draft law has affected other legislation. Until the issues of registration and the legal status of religious communities are resolved, none of them has the proper legal personality the Broadcasting Act requires. The Act established the Broadcasting Agency Council, a nine-member media regulatory body, to which the religious communities could nominate one representative (Article 23 Para. 3). Unfortunately this committee has never been fully functional. The Broadcasting Act also states that religious communities are exempt from paying broadcasting fees until the denationalisation process is complete (Article 67 Para. 3).

Religious Holidays

The Serbian Orthodox Church is one of the few churches in the world that still follows the Julian calendar. Under current legislation Christmas, Easter and Good Friday are non-working days according to this calendar, together with the day of their patron saint for Orthodox believers, while members of other religions are guaranteed the right to celebrate their own religious holidays.

International Legal Instruments

The Socialist Federal Republic of Yugoslavia was one of the original members of the United Nations, and remained a member until its dissolution. On 1 November 2000 the Federal Republic of Yugoslavia was admitted as a member once again. The United Nations' instruments protecting religious freedom include Article 18 of the Universal Declaration of Human Rights, which proclaims the right to freedom of religion.⁶

Perhaps even more important is the fact that the State Union of Serbia and Montenegro became a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 2003, which entered into force on the territory of the country on 3 March 2004. This is a very significant step, as Serbia has now also become subject to the control mechanism set up by the Convention and will be bound by any future decisions the European Court of Human Rights may hand down in cases involving Serbia and Montenegro. Article 9 of the

ECHR proclaims freedom of thought, conscience and religion, and requires very weighty reasons in order to justify interference with this right by the state.⁷ Article 10 protects freedom of expression and Article 11 freedom of assembly and association, while Article 14 prohibits discrimination, including that based on religion.⁸ Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms obliges the state to respect the religious convictions of parents when providing education for their children.⁹ One of the most important aspects of the ECHR is its incorporation into the domestic legal systems of the signatory countries. At the time of the ratification of the Convention by the Federal Assembly representatives were already voicing their concern about the lack of conformity of Serbian laws with the Convention. There is therefore an urgent need for legal reform in this area in the Republic of Serbia, in order to bring laws into conformity with the stipulations of the Convention. Without an existing legal basis regulating the legal position of religious communities in the country, Serbia may be found to violate the religious freedom of certain individuals, which is protected by the ECHR.

Yugoslavia became a signatory to the Council of Europe's Framework Convention for the Protection of National Minorities in 2001. The Framework Convention extends protection to the practice and expression of religious convictions by persons belonging to a national minority, and encourages governments to create an atmosphere which fosters tolerance towards different manifestations of cultural, linguistic and religious identity. Furthermore, it recognises the right of persons belonging to national minorities to establish their religious institutions, organisations and associations (Articles 5, 6, 7 and 8). The protection the Convention offers to individuals is important, as many persons from national minorities in Serbia belong to a religious minority at the same time.

A Brief Overview of the Current Situation in Kosovo

Although it is not the topic of the present article, the situation in Kosovo needs to be mentioned at this point, as it continues to be an important issue in the area of church-state relations and in the area of respect for human rights. Kosovo is currently placed under an interim United Nations administration on the basis of Resolution 1244 of the Security Council from 10 June 1999. Although it has no *de facto* jurisdiction over it, the Serbian political leadership (together with Serbian society) continues to regard Kosovo as an integral part of the country, as is made clear in the March 2004 decision of the National Assembly of Serbia declaring Kosovo an inalienable part of the Republic of Serbia. The State Union of Serbia and Montenegro signed the European Convention for the Protection of Human Rights and Fundamental Freedoms without a territorial reservation for Kosovo, so as to allow Serbs living in the province to be able to turn to the European Court of Human Rights if needed.

Boris Milosavljević claims that if laws regulating the return of confiscated church property had been passed in the early 1990s, when the issue was raised first by the Serbian Orthodox Church under the Milošević regime, the current partition of Kosovo might not have taken place in the form we know it. Had the law been adopted then, and had the Serbian Orthodox Church been returned the considerable amount of land and property it once owned in the province, 'the legal aspect of property ownership would have had specific weight with regard to the manner of settling the Kosovo-Metohija situation in 2001' (Milosavljević, 2002, p. 324). As it is, unfortunately, many Serbian Orthodox churches and monasteries have been completely destroyed or damaged as a form of revenge by Kosovo Albanians, of whom very few

have been arrested or charged with a criminal offence. Kosovo continues to be a very important issue for the Serbian Orthodox Church, as is evident from the large number of public statements, publications and personal visits to the province by Patriarch Pavle and other clergy in high positions.¹⁰ The church has condemned the continual destruction of Serbian historic and religious monuments (some of which are of outstanding cultural and historical importance),¹¹ as well as the violence against Serbs living in the province. The province remains in the centre of attention and the wave of ethnic hostilities in March 2004, which was exhibited partly through acts of religious intolerance, gave further cause to the Serbian Orthodox Church to keep raising the issue in the Serbian political sphere through meetings with government officials and representatives of international organisations involved in the province.

Following the wave of violence in March 2004 the Serbian government has brought in some exceptional measures in order to respond to this crisis. The new minister for religious affairs in the Serbian government, Milan Radulović, announced at a news conference in Belgrade that the government would provide an average €250 monthly salary to 150 Serbian Orthodox monks and 20 priests who had been left without any income after damage to or destruction of their churches and monasteries, and who are staying in their now unpopulated parishes in order to protect the remaining churches and monasteries. Furthermore, the Ministry for Religious Affairs would settle the €200,000 outstanding pension and social security payments for Orthodox religious ministers in Kosovo (Radulović interview, 2004b).

Future Prospects

In March 2004 the minister for religious affairs Milan Radulović explained his plans in an interview with Tanjug News Agency, stating that the three most important priorities for his first 100 days in office would be intensive work on a draft law regulating religious freedom and the legal position of religious communities, working out the criteria for the financing of cultural and educational programmes of religious communities and, first and foremost, helping the Serbian Orthodox priests and monks in Kosovo (Radulović interview, 2004a). As of July 2005, and after several new drafts, no law has been created yet but the Ministry has channelled a lot of financial help to churches and religious ministers in Kosovo.

To sum up the legal situation in Serbia concerning the relations between state and church, there is a tendency towards the harmonisation of law with international standards. This is partly due to pressure from the international community; but, I am convinced, it is also a result of the growing awareness of local politicians themselves. Although never passed, the 2001 Draft Law on Religious Freedom has already affected legislation and everyday practice. The religious communities listed as traditional or recognised in its preamble have received advantages in the laws regulating religious instruction in state schools, while the other religious communities are often treated disadvantageously in various areas of life. In my view, the way forward for Serbia (and for the State Union of Serbia and Montenegro) within the international context is the establishment of a functioning and controllable legal framework setting out the position and rights of religious communities, the removal of discrimination against certain religious groups, and the respect and enforcement of individual human rights in a society characterised by religious tolerance. How much progress Serbian political leadership and society have made in this area in recent years is the subject of the next section.

The Societal Reality of Religious Freedom and Tolerance

The Resonance of Religious Legislation and Policies in Serbian Society

Regulating areas still unresolved under the existing legal framework appears to be a priority for the present government. Meanwhile, the question of how far these laws have been able to extend their influence remains unanswered. Can they truly create religious freedom and tolerance in Serbian society and can they foster a healthy relationship between church and state?

Religion is an important issue for Serbs, of whom 95 per cent declared themselves to be religious in the 2002 census. Legal regulation of the status and activities of religious communities, therefore, has an effect on the overwhelming majority of the population, and this subject has been in the centre of political and social dialogue for the last few years.

Interviews with several religious leaders and a study of a sample of publications by religious communities show that they agree on the most urgent issues that need to be resolved. The return of confiscated or nationalised church property is one of the most important: some religious communities, including the Reformed Christian Church, are currently in a difficult financial situation (Csete-Szemesi interview, 2004). Rev. Katalin Réti, pastor of the Christian Reformed Church in Subotica, suggests that 'a direct way for believers to support their own religious communities through a certain percentage of their taxes' be made possible (Réti interview, 2004). Although we need to understand that in a transitional country – which Serbia still is – legal and economic reforms do not happen overnight, the question of returning property to religious communities has been on and off the agenda of various governments since 1991. Other important issues waiting to be resolved include the clarification of the legal position of theological faculties (Kopilović and Dudić interviews, 2004), and the legal status of employees of religious communities (Dudić and Živković/Rac interviews, 2004).

The introduction of religious instruction in state schools has been a controversial topic ever since discussions about it began. Especially smaller Protestant and Evangelical communities wanted a more inclusive approach and hoped that the laws would include them among the religious communities whose religious instruction the state would finance. Religious communities on the whole have been able to organise religious instruction quite successfully, although lack of finances and personnel or the low number of students in a given school may present obstacles in some cases (Réti interview, 2004 and Asiel interview, 2005). As of 2005, the greatest number of students attends Serbian Orthodox religious instruction throughout the country. Reformed religious instruction is being conducted in Subotica and several other places in Vojvodina (Csete-Szemesi interview, 2004); Islamic religious education is available in all schools in the Sandžak region and the Preševo Valley (Dudić interview, 2004); Catholic religious instruction is available for pupils in every school of the Subotica Diocese and in many places in the other two dioceses of Belgrade and Zrenjanin (Kopilović interview, 2004), while Greek Catholics provide religious instruction in several places in Vojvodina, including Novi Sad (Živković/Rac interview, 2004). The Slovak Lutheran Church is also present in many schools throughout Vojvodina, while, because of small numbers, the Jewish religious community is mainly conducting its religious education off school premises, with the exception of one high-school student in Novi Sad (Asiel interview, 2005). Religious communities which do not have permission to conduct religious education in state schools, such as the Adventist Church and the Methodist Church, continue to organise instruction in their own buildings of worship (Mihaljčić and Palik-Kunčak interviews, 2004). In an opinion

poll conducted in May 2003 in 12 elementary and 10 secondary schools in Serbia, students and parents assessed the necessity, content and results of religious instruction in a strongly positive manner (Kuburić, 2003).

The Special Position of the Serbian Orthodox Church

In Serbia all religious communities are considered equal in the eyes of the law. However, as the US Department of State puts it in its 2003 International Religious Freedom Report, 'the majority Serbian Orthodox Church receives some preferential consideration'. As Paul Mojzes observes, 'the Serbian Orthodox Church has been offered a special status as the church of the Serbian nation and has been given media and other support' (Witte and Van der Vyver, 1996, p. 277). The lack of regulation regarding the legal position of religious communities in the country has left a vacuum, which has been to the advantage of the Serbian Orthodox Church. Although the church no longer enjoys the status of an established religion, it has nonetheless *de facto* taken up the role of an indispensable national church. This is because religious and national identities are intertwined within the Serbian Orthodox Church; the belief is prevalent that all Serbs are (or should be) Orthodox.

The Serbian government has been less than ambiguous about embracing Serbian Orthodoxy. Leading politicians and political parties have historically taken a clear stand in support of the Serbian Orthodox Church and its primacy in Serbian society, and this tradition seems to be being continued by the government that was formed in March 2004. The Serbian Orthodox Church has also been the main recipient of government financial assistance for religious communities in recent years (Avramović interview, 2004). In 2003 the state-owned postal service contributed financially to the construction of the St Sava church in Belgrade by temporarily raising the price of every postage stamp available, so that citizens (Orthodox or not) had no choice but to 'donate' a few extra dinars to this cause with each letter they sent.

One important point we should not forget is that Serbia is an ethnically, linguistically, culturally and religiously very heterogeneous society. The 2002 census lists 63 different religious groups and denominations present in Serbia. Geographically, the greatest number of religious communities is found in the northern autonomous province of Vojvodina, where as a consequence of historical developments there is a great diversity. The province is home to the majority of Catholic, Reformed and Lutheran believers. The presence of the Serbian Orthodox Church is greatest in central and south Serbia. In Kosovo and in the bordering Sandžak region and Bujanovac-Preševo-Medveđa areas Muslims form a significant religious community.

After the collapse of Yugoslavia, as Slovenia, Croatia, Bosnia and Macedonia became independent, the demographic composition of Serbia changed radically. The Serbian Orthodox Church became the absolute majority religion (claiming 84.97 per cent of the population today). While many Croats and Hungarians (mostly Catholics and Protestants) left the country in the early 1990s as a result of direct or indirect pressure on them, waves of primarily Orthodox refugees and internally displaced persons entered the country from Croatia, Bosnia and Kosovo, strengthening the numerical advantage of the Serbian Orthodox Church. As one can see from the latest census results, there is now a vast difference between the number of adherents to Serbian Orthodoxy and the number of adherents to the second largest religion, Catholicism.¹²

Religious Freedom

Paul Mojzes describes four different types of arrangement in Europe regarding religious human rights: Ecclesiastic Absolutism ('only one religious organization is supported by the state'), Religious Toleration ('religion as such is preferred and supported by the state'), Secularistic Absolutism ('religion as such is rejected by the state'), and Pluralistic Liberty ('the state is really indifferent and neutral toward religion or non-religion') (Witte and Van der Vyver, 1996, pp. 266–68). He asks the question whether it is possible to move from a secularistic absolutist society to pluralistic liberty. This, indeed, lies at the heart of the issue of religious freedom in Serbia today. As Mojzes explains, the communist state viewed Marxism-Leninism as providing the only full understanding of the world, but now hostility toward religion is no longer a guiding force in government policy. Although, he says, pluralistic liberty is difficult to achieve fully, the intention of modern societies should be towards 'pluralism and freedom for all views and practices, except those most patently destructive' (Witte and Van der Vyver, 1996, pp. 267–69).

Although today there is undeniably a significant degree of religious freedom in Serbia, nonetheless the situation is still far from ideal. In their reports the International Helsinki Federation for Human Rights, the US State Department, Human Rights Watch and other international organisations and foreign government agencies periodically point out restrictions on religious freedom in the actions and attitudes of the Serbian government and media. I shall briefly highlight a few specific issues of conflict: the question of proselytism; the position of small religious communities; religious discrimination; and the role of the media.

The Issue of Proselytism

One of the aspects of freedom of religion, as it is expressed in international human rights protection documents,¹³ is the freedom to be able to change one's belief. The Charter on Human and Minority Rights and Fundamental Freedoms of Serbia and Montenegro¹⁴ guarantees this right.¹⁵ The primarily Orthodox culture and Serbia's history, however, make this a very sensitive issue. Proselytism has been a much-debated issue in Serbia for centuries, and for a while it was prohibited among Orthodox believers (Ramet, 1989, p. 311). Historically, Catholics have represented the greatest threat to Orthodox Christians in this area. The Muslim Ottoman Empire, on the other hand, was hardly, if ever, involved in directly encouraging conversions to Islam; rather, it applied pressure on non-Muslims in indirect ways, such as levying disproportionately higher taxes on them. Proselytism is regarded very negatively in Orthodox societies for several reasons. First, because of the autocephalous nature of their church, religious and national identities are intertwined. The Serbian Orthodox Church also claims to be the defender of national values; therefore proselytism becomes a cultural as well as a religious issue. As the years of communist rule ended, leaders of the Serbian Orthodox Church, as of Orthodox churches elsewhere in Eastern Europe, were hoping to recover their 'lost faithful', but instead they found themselves fighting over them with other religious groups. The Orthodox Church, which regards other Christian denominations as sister churches, did not expect proselytism from them in what it claimed was a 'Christian country' (Ferrari lecture, 2003). As Paul Mojzes describes the situation in the whole of the Balkans, 'currently one can observe an area-wide struggle between the dominant church or religion that wishes to restrict the activities of rival denominations and the numerous old and new

religious groups that are threatened by the prospect of monopoly (or establishment) by the dominant national church (religion)' (Witte and Van der Vyver, 1996, p. 271).

The historical struggle for political and spiritual control between the Catholic and Orthodox churches on the territory of Yugoslavia has been partly driven by what Michael Radu describes as 'the key Serbian Orthodox argument for a Greater Serbia, i.e., the alleged historic mission of the Serbs to protect Orthodoxy from the double threat of Mecca and the Vatican' (Radu, 1998, p. 292). The conflict with the Catholic Church has long had an ethnic dimension: the struggle against Croat nationalism. Since the end of the wars following the breakup of Yugoslavia, the Roman Catholic Church within Serbia has become much smaller and relatively 'safer' in the eyes of the Serbian Orthodox Church. As the total number of Catholics¹⁶ is roughly 6.5 per cent of the Serbian Orthodox Church's adherents, they do not represent as great a danger for Serbs as was perceived in pre-1991 Yugoslavia.¹⁷ Relations between the two churches have improved significantly in recent years. This is in part undoubtedly the result of the tireless efforts of Mgr Stanislav Hočevar, archbishop of Belgrade and head of the Serbian Bishops' Conference, at building bridges among religious communities through interreligious dialogue and common religious activities.¹⁸

The conflict over proselytism between the Serbian Orthodox Church and the Protestant churches has been a rather different story. Here, the ethnic dimension has never really played a role. Instead, the basic source of tension lies in differences in theology. According to Miroslav Volf, these include differing perspectives on the church, on the relationship between church and culture, on the relationship between church and state and on what it means to be a Christian (Volf, 1996, p. 37). Although proselytism in Serbia by Protestants had existed historically, it gained new momentum in the early 1990s as part of a phenomenon occurring throughout Central and Eastern Europe. Proselytism by foreign and domestic groups became widespread and of much concern for the traditional churches.

*Small Religious Communities and the Issue of 'Sects'*¹⁹

As in other countries experiencing change and upheaval, the disintegration of the communist system meant the influx of a large range of religious and esoteric groups into Serbia. Some potentially harmful cults have also appeared which alarmed the leaders of traditional churches and political groups.

In Serbia universally acknowledged human rights are protected on an individual level. This provides freedom for individuals to have or not to have religious convictions, or to change them. The principle of separation of church and state ensures that this can be done without interference from the state. Religious communities as such, however, do not enjoy any specific legal protection, and this situation, coupled with the unresolved issue of registration, leaves them vulnerable in the eyes of the law and vulnerable to religious intolerance. As Vjekoslav Perica explains, 'after the fall of communism...the major local religions and ethnic nationalistic regimes considered domestic religious minorities and foreign missionaries a gross threat, harassed their leaders, obstructed their development of new places of worship, attacked them in the media, and sometimes even persecuted their members' (Perica, 2002, p. 15). The US State Department found in 1999 that 'in practice both the Government and the legal system provide very little protection for the religious rights of minority groups'. The International Helsinki Federation for Human Rights quotes in its 2002 report on religious discrimination in Serbia one of the leading domestic experts on the sociology of religion, Professor Dragoljub Đorđević, who warns

that anti-cult campaigners in the media ‘create a tremendous confusion with regard to religious communities, in particular the small ones, and endanger the religious rights of their members’. Looking at current international sociological research, Đorđević proposes a list of characteristics which may help identify potentially dangerous cults, but which on the other hand also provide a description of what is a legitimate religious community or denomination (Mićunović, 2000, pp. 133–44).

Human Rights within Religious Communities

As the importance of the protection of human rights and the ensuring of religious freedom has become an important agenda item for the Serbian government, the issue of respect for human rights within religious communities may sooner or later also surface in the discussion. Although the sceptical attitude of the government toward the internal issues of religious communities during communism has been replaced by more trust, nonetheless the way religious communities respect the rights of their faithful is still an important issue.

Professor Rik Torfs identifies a few arguments used against human rights in the church. Although his focus is primarily on the Roman Catholic Church, these arguments are relevant for other religious communities as well. Firstly, he says, human rights limit the power of the hierarchy, and secondly, the authorities fear that ‘making room for human rights in the church puts Orthodoxy at risk’ (Torfs, 1995, pp. 14–16). The Serbian Orthodox Church is built on hierarchy and has a strongly centralised structure, and by definition this does not leave room for the prioritising of individual rights to be held as a main concern. Gerald Powers partly justifies the failure of the Serbian Orthodox Church to be a strong and consistent witness for human rights, saying that it reflects an ‘understandable pastoral priority given one’s own flock’ (Powers, 1996, pp. 221–22). Although human rights implementation is always a matter of the cultural and social context, nonetheless, as Professor de Gaay Fortman urges, churches should play an active role in promoting and protecting such rights (Fortman lecture, 2004).

Discrimination on the Basis of Religious Identity

Leaders of some minority religious communities, when asked whether their members enjoy the same rights and job opportunities as Orthodox believers do, admit that discrimination on religious grounds exists in Serbian society. Once again, it is difficult to link such discrimination exclusively with religious identity as opposed to ethnic identity. Rev. Katalin Réti thinks that discrimination against Reformed believers is primarily based on their Hungarian ethnicity, as all Reformed in Vojvodina are Hungarian (Réti interview, 2004). She claims that ‘some recent incidents of ethnic and religious intolerance are connected to a certain degree to the Serbian Orthodox Church’ – mainly because it does not categorically condemn these attacks committed against others. Rev. Andrija Kopilović admits that although relations between the Roman Catholic Church and the Serbian Orthodox Church are good, subtle discrimination does exist towards non-Orthodox believers on the personal level (Kopilović interview, 2004). Professor Mevlud effendi Dudić, director of the Gazi-Isabeg madrassah in Novi Pazar, categorically states that Muslims do not enjoy the same rights in everyday life as Orthodox believers do, ‘in spite of promises and a few small steps taken by the previous [Đinđić] government’ (Dudić interview, 2004). The United States Department of State claims that during 2003 ‘the Belgrade Islamic

community also reported continued difficulties in acquiring land and government approval for an Islamic cemetery near the city'. Furthermore, there is only one high-ranking politician on a national level in Serbia from a Muslim background, federal minister for human and minority rights Rasim Ljajić.

The State of Religious Tolerance in Society

Just how religiously tolerant is Serbian society? The answer to this question is assessed very differently by representatives of various religions. The Serbian government's own assessment would probably also differ from that of international organisations, which for years have warned of the religious intolerance present in Serbia. The historical background is of some importance here. There is a wide diversity of religious communities, and therefore of religious identities, in Serbia, and they have interacted with each other for a long time. Tito built Yugoslavia on the basis of the principle of tolerance; the Titoist slogan 'Brotherhood and Unity' echoed positively in Yugoslav ears for decades. The brutal wars following the breakup of the country shattered this ideal. People saw that accepting each other's differences was not a strong enough ideal to hold the country together and in the end led not to harmony but to tragedy. Bitter disappointment disillusioned many people who had seen Yugoslavia as an ideal for a society embracing its diversity. The notion of tolerance lost its former value in the eyes of many Serbs. After the breakup of Yugoslavia the media fanned hostility towards everything non-Serb and non-Orthodox.

Violent attacks especially against smaller religious communities are, unfortunately, too regular to ignore. Sometimes even the clergy or the buildings of the majority Serbian Orthodox Church are the target of such acts. One of the non-governmental organisations keeping account of these incidents claims that instead of abating in their numbers, 'more than 100 attacks took place on Protestant, Catholic, Jehovah's Witness, Jewish, Muslim and Romanian Orthodox targets in 2004, with more than 25 such attacks between January and May [2005]'. These attacks range from graffiti and spoken threats to physical assaults, and a common characteristic they have is that the perpetrators are hardly ever caught by the police and brought to justice. A few recent examples demonstrate the diversity of religious communities targeted:

- During the night of 21–22 March 2005 antisemitic posters and graffiti, partly directed against the B92 television and radio station and two nongovernmental organisations, appeared in several locations in Belgrade. Messages were spray-painted on the wall in front of the Jewish graveyard and at the entrances to the offices of the Helsinki Committee for Human Rights in Serbia and the Humanitarian Law Centre. The president of Serbia Boris Tadić, the Serbian government, numerous political parties and leaders of various religious communities immediately condemned these messages.
- During the night of 26–27 January 2005 unknown perpetrators vandalised the memorial to Jewish Holocaust victims in Novi Kneževac. The incident took place just a few days after the 60th anniversary of the liberation of the Auschwitz concentration camp.
- On 27 March 2004 the Catholic cemetery in Subotica was vandalised.
- On 18 March 2004, in reaction to the renewed wave of violence in Kosovo against ethnic Serbs living in the province and the destruction of Serbian Orthodox churches and monasteries, mobs vandalised and set fire to mosques in the city

centres of Belgrade and Niš. The Serbian government, the Serbian Orthodox Church, the Roman Catholic Church and other religious communities such as the Protestant-Evangelical Church, among others, condemned these incidents.

- That same night two Molotov cocktails were thrown at the Bible Cultural Centre run by a local Church of God congregation in Niš.
- During the night of 26–27 February 2004 unknown perpetrators broke the windows of the Baptist church in Novi Sad.
- In January 2004 unknown persons flooded the basement of the Reformed church in Sombor. Graffiti saying ‘Serbia is an Orthodox land’ appeared on the walls of the Reformed churches in Sombor and Pančevo.
- On the night of 24 May 2003 unknown attackers set fire to the house of Dragana Bukomirović in Beli Potok by throwing Molotov cocktails at it. Bukomirović is chairwoman of the Sanatan-sansta Association for Spiritual Learning.
- On 16 April 2003 Adventist pastor Josip Tikvicki was hospitalised with concussion after being severely beaten in the night of 15–16 April when he challenged people who were attacking his church in the city of Zrenjanin.
- In one of the most publicised attacks in recent times, a mob of about 50 people with icons and candles in their hands physically prevented Anglican believers from entering the Patriarchate of the Serbian Orthodox Church in Belgrade on 24 December 2002, where their congregation was to celebrate Christmas at the invitation of Patriarch Pavle. Among those gathered for the Anglican service was the British ambassador to Yugoslavia and other foreign diplomats. The Serbian Orthodox Church and the president of Yugoslavia Vojislav Koštunica both issued statements condemning the incident as shameful and contradicting Orthodox and universal Christian values.
- In April 2002 a hand grenade was thrown at the newly built Jehovah’s Witness kingdom hall in Vrbas.

Representatives of religious communities and nongovernmental organisations regularly raise their voices and demand that the government react to and investigate such violent attacks against religious communities and punish their perpetrators. As of July 2005 the trial of the 15 young people charged with burning down the mosque in Niš in March 2004 had not yet begun. This, together with the fact that they will be prosecuted for group violence (just as their counterparts in Belgrade in connection with vandalising the capital city’s mosque) and not religious hatred, shows the reluctance of the present authorities to identify and condemn religiously motivated violence. Although police and government officials always reiterate that most of these incidents are not carried out in an organised fashion but are the result of the irresponsible or destructive behaviour of a few individuals, their number, frequency and geographical extent is still alarming.

The Role of the Media

Siniša Malešević states that ‘two systems or apparatuses, educational and informational, are the main channels of ideology dissemination in every modern society’ (Malešević, 2002, p. 293). During the communist period Yugoslavia’s educational system and media were both in the hands of the state, and the task of ideology dissemination was made easier by their automatically assumed and expected cooperation. Today, media controlled by the state are still powerful, but independent media are also flourishing. What is the general message that comes across concerning

religious communities? What role, if any, do journalists play in fostering religious tolerance in Serbian society?

'One problem', according to the World Evangelical Alliance, 'is that the media are extremely politicised and little more than a tool for the political elite, for whom Serb nationalism is a popular vote winner' (World Evangelical Alliance, 2003). The US Department of State claims that during 2003

journalists and religious leaders noted the continuation of anti-sect propaganda in the Serbian press. Minority Christian churches, like Baptists, Adventists, Jehovah's Witnesses, and others often are given the sect moniker in the press in Serbia and Montenegro. Religious leaders have noted that instances of vandalism often occur soon after press reports on sects. (International, 2003)

The following list of a few violent attacks in 2002 compiled by *Forum 18 News Service* clearly illustrates this point:

- On 16 November 2002 the *Glas javnosti* daily newspaper tried to connect 'Novi Život' (Campus Crusade for Christ) with the suicide of a student Milan Kirčanski, in the context of 'dangerous sects' that are active in Serbia.
- During March 2002 Jehovah's Witnesses were very negatively portrayed in *Vranjske novine*, the local newspaper of Vranje. A house that supposedly belonged to them and that was reported on in the previous edition was stoned, because they were repeatedly called sects.
- From 24 February to 2 March the Adventist church in Belgrade was stoned three times. On 26 February, on BK TV, there was a repeated television programme in which Protestants were very negatively portrayed and Adventists were associated with Satanists. On 4 March a group of high school students yelled and threatened people at the front door of the Belgrade Adventist church. Police intervened and went to the neighbouring school to interview and warn the students.

Expressions of religious hatred continue to be a problem in the Serbian media. This is partly a legacy of the wars and the surrounding propaganda of the 1990s. In his article 'How to make enemies' Miroslav Kiš depicts the various stages through which individuals as well as societies move towards seeing their former neighbours and best friends as enemies. The process begins with the conscious creation of distance, and moves through the use of propaganda and depiction of the group in question as a scapegoat, to culminate in the rationalisation of evil (Kiš, 2002, p. 16). This is an accurate description of the progression that took place in the Serbian media before, during and after the wars of the 1990s. Throughout 1997 'the programming of the state-controlled TV Belgrade regularly [involved] the demonisation of certain ethnic and religious groups' (Boyle and Sheen, 1997, p. 187). The 1998 publication '*Hate Speech*' in the *Balkans* by the International Helsinki Federation for Human Rights observed (three years after the end of the Bosnian war) that the Catholic Church and Islam were continually depicted by the Serbian media as the main enemies of Serbdom and Orthodoxy (Lenkova, 1998, pp. 96–107). As Professor Mevlud effendi Dudić charges, 'state-owned television ... has until now permanently equated Islamic attitudes with those of terrorists and fundamentalists' (Dudić interview, 2004). It will be an enormous challenge not only for the media but also for Serbian society in general to move away from the stereotypes they have embraced. Although Article 51

of the Charter on Human and Minority Rights and Fundamental Freedoms²⁰ of Serbia and Montenegro (as well as Article 44 of the Constitution of the Republic of Serbia) prohibits the instigation of religious intolerance and hatred, little seems to have been done so far to enforce its stipulations.²¹

Religious leaders agree that the extremist and intolerant views expressed (sometimes even by clerics themselves) do not reflect the official theology and position of any of the major religious communities in Serbia. The powerful impact of the media nonetheless needs to be recognised, and through the recent Broadcasting Act religious communities will, it is to be hoped, be able to provide a counterbalance to such extremist views. The passing of specific legislation against hate speech will not solve the problem itself, apart from maybe helping to bring the perpetrators to justice. In my view, a deeper societal change needs to take place in the attitudes of people. I think that a large part of the solution rests in the hands of the religious communities themselves. If their leaders make a concerted effort to speak up against verbal attacks, even if they affect another religious community and not their own, this will eventually have an impact. While teaching tolerance, they should try to provide a positive example for their own followers and for society at large.

Another very important issue that needs to be resolved is the legal and societal clarification of what a sect is, even though this seems to be an extremely challenging task. Government involvement in this process seems to be justified, but only if it is done together with experts in the field and the religious communities themselves – not only the recognised religions but all who wish to be involved in such a dialogue. Such a framework, in turn, should be included in the curriculum of religious instruction, publicised in the media and adhered to by the religious communities themselves.

Signs of Hope: Interreligious Dialogue

On a more positive note, dialogue has been taking place in the last few years among representatives of various religious communities. The importance several religious groups attach to such meetings is shown by the fact that they usually send their highest-level representatives. The government has also been involved in talks with representatives of religious communities during the preparation phases of the draft laws on religious freedom and on religious instruction in state schools. This is a welcome sign of cooperation and will, it is to be hoped, lead to a deepening of mutual respect between the state and the religious communities. All the religious leaders I have interviewed agree that ongoing dialogue among the various religious communities is an indispensable factor in building a pluralistic and religiously tolerant society. Belgrade archbishop Mgr Stanislav Hoćevar stresses that the religious dimension should be viewed as the most important one in interreligious dialogue: only this will lead to 'reconciliation, peace, involvement, voluntarism and hope' (Hoćevar interview, 2004). He also points out that religious communities need to be secure in their own identity if they want to enter into societal dialogue. This view is echoed by Milan Vukomanović, who hopes that interreligious dialogue will continue without international pressure, as religious communities become more confident and independent (Vukomanović and Vučinić, 2001, p. 27).

One example of interreligious cooperation from the last few years is the Maribor Initiative,²² the main goal of which is to bring reconciliation among religious communities and focus on building democracy and respect for human rights and religious minorities in South-Eastern Europe. The round-table discussions of 14 and 15 December 2001, which were attended, among others, by Archbishop Hoćevar and Sandžak Mufti Muarem

effendi Zukorlić, resulted in the Belgrade Declaration on Religious Communities and Religious Freedoms in a Democratic Society (Bašić and Devetak, 2003). The Declaration emphasises the importance of interreligious reconciliation and dialogue. Many other discussions have taken place in recent years, exploring the place of religion in society, the relationship of the state and religious communities and other topics. Although they signal an important step towards cooperation, just how much practical benefit will result remains to be seen. An example of practical cooperation is the fact that in 2004 Archbishop Hočevar preached at an ecumenical church service which was held in a Lutheran church in Subotica and led by Lutheran superintendent Árpád Dolinszky. The Serbian Orthodox bishop of the Bačka region Irinej (Bulović) and Reformed bishop István Csete-Szemesi also attended the service.

A conference on the contribution which churches can make to cultural, religious and interethnic cooperation on the path to European integration was held in Subotica and Bečej between 22 and 24 November 2004. It was organised by the Serbian Orthodox diocese of Bačka and the Roman Catholic bishopric of Subotica, with the support of the Reformed Church, the Slovak Evangelical Church and the Evangelical Christian Church. Beside the highest-level leaders of these churches, representatives of the government, including the minister for religious affairs Milan Radulović and the Serbian prime minister Vojislav Koštunica, as well as delegates of the councils of ethnic minorities and nongovernmental organisations, also participated. The official message of the conference, adopted at the end of the working meetings, called churches to a 'fruitful dialogue' and 'fraternal cooperation'.

Serbia: on the Road toward Religious Pluralism?

Eileen Barker of the London School of Economics calls our attention to the difference between religious diversity, meaning the existence of many different religions, and pluralism, meaning the 'relatively peaceful coexistence and cooperation of different religious confessions' (Mićunović, 2000, pp. 95–101). Religious diversity is a given factor in Serbian society. Whether it will be turned into a cooperation beneficial for all is yet to be seen. Of course, reaching religious pluralism is not without its challenges. Stephen Monsma and J. Christopher Soper describe three basic questions that arise in a pluralistic situation, two of which are relevant for the present-day Serbian context (Monsma and Soper, 1997, p. 3).

First, how far can a democratic polity go in permitting religiously motivated behaviour that is contrary to societal and welfare norms? Writing about minority groups the liberal philosopher Will Kymlicka condemns what he terms internal restrictions which 'limit the right of group members to question and revise traditional authorities and practices' (Kymlicka, 1996, pp. 36–37). Looking at the example of western democracies which have dealt with such issues in recent years, we can conclude that no general rule exists, but ensuring the protection of the constitutionally guaranteed human rights and health of individuals is always seen as a priority.

Second, Monsma and Soper (1997) ask, should the state encourage and promote consensual religious beliefs and traditions in an attempt to support the common values and beliefs that bind a society together and make possible limited, democratic government? As a response, Mient Jan Faber emphasises the importance of finding a common value system among religious communities, which can 'stimulate in the whole of society a common value system', especially in the present-day Serbian situation, where many religious communities have until recently regarded each other as enemies (Mićunović, 2000, pp. 82–84).

The government's responsibility in a democratic society, where church and state are separate and the freedom of religion and the equality of all religious communities is guaranteed, is to provide an impartial and evenly balanced environment for all these communities. Although the importance and special contribution of the Serbian Orthodox Church to Serbian society cannot be denied and should be given due recognition, the legal standing of all religious communities should be placed on the same level. In my view, recent governments have not treated the resolution of outstanding questions regarding religious communities as their high priority. I therefore see a need for the present government to take further action through legislation and by exhibiting an equally neutral attitude toward all religious communities. The recent comment made by the minister of religious affairs, Milan Radulović, in which he states that he wants the country's recognised religious communities to have a say in which religious communities can be legally recognised, and under what circumstances (Radulović interview, 2004a), causes concern regarding the future direction.

Violations of human rights in the form of violent attacks against religious communities as well as religious hate speech do not show a tendency to abate. In my opinion, in such a situation a more concerned and efficient response by the police and eventually the country's court system would be necessary. As the government is limited in its scope of action (and in its role to provide a remedy for all societal evils) a stronger civil society will be an important actor in bringing change to the current situation. Networks of nongovernmental organisations, citizens' groupings, voluntary associations and the like will be able to rally around certain issues and raise their voices. Civil society networks already exist in Serbia, although 'the government has been slow to approve legislation that limits the possibilities for political interference in their registration and activities' (Pavlović, 2004, p. 25).

Society is never a static entity and old stereotypes, true for centuries, may no longer accurately describe reality. Whereas 'being a Serb means being Orthodox' still rings true for many people, religious affiliation seems now to run less along ethnic lines, especially among the younger generations. Demographic presumptions made by statisticians and politicians are being challenged.²³ The Serbian state will have to take into consideration the ever-changing dynamics of society if it wishes to provide relevant solutions to these dominant problems.

Serbia within the European Context

Serbia's Orientation: East or West?

Ever since the fall of the Milošević regime in October 2000 Serbia's governments have been clear in their goal: reintegration into international and European structures, with the goal of eventual membership of the European Union for Serbia and Montenegro. The victory of nationalist forces in the Serbian elections on 28 December 2003 has given reasons to doubt the reality of these aspirations. The new federal minister for foreign affairs has stated that the primary orientation of the foreign policy of Serbia and Montenegro from now on should be towards Russia, Ukraine and China (Drašković interview, 2004). This development, coupled with the recent unenthusiastic statements by Serbian prime minister Vojislav Koštunica regarding cooperation with the International Criminal Tribunal at The Hague, raises questions about the direction in which Serbia is really heading. Its decision to look to the East or to the West will certainly determine what course its laws and policies eventually take,

including those in the area of church-state relations. One can only hope that Serbia will not follow Chinese and Russian examples in restricting religious freedom.

A Theoretical Framework for Church-State Relations in Europe

The theoretical framework for describing and structuring church-state relations can be approached from many different viewpoints and academic disciplines, depending, for example, on whether one takes a legal, societal or institutional approach, or looks at considerations as disparate as history or sources of finance. After the fall of communism in Eastern Europe church-state relations were reshaped in most affected countries, and this in turn had an effect on the entire continent. Since much has been written about the theoretical framework of church-state relations, I will now mention only a few specific theories which illustrate certain aspects and trends relevant for this paper in the complex and diverse present-day European context.

Silvio Ferrari claims that the traditional classification of church-state systems in Western Europe (separation systems, concordat systems and national church systems) is outdated and that it 'over-emphasises the formal side of these relationships and does not pay enough attention to their content' (Kiderlen *et al.*, 1995, p. 33). Instead, according to Ferrari, it is possible to detect a common pattern in the structure of the constitutional legal provisions concerning religious freedom and current church-state relations in Western Europe, although this pattern may be applied in different ways. These provisions call for an impartial attitude on the part of the public authorities. The pattern can be described in the following way:

At the individual level there is a neutral (impartial) attitude of the State toward the various religious subjects who are free to profess the religion they prefer. . . . At the collective level there is the outline inside the public sector of a –religious–sub-sector . . . where the different religious subjects can enjoy treatment compared to non-religious subjects. . . . At both levels the State's right to interfere with religious subjects is confined to making the rules of the game and seeing to it that the boundaries of the domain are respected. (Kiderlen *et al.*, 1995, p. 34)

Zsolt Enyedi, looking at Europe as a whole, claims that currently 'there is no common European model yet, although state support for church institutions, respect for the self-determination of religious communities and the extension of privileges to a growing circle of religious organisations seems to be the norm in most countries' (Madeley and Enyedi, 2003, p. 219).

Approaching church-state relations from the viewpoint of financing, Rik Torfs observes that some form of financial support from the state for religious communities exists in every country in the European Union. He distinguishes between three different systems prevalent in the European Union member states:

- direct financial state support (as in Greece);
- a state-created framework for financing (such as we find in Germany or Italy, where religious communities benefit from tax collected by the state or levied by the churches themselves);
- separation between church and state, but indirect support (for example, in France) (Torfs, 1998, pp. 45–53).

Commenting on a survey of church-state relations in postcommunist Eastern European countries, Silvio Ferrari points out that the emerging model in these nations is not much different from that in the western part of the continent. This model, he claims, also reflects the essential principles prevalent in Western Europe: 'substantial respect of individual religious freedom, guarantee of autonomy and, in particular, the self-administration of the religious denominations, and selective collaboration of the states with the churches' (Ferrari, 2003, p. 421). This implies that 'after the collapse of Communist regimes, the opportunity to construct a new model of relations between church and state in the Central-Eastern part of Europe has been lost'.

John Madeley presents an overview of church-state relations in Europe, building on data from David B. Barrett's 1982 research (Barrett, 1982), which provided a *de jure* classification in terms of formal stances toward religion in the world's countries. Madeley combines Barrett's classification with a consideration of the *de facto* relations and state attitudes towards religion, and in this framework, and looking at the situation in 1980, he deems Yugoslavia (together with eight other Eastern European countries) to be an atheistic state, 'effectively policing only the politicisation of religion'. In Madeley's revisiting of this scheme, describing the situation in 2000, almost none of the former communist countries remained in the same classification, as their states' attitude toward religion had changed. Yugoslavia was an exception to this generalisation, since 'the embargo on religious groups engaging in political activity continued in 2000 to be policed by the Milosevic regime, albeit with extreme variations' (Madeley and Enyedi, 2003, pp. 12–15).

Attempting to categorise variations in church-state relations within the Orthodox world, Pedro Ramet describes four distinct patterns:

- Simple cooptive nationalist,²⁴ in which the hierarchy is coopted and espouses a nationalist line endorsed by the regime, as in Greece;
- Non-nationalist independent, where the church is too weak to offer any resistance to the policy of the state;
- Nationalist defiant (or independent oppositionist), where a church's opposition is organically related to its nationalism, as in the case of Serbia;
- Simple cooptive antinationalist, where an otherwise nationalist church is sapped of its nationalist strength by the slow strangulation of being 'quarantined' from the public and is penetrated and coopted by the regime, as was the case in communist Russia (Ramet, 1988, p. 241).

We thus see that when examining the current situation in Europe most scholars tend to agree on a few main points, notably the fact that Europe does exhibit a few distinguishable patterns and trends in church-state relations and that there is no complete separation of church and state as such (as is understood in the case of the United States of America). Historical standing is also one of the most important factors in determining which religious communities receive preferential treatment by the state.

Legal Sources Governing Church-State Relations and the Status of Religious Communities in the European Union

Without attempting to present a comprehensive picture of church-state relations and the position of religious communities within the European Union, I would like to mention a few important documents and the principles contained therein.

The 11th Declaration Annexed to the Treaty of Amsterdam describes the status of churches and nonconfessional organisations within the European Union.²⁵ What is most important is that it establishes the primacy of national legislation regulating this matter. Accordingly, the European Court of Justice has been reluctant to adopt a 'dogmatic line of reasoning in terms of fundamental rights' in its judgments (Kiderlen *et al.*, 1995, p. 25). The Declaration also places religious associations and nonconfessional organisations on an equal level with churches.

The Charter of Fundamental Rights of the Union, which was proclaimed in December 2000, reinforces some of the rights protected by international covenants in the area of religious freedom. These include provisions regarding freedom of thought, conscience and religion (Article II-10),²⁶ freedom of expression and information (Article II-11),²⁷ freedom of assembly and of association (Article II-12),²⁸ and the right to education (Article II-14).²⁹ All European Union member states are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the rights enshrined in the Charter are almost identical to those found in the ECHR, except for the explicit mention of conscientious objection, which falls under the competence of the member states and is recognised in accordance with national laws.

The Draft Treaty Establishing a Constitution for Europe contains several relevant paragraphs dealing with various aspects of church-state relations. Although it has not been accepted yet, and changes might be made to it, it still may be useful to take a look at its provisions. Article 51 deals explicitly with the status of churches and nonconfessional organisations within the Union and is a verbatim copy of the 11th Declaration Annexed to the Treaty of Amsterdam. Only paragraph 3 is new, which pledges that the Union will maintain an ongoing dialogue with these churches and organisations.³⁰ The Draft Treaty underlines the possibility for representative organisations (which religious communities certainly are) to 'make known and publicly exchange their views in all areas of Union action' (Article 46 Para. 1). It furthermore states that 'the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society' (Article 46 Para. 2). Exactly at what level and with whom this dialogue will be maintained is not clear and this has given rise to a range of different theories.

Greece: a Brief Case Study

It is against this legal and institutional background that I will now examine the situation in Greece. I have chosen Greece for this case study as it is the only member of the European Union with an Eastern Orthodox majority. Apart from being the largest religious community in Greece, the Greek Orthodox Church also enjoys the status of an established state church. Although this marks a significant difference from Serbia's situation, taking into account the religious, cultural and historical similarities and ties between the two countries I think we can benefit from such a comparison. The two nations were part of the Ottoman Empire for centuries and experienced similar struggles in creating their own independent nation-states. Even in recent times they have exhibited mutual support for one another. For example, during the Balkan Wars of the 1990s and the Kosovo crisis in 1999 'Greek public opinion was swayed by an explosion of unthinking and unconditional solidarity with Serbia as a "sister" Orthodox nation' (Madeley and Enyedi, 2003, p. 134), and Greece accordingly responded with large amounts of humanitarian aid for its fellow-Orthodox.³¹

Article 3 of the Constitution of Greece of 11 June 1975 establishes the relations between church and state and describes the Orthodox Church of Greece as the prevailing religion in the country. Article 13 deals with issues of religious freedom.³² It decrees that freedom of religious conscience is inviolable (Para. 1), and it states that ‘all known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law’ (Para. 2). Article 13 also explicitly prohibits proselytism (Para. 2). Article 14 allows for the seizure by authorities of publications in case of ‘an offence against the Christian or any other known religion’.

There is no form of church tax in Greece, so religious communities have to find support for themselves through the donations of their faithful or by other means. The financing of the Church of Greece however, comes almost entirely from the state, and in several different ways. The state provides direct or indirect subventions, by providing the salary and pensions of the majority of clergy—who are, therefore, effectively civil servants—and financing Orthodox clerical education. Certain categories of property belonging to the Orthodox Church are inalienable. In return, the state receives 35 per cent of all parish revenues. The Church of Greece also enjoys various forms of tax exemption, but these also apply to other religious denominations (Robbers, 1996, pp. 87–88). Beside the established Orthodox Church of Greece, the small Muslim minority in Western Thrace enjoys protected minority status and their muftis are state-appointed civil servants. The Jewish communities and central council are also regulated by state law.

In practice, the Church of Greece exercises real or symbolic authority over a wide range of societal issues. The construction of new places of worship for any religion requires the permission of the local Orthodox bishop (Madeley and Enyedi, 2003, p. 121). The Church of Greece firmly opposes any attempts at the separation of church and state and holds on to the idea that Greek national identity is inseparable from Greek Orthodoxy. The controversy and the political involvement by the archbishop of Athens, Christodoulos, over the specification of religion on Greek identity cards in 2000 illustrated this clearly. According to Gerhard Robbers, ‘for Greece its relation with the Muslim Ottoman Empire might give some, though certainly not all explanation for the idea of Orthodoxy as the prevailing religion in Greece’ (Robbers, 2001, p. 275).

Jurisprudence of the European Court of Human Rights Regarding Issues of Religious Freedom in Greece

Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)³³ is a double-sided provision: it protects freedom of thought, conscience and religion, as well as the manifestation of religion and belief. While the former is protected in an unrestricted way, the latter is subject to restrictions listed in Paragraph 2. Keir Starmer claims that

the Strasbourg bodies have interpreted the right to hold, or adhere to, a religion or belief broadly, but have interpreted manifestation—or, more accurately, the word ‘practice’ in Article 9(1)—narrowly. In other words, the observance of freedom of thought, conscience and religion in the personal sphere is afforded much greater protection than outward conduct motivated, or influenced, by religious or other beliefs. (Starmer, 1999, p. 644)

‘The attitude of the Court is that Article 9 of the ECHR is aimed at providing an adequate guarantee of freedom of religion and belief, but not at establishing certain uniform

criteria for church-state relations in the Council of Europe member states' (Hill, 2002, pp. 105–106). Accordingly, the Court has so far not pronounced on the close connection that exists between the Greek Orthodox Church and the Greek state.

Although, according to Charalambos Papasthatis, 'the legal fact of "prevailing religion" in no way excludes the full protection of religious freedom, Greece ranks first in number of convictions for violations of religious freedom by the European Court of Human Rights' (Papasthatis, 2001, p. 100). The Court first found a violation of an individual's freedom of conscience by a signatory state in 1993. The case of *Kokkinakis v. Greece* involved an elderly Jehovah's Witness who had been fined and imprisoned under the Greek anti-proselytism law for sharing his religious views with an adult woman in Crete. In its decision the Court proclaimed that the freedom of thought, conscience and religion is 'one of the foundations of a "democratic society" within the meaning of the Convention'. The Court did not pronounce its views on the legitimacy of the legal restrictions on proselytism in Greece. Instead, it made a distinction between legitimate Christian witness and improper proselytism. Consequently, the prohibitions of the Greek law may be legitimately applied in cases involving such improper proselytism, which are defined by Section 2 of Greek Law no. 1672/1939.³⁴ The Court found that there had been a breach of Article 9 of the ECHR.

In the 1996 case of *Manoussakis and Others v. Greece* regarding freedom of worship, a group of Jehovah's Witnesses was convicted under a Greek law prohibiting the operation of a place of worship without prior ministerial approval, as national legislation requires.³⁵ They lodged their application with the competent authorities in 1983, and when in 1996 their case was before the European Court of Human Rights they had still not received permission. The Court found a breach of Article 9 and stated that the methods of application of the relevant national legislation 'show a clear tendency on the part of the administrative and ecclesiastical authorities to use these provisions to restrict the activities of faiths outside the Orthodox Church'. In the almost identical cases of *Valsamis v. Greece* and *Efstratiou v. Greece* from 1996, pupils who were Jehovah's Witnesses had been suspended from school for refusing to take part in a parade on Greece's national day, an act which they claimed violated Article 9. The Court, however, 'held that the parade had not been such as to offend the parents' pacifist convictions and therefore decided that it had not amounted to an interference with the daughter's freedom of religion either' (Merrills and Robertson, 2001, p. 13). The 1997 case of the *Canea Catholic Church v. Greece* concerned denial of access of the church to the courts. In its judgment 'the Court held that every religious denomination has not only the right to be accepted as existing de facto, but also the right to be granted legal personality under conditions that are fair and similar to those applied to other denominations' (Hill, 2002, p. 109).

Other cases judged by the European Court of Human Rights include the 1998 case of *Larissis and Others v. Greece*, in which the Court stated that 'although it is permissible to punish "improper proselytism", merely trying to convert someone without undue inducements or pressure is a manifestation of religion protected by Article 9' (Merrills and Robertson, 2001, p. 12). However, as the case involved proselytism in the Greek Air Force by three officers who were followers of the Pentecostal Church, the Court held that there had been no violation of Articles 7 and 9 of the Convention with regard to the measures taken against the applicants for the proselytising of two airmen; and held that there had been a violation of Article 9 with regard to the measures taken against the second and third applicants for the proselytising of civilians. 'Because of the influence of military hierarchical structures,

the Court felt Greece was justified in protecting subordinate members from abuses of power' (Vann, 2002). In the case of *Serif v. Greece* from 1999, which concerned the intervention of the Greek state in the appointment of a mufti in Thrace, the Court held that 'unless there is a "pressing social need", the state is not entitled to interfere in a purely religious question decided by a religious community' (Hill, 2002, p. 113).

In the *Thlimmenos v. Greece* case of 2000 the applicant—a Jehovah's Witness—had served a prison sentence for having refused to wear military uniform during a time of general mobilisation. When, years later, he came second in a state examination for accountants, the Greek Institute of Chartered Accountants refused to appoint him, claiming that he had committed felony. The Court found a violation of Article 14 in conjunction with Article 9,³⁶ and in its judgment it stated that 'the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different'; in other words, 'behaviour inspired by personal beliefs constitutes a relevant differentiating factor when determining the consequences deriving from a criminal conviction' (Hill, 2002, p. 111).

To sum up, the case law of the European Court of Human Rights shows that while the internal aspect of religious liberty is regarded as absolute, limitations on its external dimension (its expression) may be justified. As we have seen, cases that have been brought before the European Court of Human Rights involving alleged violations of Article 9 by Greece cover a wide range of issues, which may indicate some fundamental discrepancies between the stipulations of the Convention and Greek legal provisions on the one hand and everyday practice on the other. In an assessment by Zsolt Enyedi, 'Greece is inclined to accept the predicaments of individual liberalism, but is reluctant to find room for genuine pluralism' (Madeley and Enyedi, 2003, p. 219). Daniel Payne claims that 'Huntington's thesis seems to be most appropriate for understanding the recent clashes between the church and the state in Greece as it attempts to implement western political norms, especially those pertaining to human rights' (Payne, 2003, p. 261). Payne states that the conflict this has led to with the Greek Orthodox Church 'can be understood as a conflict between the Orthodox understanding of the identity of the human person deriving from the collective and the western liberal understanding of the human person as an autonomous individual'. The controversy over the specification of religion on Greek identity cards in 2000 illustrated these conflicting ideals perfectly. George Mavrogordatos describes this in another way by stating that the 'most insuperable obstacle' to religious freedom lies in the fact that the Orthodox Church of Greece has the character of a *national* church (Madeley and Enyedi, 2003, p. 127). The meaning of 'prevailing religion', according to Kyriakos Kyriazopoulos, is currently being interpreted as a 'resurrection of the Byzantine model of church-state relations'. It should, however, mean only the recognition of the Orthodox Church of Greece as being 'first among equals, because of the strong historical and cultural ties that connect church to state' (Kyriazopoulos, 2001, pp. 512, 536). Although there are 'clear moves towards the disestablishment of the established churches' (Robbers, 1996, p. 325) throughout Europe, this is not likely to happen in Greece for a while, since this idea has been very strongly opposed by the leadership of the Orthodox Church of Greece.

Does the Greek Model Provide a Viable Model for Serbia to Follow?

Some questions arise naturally at this point. Does this mean, then, that Orthodoxy is, in its substance, incompatible with our modern western liberal understanding of individual human rights? Are religious pluralism and religious freedom for all possible

to achieve in a society with an established church? Although Mavrogordatos claims that in such a situation 'change in the direction of pluralism is even less probable than an outright separation between church and state', he says that this state of affairs, however, is 'by no means specific to the Orthodox Church (in Greece and elsewhere), as both Ireland and Israel demonstrate' (Madeley and Enyedi, 2003, p. 134).

Serbia has the advantage at the moment of being able to see how other nations have already dealt with issues of church-state relations. It can, in particular, look to Greece, a European Union member state and fellow-Orthodox majority country, with whom it shares many common cultural and historical experiences. Could and should the Greek example ever be a model for Serbia to follow?

First I need to point out some differences between Greece and Serbia. The most obvious ones are the demographic disparities: the proportion of Orthodox believers in the total population of Greece is 95.2 per cent, while in Serbia it is slightly lower at 84.9 per cent. Serbia is home to a larger number of historical religious minorities (which are all very small in number compared to the Serbian Orthodox Church) than Greece. Secondly, the Serbian Orthodox Church is no longer an established or state church: it holds the unofficial designation of national church and receives somewhat preferential treatment from the Serbian government, but it has neither the type of entanglement with the state nor the same political clout as the Greek Orthodox Church. The financial support provided by the state makes the Church of Greece dependent on the secular authorities. If it were disestablished, the church would find itself in a financially very vulnerable situation. This is yet another motivation for preserving the existing framework in Greece. In this sense, although still crippled to a certain degree as it has not been handed back its formerly confiscated property, the Serbian Orthodox Church has an advantage here, in my opinion, as it does not have to depend entirely on financial support from the state (and, I hope, will continue not to do so).

The Orthodox churches claim that an 'Orthodox revival' has been under way for several years in both countries. Although this has produced some renewed spirituality and a general growth in interest in religious traditions, Mavrogordatos argues that 'in content, it is not a revival of religion as such, but rather of nationalism identified with Orthodoxy' (Madeley and Enyedi, 2003, p. 130). As a result, Mavrogordatos claims, the issue of secularisation is irrelevant in this context. It is, however, an increasingly prevalent issue in Europe, and as such should not be ignored by either Greece or Serbia.

I agree with Mavrogordatos when he states that 'inevitably, the identification of a particular church with the state, the nation, or both has always been at the expense of religious freedom' (Madeley and Enyedi, 2003, p. 130). Unfortunately, we see that the case of Greece has proven this true. However, Greece is in a better position than Serbia internationally, as it is already a long-time member of the European Union and is viewed as a functioning democracy. Serbia's situation and image in the international sphere are far more insecure. It is still seen as a transitional country and is closely monitored by international institutions and foreign governments. The Serbian political leadership has yet to prove beyond doubt that it respects human rights, does not discriminate against any groups or individuals in society and is capable of enforcing relevant legislation. In this situation, more radical (and, it is to be expected, more western-fashioned) steps need to be taken, as there is a much smaller margin of error tolerated. If it intends to please the international community, Serbia should in my view look to Greece primarily in order to learn from the weaknesses of its church-state framework and from the aspects of its national legislation that are incompatible with the ECHR. While it may be worthwhile for Serbia to look at other countries as examples for legislation or practice, it needs to consider its own particular situation

and act accordingly. We should not forget that the international community also has a great responsibility in this process, but I will leave this discussion for my concluding remarks.

Conclusion: is Serbia Heading towards Achieving Religious Pluralism?

Religious Pluralism and Tolerance: an Elusive Goal?

Summarising the present-day situation in Serbia regarding church-state relations and the social issues surrounding them, we can conclude that Serbia is not in a static position. It is still very much in a transitional state in all aspects, and should be examined with that in mind—not only when we assess the present situation but also when thinking about possible solutions. Serbia's special position calls for distinctive measures of implementation.

When looking at developments in recent years in the area of church-state affairs, one cannot escape noticing that several positive steps have been taken. These include the introduction of new legislation and attempts at harmonising national law with international standards; the increased level of legal guarantee for general human rights protection; and stronger and wider interreligious dialogue and cooperation within the country. Negative phenomena include a low level of religious (and also other forms of) tolerance in society; the postponement of seeking answers to unresolved legal questions (including the regulation of the legal status of religious communities and the return of property to them, which in turn leaves religious communities partly dependent on the government); the preferential treatment of the Serbian Orthodox Church by the state, often at the expense of the other religious communities; and general discrepancies between the written letter of the law and its implementation in everyday life.

One of the greatest problems, as I have mentioned, is the large gap that exists between existing legislation and theory on the one hand, and their application and implementation on the other. Assessing the state of church-state relations in the postcommunist countries of Europe, Silvio Ferrari observes that this phenomenon is a common characteristic of all these states. He points out, however, that 'this gap appears to be wider in Central-Eastern Europe than in other parts of the old Continent' (Ferrari, 2003, p. 422). The question is how to bridge this gap in order to bring a real transformation of values and behaviour to Serbian society. Upon ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms in December 2003, the Federal Assembly of Serbia and Montenegro declared that within the coming three years the country's legislation would be brought into harmony with the standards contained in the Convention. Constitutional changes and legal guarantees are, however, not enough by themselves. The government should be actively involved in finding solutions to as yet unresolved issues.

How much change can new legislation make? Should Serbia try to solve its problems by introducing anti-discrimination laws and anti-sect legislation? The Council of Europe, which Serbia and Montenegro joined on 3 April 2003, has addressed the issues of new religious movements and religious sects several times. In 1999 the Assembly 'discouraged nation states from adopting anti-sect legislation, warned against any discrimination of religious minorities, and committed itself to state neutrality' (Madeley and Enyedi, 2003, p. 224). I think this is a good suggestion for Serbia to follow: focusing on bringing about change in societal attitude, rather than creating further legislation. In this process, social trends need to be taken into account. According to the latest census results, the number of those who declared

themselves non-religious in 2002 is a quarter what it was in 1991.³⁷ At the same time, the number of those belonging to religions not mentioned in the census has increased three and a half times.³⁸ These figures testify to the growing popularity of nontraditional religions and new religious movements in the country. Although in many ways Serbia is still experiencing a renaissance of religiousness, however, increasing secularism is also noticeable in popular culture, especially among the younger generation. In this respect Serbia is still behind Western Europe. However, as the country is looking towards European integration and building stronger ties with the European Union, religious and political leaders will have to face this reality.

The Implementation of Human Rights Protection

Tamás Földesi argues that the political transformation in Eastern Europe 'dramatically changed the status of human rights'. They were not only 'afforded a central place in the new (or basically transformed) constitutions of the Eastern European nations' with mere words, but also 'acquired true legal relevance' (Witte and Van der Vyver, 1996, p. 248). Serbia is at the moment at the stage when human rights are in the process of gaining new meaning in society. As Földesi himself acknowledges, this transformation is a long and often slow-moving process. In Serbia's Orthodox majority society we also encounter an additional challenge. As Daniel Payne puts it (referring to Greece), 'because Orthodoxy does not have the understanding of the human person as an autonomous individual, the concept of individual human rights is lacking in the ethos of Orthodox political culture' (Payne, 2003, p. 590). Although Serbia cannot be described as an exclusively Orthodox political culture, nonetheless a wider political and societal understanding of individual human rights is just as necessary as Payne suggests it is in Greece.

Assessing the level of corruption prevalent in Serbia and Montenegro, Freedom House's *Nations in Transit 2004* report claims that 'in 2003, both the Serbian and Montenegrin governments showed no progress in reducing corruption and fighting organised crime' (Pavlović, 2004, p. 25). 'Their pace of judicial reform has also been slow; their judiciaries remain subject to some levels of political influence; and weaknesses in the protection of human rights according to international standards still exist' (Pavlović, 2004, p. 5). In such a situation, where the rule of law is not so strong and the level of corruption is high, legal standards, especially the delicate issue of respect for human rights, are not guaranteed to be enforced by a corrupt judicial system.

In its decisions the European Court of Human Rights has traditionally afforded a certain 'margin of appreciation' to member states as far as their actions in restricting freedoms are concerned. This means that member states have a certain amount of flexibility with which to implement the Convention, in the light of national legislation or prevailing social and cultural factors. However, as new countries (mostly from Eastern Europe and the former Soviet Union) have joined the Council of Europe which do not have a recent democratic tradition and in which 'in particular, religious freedom was seriously restricted for a long time' (Hill, 2002, p. 103), the Court has responded accordingly and begun to narrow this 'margin of appreciation'. Serbia is a perfect example: there is no longstanding democratic tradition of respect for human rights, the national legislation is not in full harmony with the provisions of the ECHR, and the dominant church is not particularly friendly toward more recent groups which are engaged in proselytism (Hill, 2002, p. 103).

Although I fully agree that human rights values are universal,³⁹ we need to keep in mind the fact that the implementation of human rights is always a matter of context

(Fortman lecture, 2004). The international community at large has been mostly occupied with trying to export western liberal democratic standards and values to transitional countries in Eastern Europe, but, in my opinion, has not left enough room for a culturally relevant interpretation of these standards in a way which is still in line with western expectations. What may seem to the West to be regression rather than progress may not always be so—in such cases specific cultural aspects need to be considered. This, of course, is true not only in the area of human rights but as regards other standards as well.

The efforts of the present government to freeze the status of certain religious communities in time by aiming to restore to them the same legal privileges they enjoyed in the Kingdom of Yugoslavia (Radulović interview, 2004c) show signs of looking to the past too much while disregarding the present state of affairs, and not leaving room for change in the future. A possible compromise Rik Torfs puts forward is the creation of two levels of religious freedom within the context of church-state relations. The basic level (Level A) firmly guarantees and protects religious freedom for all, following, for example, the stipulations of Article 9 of the ECHR. At the upper level (Level B), where basic religious freedom is supposed to be guaranteed, ‘some positive measures taken in favour of only *certain* religious movements or churches is quite conceivable’ (Torfs, 1997, pp. 438–39). However, Torfs warns, such preferential treatment should not be at the expense of the freedom of others, and it should be based on objective criteria, including the historical presence and tradition of religious communities in the country. Although this proposal does not allow for complete equality among religions, it attempts to capture reality and offer a workable compromise. In any case, recognising the special contribution and religious, cultural and societal importance of the Serbian Orthodox Church is understandable and even desirable, but as that of first among equals and not at the expense of the rights of others. Milan Vukomanović argues that Serbia’s situation needs to be solved not by copying the models of other nations but by looking at the specific issues in Serbia and at what is best for the country (Vukomanović interview, 2004a). Sima Avramović echoes this sentiment when he states that ‘the legislature of every country needs to create its own pathway, keeping in mind the entirety of its historical and societal circumstances, without having to worry about which popular model [of church-state relations prevalent in Europe] their solution will fit into’ (Bigović, 2003, p. 54).

In my view, greater patience is required in transitional countries, as achieving legal, economic, social and other transformation takes time. Tough situations also call for tough measures. It may be that lawsuits regarding religious hate speech or discrimination will actually help in raising awareness about these problems and thereby moving the process forward, whereas subtle ways may not be that efficient at the moment. However, this should not be regarded as a long-term strategy, only a temporary one.

Achieving a Functional Model: a Proposed Action Plan

The plan of action I propose encompasses all the unresolved and problematic areas and proposes suggestions as to how they may be approached and solved. Guidelines are the recognising and honouring of Serbia’s unique historical, cultural and religious heritage, consideration of its specific political and social situation at present, and consideration of its diversity, which can potentially be transformed from a perceived drawback, which created much strife in the past, into a unifying and strengthening force for the nation.

The first and most important task is the dismantling of the legislative roadblock. By far the most urgent step required from the government and the national parliament is the introduction of legislation regulating the legal position of religious communities, in light of the changes proposed above. The law should not only legalise their status but also introduce tax and other financial incentives for individual as well as corporate donors to religious communities. Furthermore, it should allow religious communities to compete with public institutions and programmes in the educational, cultural (including broadcasting) and social arena, and provide limited financial advantages for them to do so. A restructuring, and eventually a slow phasing out, of direct state financial support should follow.⁴⁰ This will give greater ownership to members and adherents of religious communities, place religious communities on a more equal footing, and allow for creative fundraising. This will, in turn, strengthen the presence and role of religious communities in civil society as a whole. Legislation should also be introduced soon concerning the return to religious communities of formerly confiscated and nationalised property. This will lead to religious communities functioning more independently, with fewer financial ties to government, and therefore to a greater *de facto* separation of church and state. There will also be a greater incentive and opportunity for religious groups to found charitable and other organisations. The government could then, in turn, depend in its community development efforts on already existing religious networks for distribution, manpower, infrastructure and the like.

Again, the key will be in the implementation of these laws. For this I propose that the state maintain an ongoing dialogue with representatives of preferably all religious communities. The government should organise informational meetings and question-and-answer sessions about the new laws for the employees of relevant institutions and offices. Representatives of religious communities and NGOs should be involved as well. Also important will be the fostering of good relations between local authorities and the religious communities present in their area. A forum should be facilitated where these parties can meet, freely express themselves and devise possible ways of cooperation within their community. The success of the implementation of these laws should be regularly monitored and evaluated by the government. In this regard, the police also needs to adopt a different attitude and begin arresting and charging the perpetrators of religiously motivated violent attacks. The needed reform of the judicial system mentioned above will be a key factor in this process.

As regards the media, the government should commission comprehensive studies on the place of religion and religiosity in society, and create a strategy for a media campaign, based upon the findings of these studies, for fostering a greater awareness of religious diversity and the need for tolerance in Serbian society. Media editors and journalists should be educated about religion and religious communities, preferably by representatives of these communities themselves. It is to be hoped that this will lead to fewer untruthful reports. Religious communities should also be involved in the process. In the area of education the already functioning religious instruction in state schools should strive to include religious diversity and the teaching of tolerance towards other religions.

So far I have emphasised the responsibility of the government. Other actors in society, however, should also be invited to take part in this process. Serbia's growing civil society should be given a role in this dialogue and civil movements at grassroots level should be utilised. Those with already existing local networks could play a part in unofficially monitoring religious human rights and tolerance in their communities. Together with local religious leaders, they could work to settle possible conflicts or act as arbitrators in such instances, if necessary. As civil society actors are becoming more

accepted and possess more societal and political clout, they will also reach a position from which they can react to certain laws or procedures and exert enough pressure to initiate legal changes. They are in a key position, from where they can influence public opinion and bring about a change in people's attitudes. Government figures should work together with local and regional representatives of religious communities. Religious communities should be involved in ongoing dialogue with the government. They should be given a chance to shape and participate in a nationwide campaign regarding tolerance of religion. Religious leaders (representing both the traditional and the minority religious communities) should continue 'serious, constructive and continual inter-religious and inter-confessional dialogues' (Vukomanović, 2002, p. 44). The 'recognised' religions are in a crucial position, which they should use to speak up for the rights of the religious minorities. Religious leaders should make common public appearances and statements, and emphasise the need for reconciliation. Their intentions, however, should go beyond just words and gestures and focus on 'the more active and concrete support that these communities may provide not only for their own believers, but also for the members of other religious communities' (Vukomanović, 2002, p. 44). Much will also depend on the role and attitude of international actors in this process. If they continue to insist on implementing exported western democratic values without leaving room for local cultural expressions and social particularities, this may produce an adverse effect and Serbia will keep falling short of western expectations, and therefore lose more financial aid. Although I agree that Serbia does need to be held to internationally acknowledged standards, I recommend a more consultative rather than a pace-setting role for the international community, at governmental, intergovernmental or nongovernmental level. International bodies should work together with local experts and religious representatives in finding creative strategies for resolving some of today's outstanding problems.

In summary, my suggestion is that in order for the current situation to change in Serbia, a joint effort by all societal actors is needed on all levels in order to steer the nation toward recognising, accepting and valuing the existing religious diversity, and eventually toward creating a truly pluralistic democracy. This will undoubtedly be a slow process and we must expect and accept some lack of clarity and confusion along the way, but we must not forget that if we reach this goal it will be to everyone's benefit.

Serbia is at a crossroads. Is the government willing to create a new framework for church-state relations, and will it implement it? Will it take seriously its commitment to respect human rights, including the freedom of religion? How long will it tolerate religious discrimination and hate speech? Will the country finally acknowledge that religious diversity can be an asset enriching the nation? The answers to these questions are enormously important as they affect the whole of Serbian society, including the generations to come.

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Notes

- 1 The authors of the Charter refer in the preamble of the draft law to the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Declaration on Abolition of all Forms of Intolerance and Discrimination based on Religion or Convictions, and the Charter of Fundamental Rights of the European Union.
- 2 This includes two churches: the Slovak Evangelical Church of the Augsburg Confession (with its headquarters in Novi Sad) and the Evangelical Christian Church of the Augsburg Confession (with its headquarters in Subotica), which operates in Hungarian (and to a smaller extent in German).
- 3 Heading the list of the party's nominations was Vojislav Šešelj, a war crimes suspect, who is now awaiting trial at the International Criminal Tribunal for the Former Yugoslavia in The Hague.
- 4 It is interesting to note that a similar, behind-the-doors agreement took place in Croatia about the same issue between President Franjo Tuđman and the Bishops' Conference of the Roman Catholic Church. See Perica, 2002, p. 190.
- 5 They referred to the Constitution of the Federal Republic of Yugoslavia, the International Covenant on Civil and Political Rights, and the Declaration on the Rights of Children.
- 6 Article 18 of the Universal Declaration of Human Rights (10 December 1948): '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 in private, to manifest his religion or belief in teaching, practice, worship and observance.'
- 7 Article 9, 'Freedom of thought, conscience and religion', European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950): '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.'
- 8 Article 10, 'Freedom of expression': '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...' Article 11, 'Freedom of assembly and association': '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of this interest ...' Article 14, 'Prohibition of discrimination': 'The enjoyment of the rights and freedoms as 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.' Violation of Article 14 can be claimed only in conjunction with another article of the Convention, within the ambit of which the alleged violation falls.
- 9 Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'
- 10 For more details, see the official website of the Serbian Orthodox Church, <http://www.spc.yu>.
- 11 The publication *Crucified Kosovo* (available in electronic form at www.kosovo.com/ckos/page_01.htm) presents a shocking pictorial survey of the destruction of Serbian religious sites in the province since 1999.
- 12 Of the total population of Serbia, 84.97 per cent are Orthodox compared with 5.5 per cent Catholics.
- 13 See Article 18 of the Universal Declaration of Human Rights and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 14 Article 26 Para. 1 states: 'Everyone has the right to freedom of thought, conscience, belief and religion; including the freedom to remain committed to one's belief or religion or to change them at one's own choosing.'
- 15 The Constitution of the Republic of Serbia of 1990, however, does not explicitly mention the right to change one's religion.
- 16 The category 'Catholic' in the census includes, amongst others, Roman and Greek Catholics.
- 17 The total number of Catholics in Serbia has dropped by 85,000 since the 1991 census, claims Dragana Radisavljević (Radivojša, 2003, p. 9).
- 18 The positive results achieved by Mgr. Hočevar may partly be due to the fact that (like many of the staff of the Belgrade archbishopric) he is Slovenian, a representative of a relatively 'neutral' ethnic group.
- 19 In Serbia the word 'sect' ('*sekta*') is used to describe a very wide range of religious or quasi-religious groups and esoteric cults. Whereas in English 'sects' is often used to denote various smaller denominations without any pejorative meaning, in Serbian there is no such distinction, so small Protestant communities, for example, are sometimes grouped together with Satanists in this category.
- 20 Article 51 reads: 'Any provocation and instigation of national, ethnic, religious and other inequality, as well as provocation and conflagration of national, ethnic, racial, religious and other hatred and intolerance shall be prohibited and punishable.'
- 21 It is to be hoped that this is changing now, as the first direct joint civil action regarding hate speech (against the Roma community) was filed by three NGOs with a court in Belgrade against the daily newspaper *Kurir* in early 2004. See First, 2004.

- 22 The Maribor Initiative was started by the International Scientific Conference Minorities for Europe Tomorrow (ISCOMET), a Slovenian nongovernmental organisation.
- 23 The example of one Protestant Evangelical church from the southern Serbian town of Leskovac illustrates this: its more than 1000 members are all Roma. Whereas the Roma in Serbia have traditionally been presumed to be mainly Orthodox, this church and its affiliate churches in southern Serbia are challenging this stereotype.
- 24 Cooptation, as defined by Ramet, is 'the drawing of the church into a stable cooperative relationship with the state, in which, in exchange for certain benefits . . . , the church agrees . . . to be a "loyal" church and to advance regime goals in specific areas'; in other words, to become a church which is dependent on the state.
- 25 The 11th Declaration, 'on the status of churches and non-confessional organisations': '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 of philosophical and non-confessional organisations.'
- 26 Article II-10, 'Freedom of thought, conscience and religion': '1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.'
- 27 Article II-11, 'Freedom of expression and information': '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected.'
- 28 Article II-12, 'Freedom of assembly and of association': '1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.'
- 29 Article II-14 Para. 3, 'Right to education': 'The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.'
- 30 Article 51 Para. 3, 'Status of churches and non-confessional organisations': 'Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.'
- 31 See Ordinance 144/2000 of the Holy Synod of the Church of Greece, on the formation and operation, administration and management of a relief agency for the Serbian people, as quoted by Papasthatis, 2001, p. 109.
- 32 Article 13: '1. The freedom of religious conscience is inviolable. The enjoyment of civil and individual rights does not depend on the religious conviction of each individual. 2. Every known religion is free and the forms of worship thereof shall be practised without any hindrance by the State and under protection of the law. The exercise of worship shall not contravene public order or offend morals. Proselytising is prohibited. 3. The ministers of all religions are subject to the same obligations towards the State and to the same state supervision as the ministers of the established religion. 4. No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws. 5. No oath shall be imposed without a law specifying the form thereof.'
- 33 For the text of this Article 9 see note 7.
- 34 Section 2 of Law no. 1672/1939, as translated in *Kokkinakis v. Greece*, § 16: 'By "proselytism" is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (*eterodoxos*), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or

material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.’

- 35 Section 1 of Law no. 1363/1938 (as amended by Law no. 1672/1939), as translated in *Manoussakis and Others v. Greece*, §21: ‘The construction and operation of temples of any denomination whatsoever shall be subject to authorisation by the recognised ecclesiastical authority and the Ministry of Education and Religious Affairs. This authorisation shall be granted on the terms and conditions specified by royal decree to be adopted on a proposal by the Minister of Education and Religious Affairs ...’
- 36 For the text of Article 14 see note 8.
- 37 Their number has gone down from 160,000 to 40,000. See Radivojša, 2003, p. 9.
- 38 The categories mentioned in the census were: ‘Islamic’, ‘Jewish’, ‘Catholic’, ‘Orthodox’, ‘Protestant’, ‘Oriental religions’, ‘Belongs to a religion not mentioned’, ‘Believer but does not belong to any religion’, ‘Did not declare anything’, ‘Non-believer’, and ‘Unknown’.
- 39 Here I am primarily referring to what we recognise today as civil and political rights.
- 40 As the future of Kosovo is still uncertain at this point, continued financial intervention by the state in order to preserve the religious heritage and life in the province is still justified (as it is in other extreme situations), although it is to be hoped that this will also be taken on increasingly by other organisations or individuals, including the international community.

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