

THE LEGAL STATUS OF RELIGIOUS COMMUNITIES IN CROATIAN LAW

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The aim of this paper is to analyze the development of the legal status of religious communities in Croatian law over a very long period. The author will analyze the legal status of religious communities in the Kingdom of Croatia, Slavonia and Dalmatia, the Kingdom of Serbs, Croats and Slovenes / Kingdom of Yugoslavia, socialist Yugoslavia and in the Republic of Croatia. The paper will show that this development has been rather slow, and yet in some periods abrupt. Special attention will be devoted to the question of the (un)constitutionality of the treaties into which the Republic of Croatia has entered with the Holy See. The author will show that those treaties are in accordance with the Constitution, but that there are several other issues regarding the legal status of other religious communities which could be deemed unconstitutional. The author will show that five types of religious communities can be distinguished in the Republic of Croatia today.

Key words: religious communities, legal status, registration of religious communities, agreements between the Republic of Croatia and religious communities

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INTRODUCTION¹

The legal status of religious communities (RCs) in Croatian law has undergone a huge change during the course of history, from a situation where only one religious community was officially recognized (the Catholic Church) to today's state of pluralism and many officially recognized RCs. This paper strives to show how that legal status changed as the centuries passed, and what problems occurred in this long period. Of course, the paper's ultimate aim is to show today's legal status of RCs and to demonstrate that their individual statuses are not the same. Some RCs have more rights than others, some RCs are, in the light of the ruling of the European Court for Human Rights (EC), discriminated against in comparison with those which have signed special agreements with the State. One religious community cannot be even called a "religious community" under Croatian law because of its special, *sui generis* status. It can be seen even from this brief introduction that the status of RCs in Croatian law is, and has been, a complex issue, so the aim of this paper is also to shed a new light on it and to answer many of the posed yet unanswered questions. Of course, a detailed analysis of all aspects of the legal status of RCs cannot be given in this paper, nor does this paper strive to give such an analysis. A book of great volume would be better suited for such a task since this issue is very complex and intertwined with all legal branches.

I. THE LEGAL STATUS OF RELIGIOUS COMMUNITIES IN THE KINGDOM OF CROATIA, SLAVONIA AND DALMATIA²

During the Habsburg Monarchy (after 1867 the Austro-Hungarian Monarchy), which the Kingdom of Croatia, Slavonia and Dalmatia was part of, the Catholic Church was the "state" religious community and Catholicism was the state religion. There were, of course, other RCs which were *religiones receptae*, like the Augsburg Protestants and Orthodox churches which had all civil rights but no privileges.³ The Jews were tolerated, and there were also prohibited RCs

¹ The author wishes to express his gratitude to professor Ivan Padjen, Ph. D., for the use of his manuscripts.

² In the following text, the term Croatia will be used in regard to the Kingdom of Croatia, Slavonia and Dalmatia.

³ Čepulo, D., *Prava građana i moderne institucije, europska i hrvatska pravna tradicija*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2003, p. 160.

like the Hussites. The Croatian legal territory had a specific setup since the Protestant RCs were banned up to 1859, and citizens that belonged to those communities had had no civil or political rights in Croatia. When Protestantism became a strong force in Hungary, the Croatian Parliament passed the Law of 1608 which excluded all religions other than Catholicism within the borders of Croatia. The King (Rudolf II) sanctioned this law, so Croatia thus gained a special religious act which was in direct opposition to Hungarian religious regulation. The status of Jews was regulated by the Law of 1729 of the Croatian Parliament by which they were denied permanent residence and the right to own property, and only had the right of unlimited trade.⁴ During the rule of Joseph II (1780-1790) the *Toleranzpatent*⁵ was enacted. This Patent proclaimed religious tolerance: Catholicism was proclaimed the ruling faith, while others were tolerated. After the death of Joseph II, the position of RCs in Croatia reverted to its former state. During that time, the influence of the Catholic Church in all areas of everyday life, such as education, was immense, and apostasy was a crime punishable by § 122 of the Criminal Code, while the Civil Code listed it among grounds for disinheritance in § 768. The State bestowed on the Church many official duties like marriages, funerals, registries.⁶ In 1855 the Monarchy signed a Concordat with the Holy See which guaranteed the status of the state's official church to the Catholic Church⁷, and in 1859 the Imperial Patent, which also entered into force in Croatia, equalizing the legal status of Evangelical churches (RCs) with that of the Catholic Church.⁸ After the restoration of constitutionality there were numerous issues regarding the said Patent.⁹ Regarding the territory of Croatia, the status of RCs was largely established by the Concordat of 1855. This, however, was abolished in Austria

⁴ *Ibid.*, p. 161.

⁵ Which entered into force on 13 October 1781 for Austria, and on 21 October for Hungary and Croatia.

⁶ Žigrović-Pretočki, I., *Upravno pravo kraljevina Hrvatske i Slavonije s obzirom na ustav*, vlastita naklada, Bjelovar, 1911, pp. 597-598; Čepulo, D., *op. cit.*, p. 162.

⁷ Padjen, I., *Church and State in Croatia*, in: Ferrari, S. and Durham, C. W. (eds.), *Law and Religion in Post-Communist Europe*, Peters, Leuven, 2003, p. 59.

⁸ Čepulo, D., *op. cit.*, p. 165.

⁹ Because of the complex legal status of Croatia within the Monarchy, the question of validity of this Patent arose in 1865 when a group of Evangelicals from Zagreb demanded guarantees of full religious freedom. The Croatian Parliament created a Draft Act on the matter, obviously considering the Patent void after 1860 (the abolishment of absolutism). The King denied his sanction, declaring that the question was resolved with the Patent. See Čepulo, *op. cit.*, pp. 167-170.

and Hungary after the Austro-Prussian war of 1866, when King Franz Joseph had to unify the Monarchy depriving the Catholic Church its position of state religion, especially by the May laws in 1874 in Austria and the Law of 1868, which proclaimed equality of all religions in Hungary.¹⁰ The status of RCs in Croatia changed as the Croatian Parliament gradually passed new laws on the subject. It is important to note that, after the “Croato-Hungarian Compromise” of 1868, which regulated the position of the Kingdom of Croatia and Slavonia within the Austro-Hungarian Monarchy, Croatia and Slavonia (Dalmatia being part of the Austrian part of the Monarchy) had autonomy in religious matters.¹¹

In this way, the position of other RCs in Croatia was resolved as a result of legislative work by the Croatian Parliament, by a set of new laws¹² of which five¹³ legally recognized the established RCs: the Catholic Church (with the Greek Catholic Church), the Orthodox Church¹⁴ (1887), the Evan-

¹⁰ See, in more detail, Gross, M. and Szabo, A., *Prema hrvatskom građanskom društvu*, Globus, Zagreb, 1992, pp. 509-511.

¹¹ Krešić, M., *The Matrimonial Law of the Muslims of Croatia, 1916-41*, in: Beck Varela, L., Gutierrez Vega, P. and Spinosa, A. (eds.), *Crossing legal cultures*, Meidenbauer, München, 2009, p. 368.

¹² Law from 21 October 1873 by which the equality of Israelites with other legally recognized religions in the Kingdom of Croatia and Slavonia was established (*Zak. čl. 61. od 21. listopada 1873. “kojim se ustanovljuje ravnopravnost izraeličanah sa sljedbenici ostalih u kraljevini Hrvatskoj i Slavoniji zakonom priznatih vjeroispovijesti*, Sbornik zakonah i naredbah valjanih za kraljevinu Hrvatsku i Slavoniju, br. 61., kom. XXI., god. 1873.), Law from 14 May 1887 on the “organization of the Orthodox Church and the usage of Cyrillic in the Kingdom of Croatia and Slavonia (*Zakon od 14. svibnja 1887. “o uređenju crkve grčko-iztočne i porabi ćirilice u kraljevinama Hrvatskoj i Slavoniji*, Sbornik zakonah i naredbah, br. 33., kom. V., god. 1887.), the Law from 7 May 1898 on the regulation of legal relations of the Evangelical Churches of the Augsburg and Helvetian religion in the Kingdoms of Croatia and Slavonia (*Zakon od 7. svibnja 1898. o uređenju izvanjskih pravnih odnošaja evangeličkih crkava augsburške i helvetske vjeroispovijesti u kraljevinama Hrvatskoj i Slavoniji*, Sbornik zakonah i naredbah valjanih za Hrvatsku i Slavoniju, br. 30., kom. V., god. 1898.), and the Law from 27 April 1916 on the recognition of the Islamic religion in the Kingdoms of Croatia and Slavonia (*Zakon od 27. travnja 1916. o priznanju islamske vjeroispovijesti u kraljevinama Hrvatskoj i Slavoniji*, Sbornik zakonah i naredbah valjanih za Hrvatsku i Slavoniju, br. 45., kom. X., god. 1916.).

¹³ Žigrović-Pretočki, I., *Upravna nauka i hrvatsko upravno pravo*, Lav Hartman, Zagreb, 1917, p. 111.

¹⁴ The regulation of the position of the Orthodox Church in Croatia has been a very volatile political question because of the competition of the Hungarian central government and the Land Government, especially because the central government

gical Church (1898), the Jewish community¹⁵ (1873) and the Islamic community¹⁶ (1916). The pivotal law on RCs was the Law on Religious Relations from 1906.¹⁷ This Law allowed every legally recognized religious community to publicly express its religion (§ 1), and, importantly, prescribed that all legal or/and customary fees, imposts and levies would be enforced by the political government. The Law also regulated mixed marriages and the transfer from one religious community to another. Regarding transfers, transfer to Christian religions was allowed, but a transfer from Christianity to other religions was banned.¹⁸

The legislative work of the Croatian Parliament affected many provisions of the Concordat, so the Parliament requested that the Land government establish which of the provisions of the Concordat were still in force.¹⁹

Since 1784 and the enactment of the *Josefinische Gesetzsammlung* of 20 February, the handling of state registries (births, deaths, marriages, transfers to other religions) was bestowed on RCs, except for Muslims, Nazarenes and Baptists, where the state authorities were competent.²⁰ These registries were maintained in two copies, one of which had to be archived by the local authority (county or town). Since there were, in the later period, five RCs, out of which four handled state registries, the Land government issued, on 18 September 1908, Order no. 19920 concerning competence in registering births, marriages and deaths²¹ to ensure unified procedures in handling the state registries. The registries that were handled by the Catholic Church, Jewish commu-

in Budapest strongly objected when the draft law contained the adverb “Serbian” (“*Srpska crkva*”). See more in Čepulo, D., *op. cit.*, pp. 172-177.

¹⁵ The Croatian Parliament enacted one more law regarding the Jews: the Law from 7 February 1906 on the regulation of Israelite worship communities (*Zakon od 7. veljače 1906. o uređenju izraelitičkih bogoštovnih općina*, Žigrović-Pretočki, I. (ed.), *Hrvatski ustavni zakoni*, Lav Hartman, Zagreb, 1917, pp. 435-441).

¹⁶ Islam was officially recognized in Dalmatia by law from 15 of July 1912, see in Mužić, I., *Katolička Crkva u Kraljevini Jugoslaviji*, Crkva u svijetu, Split, 1978, p. 33.

¹⁷ *Zak. čl. od 17. siječnja 1906. o vjeroizpovjednim odnosima*, Sbornik zakonah i naredbah valjanih za Hrvatsku i Slavoniju, br. 8., kom. III., god. 1906.

¹⁸ Čepulo, D., *op. cit.*, p. 179.

¹⁹ Smrekar, M., *Priručnik za političku i upravnu službu u kraljevinah Hrvatskoj i Slavoniji*, Ignjat Granitz, Zagreb, 1905, p. 1160.

²⁰ Žigrović-Pretočki, I., *op. cit.*, p. 201.

²¹ *Uputa br. 19.920 o nadležnosti kod matičnih slučajeva bilježenja slučajeva poroda, vjenčanja i smrti*, Sbornik zakonah i naredbah valjanih za kraljevinu Hrvatsku i Slavoniju, br. 10, god. 1910.

nity and Evangelical Church were kept in Croatian and those handled by the Orthodox Church were in the Cyrillic alphabet. There emerged one practical problem when the registers were handled by the Orthodox Church due to the use of the Julian calendar. To solve this problem, the Land Government (Department of the Interior) issued Order no. 9189 to the competent Orthodox priests on 11 June 1885 ordering that all registries must be made according to the Gregorian calendar as well according to the Julian calendar.²²

Another competence of RCs that has already been mentioned was always education. RCs had the right to establish confessional schools. Of course, religious education was obligatory in all schools, and the competent church authorities had the exclusive right to implement it. In every elementary school with more than five teachers there had to be one catechist. The church authorities had the right to information about morality and religiousness in all schools and to demand from the Land Government an Order regarding any noted deficiencies.²³ Religious Studies as a subject (*nauk vjere*) was obligatory in secondary schools (*gimnazije*) from I-VIII grade, with two hours of classes per week.²⁴ When the Land Government appointed professors at the Faculty of Theology, it had an obligation to make an arrangement with the archbishop's Chancery.²⁵

It is interesting to mention that swearing was banned (God hated profanities) by Order of the Ministry of the Interior of 23 October 1880, 2 June 1886 and 14 November 1894. Also, mockery of a religion or its sanctities was at various points considered either as a felony, or a misdemeanour.

Other RCs that did not have legal recognition were tolerated and their activities were regulated by orders of the Land Government. They could operate following the rules of the Order of the Ministry of the Interior in Vienna of 1859, which provided that those RCs could operate only pursuant to an administrative act issued by the competent authority allowing them to function²⁶ in order that their activities would not be deemed illegal.

²² Smrekar, M., *Priručnik za političku i upravnu službu u kraljevinah Hrvatskoj i Slavoniji*, Ignjat Granitz, Zagreb, 1902, p. 64.

²³ Žigrović-Pretočki, I., *op. cit.*, p. 344.

²⁴ See in *Naredba kr. hrvatsko-slavonsko-dalmatinske zemaljske vlade, odjela za bogoštovlje i nastavu, od 30. kolovoza 1886. broj 9454 kojom se propisuje jedna naučna osnova za sve hrvatsko-slavonske gimnazije*, Službeni glasnik, br. 12., kom. VIII., god. 1886.

²⁵ Smrekar, M., *op. cit.*, p. 1027.

²⁶ Čepulo, D., *op. cit.*, pp. 177-178.

To conclude, it is obvious that freedom of religion did not exist in Croatia, its citizens did not have the right to be atheists and they had an obligation to raise their children in a religious spirit. The children followed their parents' religion, legitimate children following that of their father, while illegitimate children followed the religion of their mother (§ 20 of the Law on Religious Relations). There were RCs that had all their rights prescribed by law and that had been legally recognized, but there were other RCs that were merely tolerated and did not have the right to freely exercise their beliefs. Some RCs were banned, and establishing "new" legally recognized religions was a very slow process which had many adversaries.

II. THE LEGAL STATUS OF RELIGIOUS COMMUNITIES IN THE KINGDOM OF SERBS, CROATS AND SLOVENES / KINGDOM OF YUGOSLAVIA²⁷

After the demise of the Austro-Hungarian Monarchy, a new state was forged when the State of Slovenes, Croats and Serbs and the Kingdom of Serbia united into the Kingdom of Serbs, Croats and Slovenes (SCS) on 1 December 1918. The new state had a very complex legal order. Previous laws remained in effect, the validity of some laws of the Kingdom of Serbia was extended to the whole territory of the new state, and, of course, the new state enacted new constitutions (two of them), as well as laws. The status of RCs was one of the paramount problems in the SCS. The disagreements about the position of the two largest RCs – the Serbian Orthodox Church (SOC) and the Catholic Church - were just one of the reasons, but an important one, for enacting the new Constitution only in 1921.²⁸ The pivotal political leader of the Serbs, Nikola Pašić, argued that the Constitution of the Kingdom of Serbia should become the Constitution of the SCS, or that it should provide a starting point in the making of the new Constitution.²⁹ The main issue arose from the fact that the Orthodox faith was defined by that Constitution as the state religion, which was obviously unacceptable to the Catholic Church and

²⁷ The name of the Kingdom of Serbs, Croats and Slovenes was changed into the Kingdom of Yugoslavia on 3 October 1929.

²⁸ One of the main issues in the 1917 Corfu Declaration was the equality of religions, see Ramet, S. P., *Tri Jugoslavije – izgradnja države i izazov legitimacije: 1918.-2005.*, Golden Marketing/Tehnička knjiga, Zagreb, 2009, p. 83.

²⁹ Matković, H., *Povijest Jugoslavije*, Naklada Pavičić, Zagreb, 2003, p. 119.

other RCs. Until the new Constitution³⁰ (*Vidovdanski ustav*) was enacted (28 June 1921), the RCs retained their former legal status, and Regent Aleksandar issued a Proclamation in 1919 which guaranteed equality of all religions in the SCS, and, more importantly, also denied the status of state religion to the SOC.³¹ The Ministry of Faith was also established very early (7 December 1918) by a royal decree. This Ministry, according to the Order of 31 July, had supreme oversight and the highest administrative power over all religious affairs under state jurisdiction.³²

When discussing the legal position of RCs in the SCS, it is impossible to overlook an issue that was of the utmost importance in the early life of the new state: the issue of agrarian reform. Agrarian reform had to be conducted, an important reason being the fact that land had already been re-distributed in the whirlwind of war, so it was important to legalize the situation on the ground. In 1919, previous regulations on the preparation of the agrarian reform³³ led to all “great possessions” being expropriated.³⁴ It is obvious that RCs had had many “great possessions” which were now lost. The state gave compensation, but that compensation was not just.³⁵ Agrarian reform was completed with the Law on Liquidation of Agrarian Reform on Great Possessions³⁶ from 1931 that prescribed the expropriation of all great possessions (land whose size exceeded, depending on the *banovina*, between 87 and 521 acres of fertile land), the compensation being given in state bonds³⁷ that were earlier used in agrarian reform because the early beneficiaries did not gain the right of property.

It should also be noted that the Serbian and Montenegrin Orthodox Churches merged into the SOC on 12 September 1920.³⁸ The ruling regent,

³⁰ *Ustav Kraljevine Srba, Hrvata i Slovenaca*, Službene novine Kraljevine Srba, Hrvata i Slovenaca, no. 142a of 28 June 1921.

³¹ Novaković, D., *Položaj crkava i vjerskih zajednica i ostvarivanje vjerskih sloboda u ustavima Srbije*, Društvena istraživanja, vol. 20, no. 2, 2011, p. 524.

³² Novaković, D., *Versko zakonodavstvo Kraljevine Jugoslavije*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 33, no. 2, 2012, p. 941.

³³ *Prethodne odredbe za pripremu agrarne reforme*, Službene novine Kraljevine Jugoslavije, no. 11 of 27 February 1919.

³⁴ Staničić, F., *Razvoj instituta izvlaštenja u Hrvatskoj*, (unpublished doctoral thesis), Zagreb, 2011, p. 149.

³⁵ For more detail see *ibid.*, pp. 190-201.

³⁶ *Zakon o likvidaciji agrarne reforme na velikim posjedima*, Službene novine Kraljevine Jugoslavije, no. 133-XLII, 1931, and no. 143-XL, 1933.

³⁷ Staničić, F., *op. cit.*, pp. 152, 189.

³⁸ Ramet, S. P., *op. cit.*, p. 89.

in the opinion of some authors, was doing everything to diminish the strength of the Catholic Church: by supporting the Old Catholic Church that arose after the First Vatican Council and had a number of followers in Croatia³⁹, by emphasizing the Vatican's support to fascism, by aiding the proselytism of the SOC (according to some authors more than 100,000 Croats converted to Orthodoxy in 1935⁴⁰), and, of course, by withholding state funds. For example, although in 1921 Catholics made up 39.9% of the population and Orthodox Christians 46.7%, the Ministry of Faith allocated 141,246,426 krunas to the SOC and only 10,903,993 krunas to the Catholic Church.⁴¹

Prior to the adoption of the Constitution, a "religious poll" was performed from 15-21 February 1921. RCs were asked to express their opinions and suggestions regarding their future position, but some authors have stated that it was obvious from the results that the RCs were not thinking about equality of religions and separation from the state.⁴² It is safe to say that all RCs wanted to preserve their own *status quo*. The obvious problem was the fact that the *status quo* of the SOC negated the *status quo* of the Catholic Church and so on. When the Constitution of 1921 was finally enacted, it abandoned the system of state churches, but it did not separate the RC from the state. RCs gained the status of public institutions with a special position in the state and special privileges, with the authority to perform some public law duties⁴³, similar to the legal regulation in Croatia before 1918 (registries, marriages). The Constitution recognized "adopted" and "legally recognized" RCs. The adopted RCs were those that were legally recognized in any part of the SCS prior to 1 December 1918. Legally recognized RC were to be those that would be, in the future, recognized by law.

This situation continued until the period of the dictatorship of King Aleksandar (1929-1931) which ensued after the King's *coup d'état*, when the King, in an effort to assert control in the country, ensured the enactment of four important laws: the Law on the Serbian Orthodox Church⁴⁴ (1929), the Law on

³⁹ Goldstein, I., *Hrvatska 1918.-2008.*, Novi Liber, Zagreb, 2008, p. 159.

⁴⁰ Rogošić, R., *Stanje Kat. Crkve u Jugoslaviji do sporazuma*, Pučka tiskara, Šibenik, 1940, p. 70.

⁴¹ Ramet, S. P., *op. cit.*, p. 139; similar in Goldstein, I., *op. cit.*, p. 159.

⁴² Unković, V., *Vjerske zajednice u uvjetima nastanka i razvoja nove Jugoslavije 1941-1971*, (unpublished doctoral thesis), Zagreb, 1986, p. 11.

⁴³ Novaković, D., *op. cit.*, p. 942; Stefanović, J., *Odnos između Crkve i države*, Matica Hrvatska, Zagreb, 1953, p. 101.

⁴⁴ *Zakon o Srpskoj pravoslavnoj crkvi*, Službene novine Kraljevine Jugoslavije, no. 269, 1929.

the Islamic Religious Community of the Kingdom of Yugoslavia⁴⁵ (1930), the Law on Christian Evangelical Churches and on the Reformed Christian Church in the Kingdom of Yugoslavia⁴⁶ (1930) and the Law on the Jewish Religious Community in the Kingdom of Yugoslavia⁴⁷ (1929). From this, it is obvious that the only adopted religious community from the previous period whose legal status was not regulated by new legislation was the Catholic Church. Of course, the existing law on 1 December was still in force, so the status of the Catholic Church was regulated by four legal frameworks: the Concordat of 1855, the Concordat of 1881 (for Bosnia and Herzegovina), the Concordat of 1886 (between the Holy See and Montenegro) and the Concordat of 1914 (between the Holy See and the Kingdom of Serbia). This status did not satisfy the Catholic Church, which demanded that a new Concordat be concluded as soon as possible.⁴⁸ This demand placed the government and the King into an awkward position since the SOC had been, during the whole period of negotiations about the Concordat, in strong opposition to the conclusion of such a document – a situation which provoked the Concordat crisis.⁴⁹ The ultimate result of the crisis was that the Concordat was never signed, so the status of the Catholic Church was, during the existence of the SCS / Kingdom of Yugoslavia, inferior to that of the SOC. It should be noted that in every law concerning RCs the internal structure of the community was prescribed. So the state decided, for example, on how the election of the patriarch of the SOC should be carried out. Similar legislative regulation existed in the previous period in Croatia. Religious teaching was, as it had been earlier, obligatory, as religious teaching was included in schools, public and private, with the approval of the competent religious organs and in accordance with school laws.⁵⁰

After the Dictatorship, the King imposed a new Constitution⁵¹ in 1931

⁴⁵ *Zakon o Islamskoj vjerskoj zajednici Kraljevine Jugoslavije*, Službene novine Kraljevine Jugoslavije, no. 99-X, 1930.

⁴⁶ *Zakon o Evangeličko-kršćanskim crkvama i o reformiranoj kršćanskoj crkvi u Kraljevini Jugoslaviji*, Službene novine Kraljevine Jugoslavije, of 17 April 1930.

⁴⁷ *Zakon o vjerskoj zajednici Jevreja u Kraljevini Jugoslaviji*, Službene novine Kraljevine Jugoslavije, no. 301 of 24 December 1929.

⁴⁸ Matković, H., *op. cit.*, pp. 123-125; Ramet, S. P., *op. cit.*, p. 141.

⁴⁹ On the Concordat crisis see, extensively, in Novaković, D., *op. cit.*, pp. 956-958; Ramet, S. P., *op. cit.*, pp. 141-144; Matković, H., *op. cit.*, pp. 123-126; Mužić, I., *op. cit.*, pp. 123-200.

⁵⁰ Novaković, D., *op. cit.*, p. 954.

⁵¹ *Ustav Kraljevine Jugoslavije*, Službene novine Kraljevine Jugoslavije, no. 207-LXVI, 9 September 1931.

which did not differ from the previous one regarding the regulation of RC.

The Islamic religious community was perhaps in the weakest position in the period prior to the dictatorship, because the government was running an anti-Muslim policy prohibiting the unity of the Islamic religious community. After the enactment of the relevant law the unification of the Islamic religious community was allowed, under a reis-ul-ulema whose seat was in Belgrade, not in Sarajevo which had always been the natural centre for Muslims in the SCS / the Kingdom of Yugoslavia. The King had the right to appoint reis-ul-ulema, ulemas and muftis. The Minister of Justice was proclaimed the highest authority with oversight rights over the bodies of this religious community.⁵² After 1936 and amendments to the Law, the seat of reis-ul-ulema was returned to Sarajevo, and muftis were abolished.⁵³ The King also had a decisive influence on the election of every dignitary from all RCs, since a dignitary could not be elected until the King granted his acceptance. The state thus tried, and succeeded, to establish control over the RC.

Regarding the financing of RCs, they had a right to state aid, and also to enforce (after approval by the Ministry of Finance) a surtax on taxes that were paid to the state by their members, but this right existed only if regular incomes were not enough to cover planned expenses.⁵⁴ This of course did not apply to the Catholic Church, whose position was, as stated earlier, regulated by the four Concordats (although it was receiving state aid, as stated earlier).

It is safe to say that, in the sense of an individual's religious freedom, the legal regulation of the SCS and the Kingdom of Yugoslavia was better than that in the Kingdom of Croatia, Slavonia and Dalmatia. Freedom of religion existed, citizens did not have to be religious, and religious affiliation had no impact on citizens' rights or privileges unlike the setup under the legislation of the previous period. However, the state favoured one religious community, the SOC, and was unwilling, or even powerless, to regulate the legal status of the Catholic Church. The state also used RCs as "bargaining chips" when this was convenient. Only when unrest in the state grew did the King act and the Parliament passed religious legislation (except for that pertaining to the Catholic Church). The state maintained control over RCs because every law prescribed that their leaders could only be elected with the King's approval on the proposal of the Minister of Justice and the President of the Ministerial Council. It can

⁵² Mužić, I., *op. cit.*, p. 36.

⁵³ Frid, Z. (ed.), *Vjerske zajednice u Jugoslaviji*, NIP Binoza, Zagreb, 1970, p. 29.

⁵⁴ Novaković, D., *op. cit.*, p. 952.

also be seen that religion had an enormous impact on everyday life, as well as on political life. The SOC was able to spur protests that ultimately prevented the government from concluding the Concordat with the Holy See, which was an enormous political blunder that the government was aware of but was unable to avoid. One more fact has to be highlighted: freedom of religion existed, but only for the adopted or legally recognized RCs. Other RCs were banned and their members persecuted.⁵⁵ In the Kingdom of Yugoslavia there were six “legal” RCs: 1) the Catholic Church, 2) the SOC, 3) the Evangelical Church, 4) the Reformed Church, 5) the Islamic religious community and 6) the Jewish religious community.

III. THE LEGAL STATUS OF RELIGIOUS COMMUNITIES IN SOCIALIST YUGOSLAVIA

The position of RCs in socialist Yugoslavia was immensely burdensome for the ruling Communist party as it was, by definition, a party whose credo was that “religion is the opium of the people”. Nevertheless, socialist Yugoslavia did not want to repeat the mistakes of earlier times and so its primary task was to prevent any activities that could lead to interethnic strife or religious hatred.⁵⁶ Very soon after the war the Law Prohibiting the Incitement of National, Racial and Religious Hatred⁵⁷ was enacted, and state, federal and republic-level commissions for religious matters were founded.⁵⁸ All federal and republic-level constitutions guaranteed religious freedom. The first Yugoslav Constitution of 1946⁵⁹ prescribed, in Art. 25, that “to the citizens, freedom of conscience and freedom of religion are guaranteed.” Also, the state and religion were legally separated for the first time. The Constitution equalized all RCs, ensured the free performance of religious affairs and religious ceremonies, and allowed that RCs be founded freely without any formal procedure.⁶⁰ The Law on the Legal Status of RCs⁶¹ (LLPRC) was enacted in 1953, and it also guaranteed freedom

⁵⁵ *Ibid.*, p. 525.

⁵⁶ *Ibid.*, p. 526.

⁵⁷ *Zakon o zabrani izazivanja nacionalne, rasne i vjerske mržnje*, Službene novine FNRJ, no. 56/1946.

⁵⁸ Frid, Z. (ed.), *op. cit.*, p. 57.

⁵⁹ *Ustav FNRJ*, Službeni list FNRJ, no. 10/1946.

⁶⁰ Frid, Z. (ed.), *op. cit.*, p. 59.

⁶¹ *Zakon o pravnom položaju vjerskih zajednica*, Službeni list FNRJ, no. 22/1953. For the

of religion (Art. 1) and ensured the free formation of RCs (Art. 2). RCs and their corresponding organs were established as legal persons according to the civil law (Art. 8). For the first time, RCs lost their prerogative rights regarding state registries and marriages, and religious teaching in schools was abolished/prohibited.⁶² For the first time RCs were faced with self-financing as the only, or at best predominant, way of financing (Art. 11, 12). Although the Constitution allowed the possibility for the state to financially help RCs, the conditions for such help were never specified. The state did provide some financial help, especially in the later period; for example, social security for priests that were members of priests' associations based on agreements between the state and such associations.⁶³ Religious influence in matters of marriage was abolished; as was the possibility for religious courts to rule in marital disputes. Every decision of all RCs applied only within the respective religious community (Art. 10). The positive outcome of such regulation was surely, from the perspective of religious freedoms, the fact that there were no banned RCs (of course, RCs had to function within the scope of the constitution), which resulted in many new RCs being founded. There was no obligation to participate in religious festivities, unlike the regulation in the SCS / Kingdom of Yugoslavia which allowed citizens to be atheists but obliged them to participate in religious ceremonies when they were part of a state holiday. Namely, no one could be, in any way, forced to participate in religious ceremonies, processions or other manifestations of religious beliefs (Art. 6/2). Also, no one could prohibit any citizen's right to participate in such events. The LLPRC was amended in 1965 as a result of constitutional changes in 1963, when the new Constitution of SFRY was enacted. The Law thus became the Basic Law on the Legal Status of Religious Communities, and the republics and provinces were supposed to enact new rules for the enforcement of the law, which they failed to do. Later, after the constitutional amendments in 1971, the competence for regulating RCs passed from the Federation to the Republics, which then enacted new laws on RCs.

This was the legal framework. The reality was substantially different. The period was marked by persecution of "religious believers generally, and the

implementation of this Law in Croatia, the Order for the implementation of the Law on the Legal Status of RCs was enacted on 2 August 1961.

⁶² Unković, V., *op. cit.*, p. 153.

⁶³ Đorđević, J., *Ustavno pravo*, Savremena administracija, Beograd, 1976, p. 400.

Catholic Church specifically”⁶⁴ especially in the early period.

Firstly, after the new agrarian reform was carried out, RCs lost a great deal of their possessions. Out of 618,807 hectares that entered into the agrarian reform that was conducted under the Law on Agrarian Reform and Colonization⁶⁵, 173,367 hectares were taken from RCs, or almost 11%.⁶⁶

Secondly, RCs were not allowed to own real estate until the enactment of the new Constitution⁶⁷ in 1963, when it was prescribed, in Art. 46 that “RCs can own real estate in boundaries set by federal law.”

Thirdly, the general attitude of the ruling party towards all RCs was negative and RCs, especially the Catholic Church and to some extent the SOC, were seen as anti-Yugoslav.⁶⁸

The position of the Catholic Church experienced improvement during the 1960s, with a gradual mutual convergence of Yugoslavia and the Vatican. This process led to the signing of a Protocol on 25 June 1966 which ultimately led to re-establishing diplomatic relations between Yugoslavia and the Vatican which had been severed since 1952. That same year (1952), the Catholic Faculty of Theology in Zagreb was “expelled” from the University of Zagreb.⁶⁹

After the constitutional amendments of 1971, the Federation lost its competence in religious matters, so all republics enacted laws on RCs, as stated above. These laws regulated a vast area of religious life. For example, the right to profess or not to profess faith; the status of RCs; the profession of faith in hospitals and similar institutions; the right to own property, premises and rooms in which religious sermons were performed; the banning of religious gatherings; the administration, attendance, supervision and founding of religious schools; baptisms and circumcisions of minors, and the building and reconstruction of religious buildings.⁷⁰

⁶⁴ Padjen, I., *op. cit.*, p. 59.

⁶⁵ *Zakon o agrarnoj reformi i kolonizaciji*, Službeni list DFJ, no. 64/1945, Službeni list FNRJ, no. 24/1946, 105/1948, 21/1956.

⁶⁶ Unković, V., *op. cit.*, p. xxxiv.

⁶⁷ *Ustav SFRJ*, Službeni list SFRJ, no. 14/1963.

⁶⁸ See Unković, V., *op. cit.*, pp. 218-224; and especially Kurtović, T., *Politika SKJ i vjerske zajednice*, Izdavačka djelatnost, Sarajevo, 1982.

⁶⁹ On Catholic theology in Croatian universities see, in detail, in Padjen, I., *Catholic theology in Croatian universities: between the constitution and the treaty – a policy oriented inquiry*, in: Vukas, B. and Šošić, T. M. (eds.), *Liber amicorum Božidar Bakotić*, Leiden, Boston, 2010, pp. 13-40.

⁷⁰ See in more detail, Unković, V., *op. cit.*, pp. 178-182.

The Socialist Republic of Croatia in 1978 also enacted a Law on the Legal Status of Religious Communities⁷¹ (LLSRC 1978). LLSRC 1978 guaranteed religious freedom and established RCs as civil legal persons (Art. 11). This Law, like the previous one, did not prescribe the criteria for the founding or identification of a religious community, so the legally valid rules of old Yugoslavia applied.⁷² Unlike LLSRC 1978, the relevant laws of Macedonia, Bosnia and Herzegovina and Slovenia contained such provisions.⁷³ Although a formal procedure did not exist, RCs in the Socialist Republic of Croatia would register with the State Bureau of Statistics, provided that the person who claimed to be a representative of the religious community filled out a form, signed it and sealed it with a seal of the religious community applying for registration. RCs and their units were registered under the heading "other organizations: activity of RCs".⁷⁴ Although the notification of registration issued by the Bureau of Statistics did not imply recognition of juridical personality, as LLSRC 1978 did not prescribe this, the notification was a prerequisite for acquiring powers essential to juridical personality, so all RCs would register to acquire the right to open a bank account, to apply for state aid etc.

To conclude, the legal status of RCs in socialist Yugoslavia, although very liberal when observing the legal framework and the regulation of their status, was in fact very trying. RCs had to accustom themselves to a never before seen situation. No religious community had a privileged status, there were almost no state subsidies, and the state was, in the early period, openly hostile to RCs. They lost most of their possessions; could not own real estate legally (for a time); priests were prosecuted and incarcerated (the most striking example being the one of Archbishop Stepinac, who was made Cardinal while he was incarcerated); it was tremendously difficult to erect new religious buildings, and religious newspapers were occasionally banned and confiscated. It is safe to say that the real position of RCs in socialist Yugoslavia was one in which they were discriminated against, in direct contradiction to the legally established system. After 1966 the situation changed, and the government and RCs, especially the Catholic Church, achieved a certain level of coexistence.

⁷¹ *Zakon o pravnom položaju vjerskih zajednica*, Narodne novine, no. 14/1978, 52/1988, amended also by *Zakon o novčanim kaznama*, Narodne novine, no. 26/1993.

⁷² Padjen, I., *op. cit.*, p. 64.

⁷³ Unković, V., *op. cit.*, p. 181.

⁷⁴ Padjen, I., *op. cit.*, p. 64.

IV. THE LEGAL STATUS OF RELIGIOUS COMMUNITIES IN THE REPUBLIC OF CROATIA

The modern Croatian Constitution was enacted in December 1990⁷⁵ (the “Christmas Constitution”). After several amendments⁷⁶, it now contains several provisions regarding RCs and the freedom of religion. Firstly, it prescribes that “freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed” (Art. 40). This provision must be linked with the provision of Art. 38 which guarantees freedom of speech and expression and forbids censorship. Secondly, it is prescribed that all RCs “shall be equal before the law and clearly separate from the state”. Also, RCs “shall be free, in compliance with the law, to publicly conduct religious services, open schools, academies or other institutions, and welfare and charitable organizations and to manage them, and they shall enjoy the protection and assistance of the state in their activities” (Art. 41). The provision of Art. 42 is relevant for registering new RCs, as they, as will be explained in detail, have to register first as associations and later as RCs. This provision states that “everyone shall be guaranteed the right to freedom of association ... [which right is only] restricted by the prohibition of any violent threat to the democratic constitutional order and the independence, unity, and territorial integrity of the Republic of Croatia.” Thirdly, the Constitution prescribes that “all persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, *religion*, political or other conviction, national or social origin, property, birth, education, social status or other characteristics, and that all shall be equal before the law” (Art. 14). It is important to note that the highest values of the constitutional order of the Republic of Croatia are respect for human rights and equal rights (Art. 3). Finally, the Constitution prohibits “any call for or incitement to war or use of violence, to national, racial or religious hatred, or any form of intolerance” (Art. 39).

Although it is permissible, under the Constitution, for some constitutionally-guaranteed freedoms and rights to be curtailed during a state of war or any clear and present danger to the independence and unity of the Republic of Croatia or in the event of any natural disaster, “no restrictions may be imposed upon the provisions of this Constitution stipulating the right to life, prohibition of torture, cruel or unusual treatment or punishment, and concerning the legal

⁷⁵ *Ustav Republike Hrvatske*, Narodne novine, no. 56/1990.

⁷⁶ *Ustav Republike Hrvatske*, Narodne novine, no. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010.

definitions of criminal offences and punishment, and the freedom of thought, conscience and *religion*" (Art. 17).

One more constitutional provision should be mentioned here since, as will be shown later, it has a great impact on the legal status of one religious community. This provision is laid down in the first sentence of Art. 141, which states that "international treaties which have been concluded and ratified in accordance with the Constitution, and which have been published and have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law".

The legal status of RCs in the Republic of Croatia is also regulated by two international treaties: 1) the International Covenant on Civil and Political Rights⁷⁷, which guarantees, *inter alia*, the freedom of religion (Art.18), and 2) the European Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁸, which also guarantees the freedom of religion (Art. 9).⁷⁹

In addition to these international agreements, Croatia has also entered into four treaties with the Holy See regarding the status and activities of the Catholic Church in Croatia: the Treaty on Spiritual Charge of Catholic Believers Who Are Members of the Armed Forces and Police Services of the Republic of Croatia⁸⁰, the Treaty on Co-operation in Education and Culture⁸¹, the Treaty on Legal Issues⁸² and the Treaty on Economic Issues⁸³.

For the implementation of these four treaties, four documents were signed

⁷⁷ *Međunarodni pakt o građanskim i političkim pravima*, Narodne novine: Dodatak međunarodni ugovori, no. 12/1993.

⁷⁸ *Zakon o potvrđivanju Konvencije za zaštitu ljudskih prava i temeljnih sloboda i Protokola br. 1, 4, 6, 7 i 11 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda*, Narodne novine: Dodatak međunarodni ugovori, no. 18/1997. When Protocol no. 11 entered into force, a consolidated text of the Convention was published in Narodne novine: Dodatak međunarodni ugovori, no. 6/1999, new added protocols no. 12 and 13 are published in Narodne novine: Dodatak međunarodni ugovori, no. 14/2002. Protocol no. 14 is published in Narodne novine: Dodatak međunarodni ugovori, no. 1/2006.

⁷⁹ Padjen, I., *op. cit.*, p. 54.

⁸⁰ *Ugovor o dušobrižništvu katoličkih vjernika, pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske*, Narodne novine: Dodatak međunarodni ugovori, no. 2/1997.

⁸¹ *Ugovor o suradnji u području odgoja i kulture*, Narodne novine: Dodatak međunarodni ugovori, no. 2/1997.

⁸² *Ugovor o pravnim pitanjima*, Narodne novine: Dodatak međunarodni ugovori, no. 3/1997.

⁸³ *Ugovor o gospodarskim pitanjima*, Narodne novine: Dodatak međunarodni ugovori, no. 18/1998.

between the Croatian Bishops' Conference (CBC) and the Croatian Government or its ministries and public institutions. Those documents are: the Rules on the Organization and Functioning of the Military Ordinariate in the Republic of Croatia, the Agreement on Catholic Confessional Instruction in Public Schools and Religious Education in Public Pre-School Institutions, the Treaty on the Manner of Executing Certain Financial Obligations of the Republic of Croatia Towards the Catholic Church and the Treaty Between the Croatian Radio Television and the CBC.

The LLSRC 1978 remained in effect during the 1990s, and this was the cause of several problems. While the aforementioned practice of registering with the Bureau of Statistics facilitated both transactions of traditional RCs and the recognition of new RCs, the absence of regular registration procedures had its drawbacks, especially in determining the time of creation or cessation and in providing evidence for the existence of corporate personality of a religious community or its unit. Several parts of LLSRC 1978 were rendered inapplicable: provisions aimed at limiting religion to the confines of churches, cemeteries and homes no longer corresponded to either constitutional principles or social reality, and parts of the LLSRC 1978 were derogated by ordinary laws adopted in the 1990s, for example by laws that empower citizens to found private schools.⁸⁴ After the treaties with the Holy See were ratified, the LLSRC 1978 became obsolete as it could no longer apply to the Catholic Church whose position was regulated by the four treaties.

It is important to look upon those four treaties now and to shed some light onto the subject. When the treaties were signed, a position *sui generis* was established for the Catholic Church because the legal position of the Catholic Church is regulated by international treaties. The aforementioned Art. 141 of the Constitution prescribes that international treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Because of this, the position of the Catholic Church was and is "cemented" and it cannot be altered by the legislators' work. No law can regulate the position of Catholic Church in a manner contrary to the treaties, and the treaties can be altered only with consent of the Holy See.

⁸⁴ Padjen, I., *op. cit.*, pp. 64-65.

Some authors have argued that the treaties between the Holy See and the Republic of Croatia were unconstitutional⁸⁵, and demanded that other RCs be given the same rights as were given to the Catholic Church, but some have also found that this unconstitutionality “may be less offensive to the Croatian constitutional system than it seems” on the grounds that these treaties looked more like “gentlemen’s agreements”, and because the state and the Catholic Church have been working on giving the same rights to other recognized RCs.⁸⁶

The (un)constitutionality of the treaties is a difficult question. The Constitutional Court declined its competence to rule on this question in 2004.⁸⁷ It could be construed, when taking in account Art. 41 of the Constitution, that all relations between the state and RCs should be regulated only by law, and that contractual regulation is not permitted.⁸⁸ It could also be argued that the state discriminated against other RCs by entering into these treaties since the Catholic Church is the only religious community which is capable of entering into international treaties as the Holy See is an international legal subject with legal personality which is in some aspects identical to that of states, and as the Pope is capable of entering into international treaties not only of religious character (for example the Holy See is a contracting party to the Geneva Convention on the Protection of Casualties of War).⁸⁹

On the other hand, it could also be argued that, by preventing or prohibiting the Catholic Church from entering into international treaties regarding its status with the Republic of Croatia, this religious community would be discriminated against because of its internal organization and the fact that other RCs do not have the means to enter into international treaties. The Holy See has international legal subjectivity; it has the right to enter into international treaties. The Croatian Parliament ratified these four treaties, and, by doing so, demonstrated the will of the Republic of Croatia to enter into such an arrangement.

⁸⁵ *Ibid.*, pp. 62-63; Uzelac, A., *Od liberalizma do katolicizma: neki aspekti pravnih odnosa između crkve i države u Republici Hrvatskoj – novo pravno uređenje braka*, Zbornik Pravnog fakulteta u Zagrebu, vol. 49, no. 3-4, 1999, pp. 367-368.

⁸⁶ Padjen, I., *op. cit.*, p. 63.

⁸⁷ See decision U-I/825/2001, Narodne novine, no. 16/2004.

⁸⁸ Uzelac, A., *op. cit.*, p. 368.

⁸⁹ See, especially, the analysis of Padjen in Padjen, I., *The status of minor religious communities in Croatia: a revival of legal pluralism*, in: Devetak, S., Kalčina, L. and Polzer, M. F. (eds.), *Legal Position of Churches and Religious Communities in South-Eastern Europe*, ISCOMET, Maribor, 2004, pp. 93-106.

Furthermore, while the Constitution prescribes that all RCs shall be equal before the law, it does not prescribe that their status can be regulated only by law. It does not prohibit its regulation by agreements or international treaties. So, the answer to the question on the (un)constitutionality of the treaties would be that they are in accordance with the Constitution. However, from this fact an obligation of the state to assure that similar rights be granted to other RCs which are not in a position to enter into international treaties must be derived. That is why the LLSRC of 1978 has been, since the ratification of the treaties, completely inadequate.

Acknowledging this fact, the Croatian Parliament enacted the Law on the Legal Status of RCs⁹⁰ (LLSRC). The enactment of this Law was lengthy and well prepared. After several years of preparation, the Croatian Government Commission on Relations with RCs (CRRC) released to the general public the first draft of the new LLSRC in March 2001. Although most RCs supported the new law in principle, they submitted to the CRRC no less than 300 pages of amendments to 29 articles of the Draft. To accommodate the amendments the CRRC completed at least two revised drafts of a new LLSRC. The Croatian Parliament adopted the new LLSRC on 4 July 2002.⁹¹

Since the enactment of the LLSRC, five types of RCs in the Republic of Croatia can be distinguished:

1. the Catholic Church whose position is regulated by international treaties and which has a special, *sui generis*, status within the Croatian legal system, and to which the LLSRC does not apply⁹²;
2. RCs that have signed special agreements with the state;
3. registered RCs;
4. unregistered RCs that have the form of religious associations, the *in statu nascendi* RCs;
5. unregistered RCs that do not even have the form of religious associations.⁹³

The LLSRC defines a religious community as “a community of natural persons who realize the freedom of confession by the same public performance of

⁹⁰ *Zakon o pravnom položaju vjerskih zajednica*, Narodne novine, no. 83/2002.

⁹¹ Padjen, I., *op. cit.*, p. 61.

⁹² Milić, J., *Pravni i činjenični status vjerskih zajednica u Republici Hrvatskoj*, Hrvatska pravna revija, vol. 6, no. 3, 2006, p. 15.

⁹³ See similar in Staničić, F. and Ofak, L., *Registracija vjerskih udruga i vjerskih zajednica u svjetlu Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda* in: Šalković, J. (ed.), *Vjernici, društva, pokreti*, Glas Koncila, Zagreb, 2011, p. 234.

religious ceremonies and other manifestations of their faith, and is registered in the Register of RCs of the Republic of Croatia.” By its provisions the Register of RCs was established, into which all RCs that were acting as legal persons on the day when the LLSRC entered into force were entered upon their request. It is important to stress that the Catholic Church is not entered into the Register.⁹⁴ Other, new RCs must also be entered into the Register to become recognized RCs. However, to be granted that right, they must previously act as registered associations according to the Law on Associations.⁹⁵ This obligation is inappropriate. Namely, the Law on Associations specifies the goals for the fulfilment of which associations are founded. Many authors feel that religious goals cannot be achieved through associations. For the achievement of such goals, the only appropriate form is that of a religious community.⁹⁶ Namely, associations are founded for the fulfilment of specific goals, and it can be argued that religious or political goals were excluded from the explicitly mentioned goals stipulated in Art. 2/1 of the Law on Associations because they cannot be achieved through the legal form of an association. Political goals are achieved through political parties, and religious ones through RC.

A new religious community wishing to be entered into the Register must prove that it has been acting as a registered association for a minimum of five years and that it has at least 500 believers. It must present its statute from which the nature of the religious community, its ceremonies and organizational structure are clear. The Ministry of Administration decides on the registration by means of an administrative decision which can be contested in an administrative dispute. If the decision is positive, the name and seat of the religious community, date of registration, registered number, finding that the religious community gained the status of a legal person, and the service of the authorized person will be specified.⁹⁷ The Ministry shall deny an application or request for registration if it determines that the content and the manner of performance of religious ceremonies and other manifestations of faith are contrary to the legal order or public morals, or are detrimental to life, health or other rights and freedoms of believers and other citizens (Art. 22/2).

⁹⁴ Lončarević, V., *Pravni položaj crkava i vjerskih zajednica te njihovo stjecanje pravne osobnosti u Republici Hrvatskoj*, <http://www.reformator.hr/Pdf/Vjerske%20zajednice%20u%20Hrvatskoj%20Loncarevic.pdf>, accessed 10 February 2013.

⁹⁵ *Zakon o udrugama*, Narodne novine, no. 88/2001, 11/2002.

⁹⁶ Staničić, F. and Ofak, L., *op. cit.*, p. 232; Dika, M., Ljubišić, S., Medvedović, D. and Šprajc, I., *Komentar zakona o udrugama s obrascima*, B.a.B.e., Zagreb, 2003, p. 31.

⁹⁷ Staničić, F. and Ofak, L., *op. cit.*, pp. 233-234.

All RCs that are entered into the Register have the right to freely perform religious ceremonies in premises that they own or have leased, the right to found schools and colleges in accordance with relevant laws, the right to found religious schools and religious colleges which acquire legal personality, while all citizens have the right to attend those schools, regardless of their religion in accordance with relevant laws. In addition, they have the right to perform the activity of public information and the right of access to the media owned by the state.⁹⁸

The LLSRC provides that RCs shall receive means from the state budget in an amount that shall be determined depending on the type and significance of religious facilities (cultural, historical, artistic, religious and the like) and activity of the religious community in the fields of upbringing, education, welfare, health and culture, and according to its contribution to national culture, as well as its humanitarian and other generally useful activity of the religious community (Art. 17/2). A religious community is exempted, by law, from VAT and profit tax for its main activity (other than commercial activity), as it is deemed a non-profit organization.

1. Legal status of the Catholic Church

Since the ratification of the aforementioned treaties, they have remained the main source of regulation of the legal status of the Catholic Church. The Croatian legal order applies only if the treaties do not regulate a specific matter. The most important of the four treaties is the Treaty on Legal Issues which gives the Catholic Church a somewhat unique status. One of the more important provisions of this Treaty is Art. 2 which recognizes the public legal personality of the Catholic Church and of legal persons within the Catholic Church as regulated by canon law. These church legal persons are registered in a special registry which is under the jurisdiction of the Ministry of Administration.⁹⁹ Furthermore, this Treaty gives to the Catholic Church absolute freedom regarding its inner organization (Art. 5), communication with the Holy See, and bishops' conferences of other countries, particular Churches and other institutions, domestic and foreign (Art. 3). A very important but highly inappropriate provision is Art. 8/1 which prescribes that, in cases of criminal

⁹⁸ *Ibid.*, 234.

⁹⁹ See: <http://www.applpravna.hr/PravneOsobeKatolickeCrkve/>, accessed 16 February 2013.

investigations of clergy, the court authorities must first inform the appropriate church authorities on a pending investigation. This provision gives a sort of a quasi-immunity to the clergy. Of course there are other persons, other than those stipulated in the Constitution, that enjoy the right to immunity, such as foreign diplomats, but there is no justification for members of the clergy to enjoy this albeit limited form of immunity. There is no obstacle for prescribing that the court authorities inform the church authorities that an investigation has been started, as is stated in agreements that other RCs have signed with the state, but in no means should this be done prior to the opening of the investigation, as that would present the opportunity to elude the investigation.

Art. 8/2 guarantees the inviolability of confessional secrecy, which is very important in the light of possible changes in criminal legislation. It is impermissible that the Criminal Code include an amendment which would violate confessional secrecy, and the recent announced amendments to the Criminal Code are said to have contained such provision. Sunday was proclaimed a holiday, and seven other holidays were established (Art. 9), but although some governments have tried to make Sunday an obligatory holiday, the Constitutional Court abolished such laws in 2004¹⁰⁰ and 2009¹⁰¹. However, Catholic faithful do have the right to decline working on Sundays, and cannot be forced to work on Sunday.

Marriages conducted before the clergy (canon marriage) were made equal to civil marriages provided there were no barriers to such unions as laid down in the Family Law Act (Art. 13). Since ratification, civil marriage has become superfluous provided that a religious one has been concluded. Other provisions granted the Catholic Church the right to found educational institutions at every level of education (Art. 15), spiritual care of persons in hospitals, prisons etc. (Art. 16), and the freedom of believers to found religious associations (Art. 14). The right of institutions of the Catholic Church operating in the service of the common good to receive state aid was prescribed, while the amount of such aid is to be agreed between the competent bodies of the state and the Catholic Church (Art. 17/4).

Another important Treaty is the Treaty on Economic Issues. This Treaty gives the Catholic Church the right to receive charity and donations from believers, to which the provisions that regulate the tax system of the Republic of Croatia do not apply (Art. 1). Furthermore, the state undertook the obli-

¹⁰⁰ See decision U-I/3824/2003 from 28 April 2004, *Narodne novine*, no. 55/2004.

¹⁰¹ See decision U-I/642/2009 from 19 June 2009, *Narodne novine*, no. 76/2009.

gation to give subsidies to the Catholic Church in an amount calculated by multiplying the amount of a double average salary with the number of parishes in Croatia (Art. 6/2). This amount had to be raised by an additional 20% for the provision of pensions for members of the clergy whose pension insurance had not been resolved in the first ten years of the Treaty's application (Art. 9). This system of financing the Catholic Church is facing strong criticism. In 2000 there were talks to replace this system with a system of church tax¹⁰², but it is still in force in 2013. There have been numerous discussions, but the state never made an effort to change this system of financing. Additionally, the right to the return of seized property that can be carried out in kind was granted to the Church (Art. 3), and if the property cannot be returned in kind, an appropriate replacement property or an appropriate amount of money must be given instead (Art. 3, 4). The wording of the Treaty is poor in this respect, which has caused much confusion concerning the interpretation of terms "appropriate replacement" and "appropriate amount". When taking into account the Constitution, the European Convention and the relevant domestic law (the Law on Restitution/Compensation of Property Taken During the Time of the Yugoslav Communist Government¹⁰³, which ensures the restitution or compensation of seized property to all RCs that have legal continuity), it is clear that "appropriate replacement" means a property (real estate or some other form of property) whose value reflects the value of the seized property. When the state has an appropriate property which can replace the seized one, its market value must reflect the market value of the seized property. However, "appropriate amount", when the compensation is given in money, does not mean full market value of the seized property. As was stated in a decision¹⁰⁴ of the Constitutional court, "none of the transitional countries in which denationalization is performed and legally regulated has the economic power to return every seized property. That is why every national law on denationalization contains the same limitations, especially regarding the circle of beneficiaries, property that is compensated and the level of compensation." The Croatian Parliament was guided by this principle when enacting this Law, but surely also when ratifying

¹⁰² Padjen, I., *op. cit.*, p. 73.

¹⁰³ *Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine*, Narodne novine, no. 92/1996, 39/1999, 42/1999, 92/1999, 43/2000, 131/2000, 27/2001, 34/2001, 65/2001, 118/2001, 80/2002, 81/2002.

¹⁰⁴ See decision U-I-673/1996 and others from 21 April 1999, Narodne novine, no. 29/1999.

the Treaty. Because of that, when compensation is being given in money, its amount cannot exceed the maximum amount set by Art. 59 of the Law, but with an agreement between the representatives of the Church regarding the appropriate percentage, which should not exceed 73.26%, the second highest percentage allowed by law.

2. RCs that have signed special agreements with the state

The LLSRC did, as a matter of principle, prescribe that RCs have certain rights (religious teaching and confessional instruction in public schools (Art. 13), the right to spiritual care in health institutions, and social care institutions (Art. 14), the right to spiritual care in penitentiaries and prisons (Art. 15), and the right to spiritual care of members of the Armed Forces and the police (Art. 16)). But only RCs that have signed special agreements with the state can exercise these rights, as is stipulated in Art. 9/1 of the LLSRC. However, certain laws contain provisions that guarantee some of these rights to all registered RCs so they can exercise those rights without signing special agreements (for example, the Law on Health Care and the Law on the Execution of Prison Sentences regulate the right to spiritual care in health institutions, penitentiaries and prisons). There is one very important right prescribed in the Family Law Act¹⁰⁵ – the right to perform a religious marriage that has the same effects as a civil marriage pertains only to RCs that have signed such special contracts (Art. 8).

Provisions of the LLSRC regarding these contracts originate from the aforementioned obligation of the Republic of Croatia derived from the fact that the state entered into international treaties with the Holy See, guaranteeing the Catholic Church certain rights. In doing so, the state *tacite* recognized the right of other RCs to attain such rights. The problem is in the fact that the LLSRC prescribes that the state *can* conclude such agreements with RCs. When a provision states that something can be done, it automatically means that *it does not have to be done*. So, the state is given *carte blanche*, or discretionary power to decide with which RCs it will conclude such contracts. The state did try to form a set of rules by enacting the Conclusion of 23 December 2004 in which it laid down the criteria under which an agreement with a religious community may be concluded.¹⁰⁶ Several RCs have challenged the constitutionality of this Con-

¹⁰⁵ *Obiteljski zakon*, Narodne novine, no. 116/2003.

¹⁰⁶ See Milić, J., *op. cit.*, p. 14.

clusion before the Constitutional Court, which denied its competence on the grounds that the Conclusion was not a regulation but a statement of policy. Some authors¹⁰⁷ challenged this decision claiming, with good arguments, that this Conclusion is in fact an Order enacted in the inappropriate form of a Conclusion, and that the Constitutional Court was not correct when it denied its competence. In the aftermath, the RCs which claimed that the Conclusion was unconstitutional lodged a complaint before the EC, which in its ruling concluded that the Republic of Croatia violated Art. 14 seen in connection with Art. 9 of the Convention and Art. 1 of Protocol no. 1 of the Convention.¹⁰⁸

Over the course of time, the state concluded such agreements with the following¹⁰⁹ RCs: the Serbian Orthodox Church, the Islamic community, the Evangelical Church, the Reformed Christian Church, the Evangelical (Pentecostal) Church, the Church of God and the Alliance of Christ's Pentecostal Churches, the Advent Christian Church, the Reform Movement of the Seventh Day Adventists, the Alliance of Baptist Churches, the Church of Christ, the Bulgarian Orthodox Church in Croatia, the Croatian Old Catholic Church, the Macedonian Orthodox Church in Croatia, the Jewish community Bet Israel and the Coordination of Jewish communities in the Republic of Croatia.

The Republic of Croatia should conclude such agreements with every religious community that requests it and is registered into the Register of RCs. This obligation derives from the previously mentioned fact that entering into treaties with the Holy See created this obligation in order to fulfil the provision of Art. 41/1 of the Constitution: "All RCs shall be equal before the law..." There can be additional criteria, but these criteria must apply to all RCs alike, as was stated in the ruling of the EC.

3. Registered RCs

Registered RCs enjoy all the aforementioned rights specified by the LLSRC, except those connected with the concluding of special agreements.

¹⁰⁷ Staničić, F. and Ofak, L., *op. cit.*, pp. 237-239.

¹⁰⁸ *Ibid.*, p. 241.

¹⁰⁹ See in Narodne novine, no. 196/2003, 141/2004, 4/2012.

4. Unregistered RCs that have the form of religious associations, the *in statu nascendi* RCs

These *in statu nascendi* RCs are, under the existing Croatian legal framework, associations and operate under the rules of the Law on Associations. As has been mentioned before, if a group of believers wants to be registered as a religious community, it is required to establish an association. An association can be established with a minimum of three founders. If the ultimate goal of an association is to be recognized as a religious community, it has to acquire legal personality by registering into the Register of Associations. After its registration, a minimum of five years of acting as an association has to pass in order that this “religious association” may apply to be entered into the Register of RCs, with the additional condition that it has a minimum of 500 members. If it is granted registration, its further legal status is determined on the basis of the LLSRC.

5. Unregistered RCs that do not even have the form of religious associations

It is certain that there exist religious associations that do not wish to be registered as RCs and which feel that they do not need legal personality. Such religious associations will not apply to be entered into the Register of Associations, or the Register of RC. The status of such “associations of believers” is governed, under specific provisions of the Law on Associations, by the legal regulations governing partnership. Partnership is a legal community of persons or goods without legal personality, in which two or more persons oblige themselves to invest their labour and/or assets in order to achieve a mutual goal. It is based on a contract, which does not have to be in written form since it can be concluded by concluding actions.¹¹⁰

CONCLUSION

The development of the legal status of RCs in Croatian law has been rather slow, and in certain periods abrupt. Notwithstanding the legal developments in the remainder of the Austro-Hungarian Monarchy, the status of RCs in Croatia remained unchanged for a long period of time. Only after more than

¹¹⁰ Staničić, F. and Ofak, L., *op. cit.*, p. 230.

200 years were the Protestants acknowledged and given civil and political rights in Croatia. After the “Croato-Hungarian Compromise” the legal status of RCs was improved by a set of new laws. The creation of a new state, SCS, brought some improvements regarding an individual’s religious rights, but it also brought state control over RCs and led to one (the SOC) enjoying a privileged position. The main problem was the status of the Catholic Church which was not resolved until the state’s demise in the turmoil of the Second World War. After the war, socialist Yugoslavia created a rather liberal legal framework regarding RCs, but legal regulation and the actual situation were in sharp contrast, especially in the early period of functioning of socialist Yugoslavia. The status of RCs improved to some extent after 1966. It can be said that the status of RCs in socialist Yugoslavia was initially a great shock for all RCs which lost all state support that had been available for centuries. Socialist Yugoslavia had a negative view of RCs and religion altogether and showed open hostility towards RCs, especially the Catholic Church whose seat was abroad. Since independence, the Republic of Croatia has adopted a different view of RCs. It could be argued that, in certain periods, the constitutionally-proclaimed separation of the state and RCs has been in peril, especially regarding confessional instruction in public schools¹¹¹, on which the Constitutional Court also declined its competence.¹¹² After the ratification of four treaties with the Holy See, the Catholic Church gained a special, *sui generis* status within the Croatian legal framework. Though some authors have argued that those treaties are unconstitutional, they merely created an obligation of the state to assure that all RCs are in the position to acquire the same rights as the Catholic Church. This obligation has been, partially, fulfilled by the state when the LLSRC was enacted. However, the wording of the LLSRC has enabled the state to award these rights on a discretionary basis, and the same criteria have not been – and still are not – applied to all RCs that apply for the conclusion of special agreements with the state, as was stated in the ruling of the EC. Some authors have found that there are 39 RCs in Croatia, and divide RCs into two main groups: Christian RCs and non-Christian RCs, which are further subdivided into tra-

¹¹¹ See in Padjen, I., *Confessional Religious Instruction in Croatian Public Schools*, paper presented to the conference “The Croatian Law on the Legal Position of RC”, 26-27 April 2002, p. 2.

¹¹² See decision U-II/2885/2003, <http://sljeme.usud.hr/usud/praksaw.nsf/Pojmovi/C1256A25004A262AC1256E37004F0427?OpenDocument>, accessed 10 February 2013.

ditional non-Christian communities and other non-Christian communities.¹¹³ There are 52 RCs entered in the Register¹¹⁴ (however, 11 of them are Jewish communities so it can be said that there are 42 RCs in Republic of Croatia).

To conclude, five types of RCs can be distinguished in the Republic of Croatia, with different legal statuses: 1. the Catholic Church whose position is regulated by international treaties and which has a special, *sui generis*, status within the Croatian legal system and to which the LLSRC does not apply; 2. RCs that have signed special agreements with the state; 3. registered RCs; 4. unregistered RCs that have the form of religious associations, the *in statu nascenti* RCs, and 5. unregistered RCs that do not even have the form of religious associations.

¹¹³ Marinović Bobinac, A. and Marinović Jerolimov, D., *Vjerske zajednice u Hrvatskoj*, Prometej, Zagreb, 2008, pp. 9-11.

¹¹⁴ Cf. <http://www.appluprava.hr/RegistarVjerskihZajednica/>, accessed 19 February 2013.

Sažetak

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PRAVNI STATUS VJERSKIH ZAJEDNICA U HRVATSKOM PRAVU

Cilj je ovog rada analizirati razvoj položaja vjerskih zajednica u hrvatskom pravu tijekom vremena. Autor analizira pravni položaj vjerskih zajednica u Kraljevini Hrvatskoj, Slavoniji i Dalmaciji, Kraljevini Srba Hrvata i Slovenaca / Kraljevini Jugoslaviji, socijalističkoj Jugoslaviji i u Republici Hrvatskoj. U radu će se pokazati da je taj razvoj bio usporen, a u nekim razdobljima isprekidan. Posebna će se pozornost posvetiti pitanju (ne)ustavnosti ugovora koje je Republika Hrvatska sklopila sa Svetom Stolicom. Autor će pokazati da su ti ugovori u skladu s Ustavom, ali da postoje druga pitanja glede pravnog položaja drugih vjerskih zajednica o čijoj bi se ustavnosti moglo dvojiti. Autor će pokazati da danas u Republici Hrvatskoj postoji pet tipova vjerskih zajednica.

Ključne riječi: vjerske zajednice, pravni položaj, registracija vjerskih zajednica, ugovori između Republike Hrvatske i vjerskih zajednica

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