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Religious Diversity in Europe and the Rights of Religious Minorities

Elizabeta Kitanovic / Patrick Roger Schnabel (Editors)



**Religious Diversity in Europe
and the Rights of Religious Minorities**

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I

INTRODUCTIONS

EDITORS' PREFACE

The Conference of European Churches (CEC) encompasses more than 110 Member Churches, from the Oriental and Eastern Orthodox, from the historic and Free Church Protestant, as well as from the Anglican and Old Catholic traditions, based in approximately 40 European countries. A majority of its members are minority churches. This broad scope of the Conference's constituency reflects and, through its work strengthens religious and multicultural plurality in Europe. This is why CEC regularly addresses the subject of the rights of religious minorities in Europe, adding a competence to the debate that is based both on practical experience, political advocacy and academic reflection.

Minority Churches, and indeed religious minorities in general, face many challenges, in Europe and beyond. Some struggle with attaining an appropriate legal status, others are subject to discrimination, exclusion or even open hostility against individual members and the entire community. Complaints range from widespread prejudices to destruction or even demolition or confiscation of property, obstructions to religious rituals and ceremonies, to the need for protection by police or even military. In cases where there is a strong historic bond between state and society and a specific religion, minorities can at times also be regarded as dissenters and, therefore, disloyal citizens.

While CEC is convinced that minorities bring an added value to societies, sometimes governments do not see that, but treat them as threat to national security. Quite often, state officials lack religious

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literacy and have not yet developed a deeper understanding of the benefits that can spring from creating space for religious minorities to flourish.

The Conference sees as one of its purposes to enhance understanding and foster dialogue. It was to serve these aims that it organised, together with the Churches' Commission for Migrants in Europe (CCME), the Diocese of Zagreb and Ljubljana of the Serbian Orthodox Church, and the European Parliament Antiracism and Diversity Intergroup a conference on *Religious Minorities as Part of Culturally Diverse Societies*, which took place from 21 to 22 October 2016 in Zagreb, Croatia. Participants discussed topics like European and national legal standards on the protection of the rights of religious minorities, current challenges, but also best practices to ensure fair treatment of religious minorities. Special attention was given to the role of international actors in combating violations of fundamental rights of religious minorities.

The material you find now in your hands gives some insight into the discussions. The authors kindly permitted the printing of their presentations, which were mostly kept in the style of a conference intervention. As the conference was concentrating on the situation in the Balkans, with only a few examples from other parts of Europe, some other Member Churches of CEC kindly contributed additional material to this collection of essays. At the end of the book, you will find the final statement drafted by the CEC Thematic Reference Group on Human Rights in collaboration with conference participants. This statement was submitted to the European Institutions and disseminated to CEC Member Churches and the wider public.

Apart from what we hope you will find an interesting read, there were other outcomes of this conference. Some of its members have been asking CEC for direct assistance when dealing with governmental issues related to the right of religious minorities, some have created stronger partnerships for further work in the area. A very noteworthy outcome

was a project for young people from Zagreb and Ljubljana, initiated by the diocese of Zagreb and Ljubljana of Serbian Orthodox Church. In the course of this project, the Conference of European Churches hosted the visit of 20 young people, 10 Serbs from Croatia and 10 Croats from Serbia, to the European Institutions in Brussels during Holy Week 2017. More about their special experience can be found in the video '*Standing up for minority rights*', which is available at the CEC website and on YouTube.

If you are Member Church of CEC dealing with, or even facing violations of the rights of religious minorities, please feel welcome to contact the Conference of European Churches for cooperation and assistance.

Dr Elizabeta Kitanovic, Rev. Dr Patrick Roger Schnabel.

GREETING SPEECH OF METROPOLITAN PORFIRIJE

First of all I would like to express my joy about the fact that we have all gathered to speak about religious minorities here in the Serbian Orthodox Secondary School, a school that belongs to the Serbian Orthodox people - a minority in the Republic of Croatia. It is with deep respect, gratitude and love that I welcome everyone present here, especially those who have helped in the organization of this conference, and you who have come from abroad in order to help religious minorities and societies in which they live by studying the problematic which this conference is dedicated to, because, as we witness, despite the refined legislation, even in the most developed countries with deeply-rooted democratic traditions, problems tied to the inclusion of religious minorities, are not merely present, but sometimes gain even tragic proportions.

You are here in an educational institution of the Orthodox Metropolis of Zagreb and Ljubljana, which, together with four other ancient dioceses, belongs to the Serbian Orthodox Church in Croatia. The bare fact that such a school exists, proves that an immense potential for the Serbian community to be respected and accepted is evolving in Croatia. It is true that we represent a minority. Today we are slightly above 4% of the entire population, but the vast cultural heritage created by our ancestors throughout the ages in these lands, obliges and motivates us to further develop the potentials of the Republic of Croatia,

not only in order to preserve our own culture for future generations, but rather to enable this and later generations to live freely and contribute to the country in which they are living. To enable them to be constructive, creative and good members of society. Whether we are good, does not depend on how great or small we are. The Ancient Greeks say: *Uk en to polo to ef, al en to ef to polo* – the good is not in the many, but it is the many which is in the good!

I will not, on this occasion, go into legal, international and other aspects of the problematic of religious minorities. You, who are experts on these matters, will be doing that during the next two days. Nevertheless, I would like to point to, what seems to me to be the one fundamental problem in the approach to this subject, as well as to the question of human rights generally. In its form of appearance, it refers to terminology, but essentially, at least from the Orthodox, but also generally Christian point of view, it touches upon the question of the goal and scope of the engagement of all contemporaries who want to enhance the respect and implementation of religious and human rights.

Namely, the basic term that calls the majority communities to respect the rights of minorities is *tolerance*. Initially, this Latin word means forbearance, perseverance, suffering. In early Christian literature, for instance in the writings of St. Cyprian, we find the idiom *tolerantia passionis*, the bearing of suffering performed by holy martyrs for Christ. Similarly, in contemporary medical terminology the term *tolerance to pain* is used. Tolerance toward people and ethnicities of different faith, or more precisely, the bearing of subordinated religious communities by those predominant and powerful in certain societies, has therefore been present for centuries, dating back to Ancient pagan Greece and Rome. The reasons are always of utilitarian nature: it is better for the state to live in peace and progress, then in hostility and instability.

Having this in mind, let us ask ourselves, should relations between majority and minority religious communities, at least in Christian Europe, be based on tolerance?

In the very foundation of Christian anthropology lie the fact that God – Trinity in unity and Unity in trinity, the perfect ‘community of love’, created man - Adam, according to His likeness (Jm 3,9) the icon of God (Gn 5,1). Furthermore, the entirety of mankind stems from a human couple created by God, meaning that all people, regardless of skin color, race, language or educational background are bestowed with the dignity of divine origin. The Apostle Paul says on the Areopagus: ‘The God who made the world... from one blood he made all the nations of men’ (Acts 17, 24-26). Citing the here present Bishop Irinej of Bačka, my spiritual father and teacher, who said: ‘A Christian does not simply live next to the other or with him, but also for the other, because in every man, regardless of his faith, skin color and social status, he recognises the living icon of God and in him loves his God-like brother or sister.’ The uniqueness that different individuals and nations have are not differences which divide, but God-given personal features and gifts through which we are supposed to give ourselves to God and one another, so that, by enriching each other, we could build up a community based on God who is unity in Trinity, so that again, as countless persons and many nations we could, in turn, through love and mutual respect joyfully share in the one and unique human nature. We are all, firstly, participants in this one and the same human nature and only then do we have special personal, religious, national, racial and all other identities.

What are, thus, the principles that, instead of tolerance, even instead of different laws and declarations, albeit the ones of most significance, are to apply to our relation toward everyone, be it the relation of majorities toward minorities or minorities toward majorities, especially the relation between religious minorities and majorities? Those are

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principles of *love* and *freedom*. Love and freedom which Emperor Constantine, whom we Orthodox celebrate as Saint, has proclaimed by words: May everyone believe as their heart pleases!

With these thoughts, I wish you a pleasant stay here in Zagreb, as well as a lot of success in your work.

THE LEGAL FRAMEWORK FOR RELIGIOUS MINORITIES IN EUROPE

Rev. Dr Patrick Roger Schnabel

Eminences, excellencies, esteemed guests, dear brothers and sisters,

I always find those lecturers the most benefiting, who start with preliminary remarks that are almost longer than their main presentation, and add a lot of annotations as well. Therefore, I take the liberty to start my intervention with some rather fundamental statements before I venture to give you a sketch of the ‘legal framework’ for religious minorities in Europe.

Preliminary Remarks

1. Especially German ecclesiastical lawyers are wont to emphasise that fundamental rights are at core individual rights, but that some of them (like Freedom of Religion or Belief [from now on also referred to by the abbreviation FORB], freedom of association etc.) can only be properly understood when their collective, even corporate dimension is taken into account. That goes to say that, if the right to freedom of religion and belief were fully and unambiguously guaranteed, there would not be

much need to address religious minorities in particular. From all the fundamental human rights that we have, FORB is a minority right from its very roots in history. It developed as the right to dissent from what state and religious powers believed was the ultimate truth.

Why is that so?

FORB encompasses your right to adhere to any or no religion or belief, or change your adherence at your discretion, and pursue a life in accordance with the rules and customs of your religion or belief, within the limits of the public order, alone and in company with others, in private or in public.

In order to have a certain religion or belief, you must make reference to some concrete group of people with some concrete set of beliefs, rules and customs – pure deism, atheism or agnosticism is an opinion, not a religion or belief, because it lacks this fundamental requirement of reference to a group, however loosely it might be organised.¹ That is not

¹ Here, we have to be very careful to make some important distinctions. First, all our historic rights of liberty have two sides: a positive side, guaranteeing you to exercise them at full, and a negative side, guaranteeing your freedom to abstain. As far as this negative side is concerned, atheism and agnosticism are also, of course, covered by FORB. However, when you want to invoke the right in its positive side, there are higher requirements than just to say you believe or don't believe in God. This is especially important for legal orders that guarantee a very high level of protection to FORB, which might go beyond the protection given to other fundamental rights, e.g. on the level of restrictions. While FORB can be restricted by law (even though not just any law, but only those that qualify as necessary in a democratic society) under art. 9 European Convention on Human Rights (ECHR), according to art. 4 of the German Basic Law it can only be restricted by other fundamental rights and constitutional regulations. Therefore, the state has a legitimate interest in ensuring that religion is not used as a cover for other activities. In order to qualify as a religion or belief, a certain complexity of its theoretical base is, therefore, required. What is not required is,

to say that you have to buy the whole package, also the faith of the dissenter or heretic merits the same legal protection, but the reference must be there. In a way, the individual right is your right to choose a religious community and at the same time determine your relationship, also your level of proximity or distance, towards it. If fully implemented, this fundamental right makes the question as to the protection of religious minorities almost obsolete.

Why only almost?

Because in none of the international legal frameworks that protect FORB the existence of certain forms of positive discrimination of specific religions or religious communities is prohibited. Such forms of positive discrimination can take the shape of

- a proper state church (like in England and some Scandinavian countries);
- the formal declaration of a certain religion as the predominant religion of the commonwealth (like in the Greek Constitution);
- or its special role for the nation (like in the Hungarian Constitution);
- or religious references, specific (like in the Irish or Slovak Constitution);
- or unspecific (like in the German Basic Law);
- or simply a stratification of legal acknowledgement of religious communities (like in Austria).

In such cases, it is quite clear that – at least from a formal perspective – all are equal, but some are more equal than others. While this must not prejudice the general legal status of any religious or non-religious believer, it might give them a feeling of belonging to a

of course, a reference to transcendence. Atheism can be part of a 'belief', as 'deism' can be part of a religion.

‘minority’ (even though it might be disputable if secularisation doesn’t make even adherents of ‘majority religions’ to a social minority in some countries).

However, an elevated legal status does not necessarily have to correspond with size – in Finland, for example, the Lutheran and the Finnish Orthodox Church both enjoy a special constitutional status (‘state church’ or ‘national church’), originally introduced in the 1919 constitution to strengthen the Karelian minority’s feeling of belonging to the young Finnish state.² From this you can see that there is always some space to use status as a political instrument, without entering the forbidden territory of (il)legal discrimination. This somewhat qualifies the general remark that the proper implementation of FORB would make the question as to the rights of minorities dispensable. At least in the realm of political symbolism, some space for (positive) discrimination is left.

2. My second remark concerns one of the probably most misunderstood fundamental rights: The right to equality before the law and the prohibition of discrimination on certain, legally defined, grounds. Religion is, as far as I can see in all European Constitutions, and certainly on the supra-national level, one of these grounds. However, the rule behind it is more complex than the wording might suggest. The right to equality does not necessarily imply that everyone can under all circumstances expect equal treatment by the state (or, through anti-discrimination legislation, by other private actors). The rule, in its legal interpretation, demands that all things equal must be treated

² In 1917, when Finland became independent of Russia, the majority of the Orthodox population in the country started to sever ties with the Russian Orthodox Church (Moscow Patriarchate), becoming an autonomous church affiliated with the Ecumenical Patriarchate of Constantinople in 1923. A smaller part of the Orthodox population remained Russian Orthodox.

equally according to their level of equality. It thus implies unequal treatment for unequal things according to their level of inequality.

Complicated, isn't it?

I must ask you to bear with me for a moment, and try to grasp the full meaning of this figure of thought. It has a great bearing on our issue at hand. Let me assist you with some practical examples:

When I am having discussions with my esteemed friends from free churches in Germany, they often complain about unequal and discriminatory treatment. As I am myself rather proud of the amount of equality that the German Basic Law gives to all religious associations, I notoriously try to dig deeper: How exactly are free churches discriminated against?

The answer usually lies not so much in the strictly legal, but in the more elusive political sphere. Here you do certainly find unequal treatment, because the crucial question when asking for equality is always the *tertium comparationis*, the point of comparison. If religious associations are concerned, it seems obvious that religion has to be the point of comparison in all possible constellations. However, there are also other factors that the state might take a legitimate interest in. I name but 'size', 'history' or 'social impact'. If, for example, the Roman Catholic or historic Protestant Churches in Germany receive state aid for conservation work on their church buildings, belonging to our nation's cultural heritage, does that mean that other churches have to receive the same money – either in total or even per capita, without having the same obligations? Or if the biannual Protestant Christian Convention called Kirchentag draws more than 100 000 visitors to a city, and that city or region subsidises the event, does this discriminate against religious communities that receive no such support as they don't organise a comparable event? Or, if at important state occasions, dignitaries of the major religions represented in the commonwealth are asked to

participate in an accentuated position, does this discriminate against those communities that do exist, but at a socially negligible number?

You see, equal treatment or discrimination are not always as unambiguously identifiable as a first, superficial or amateurish inspection might suggest.

3. Please allow me a third, howbeit shorter preliminary remark.

Minority rights are a fashionable topic in international law. This shows that there is definitively some significant necessity to address the subject. However, whenever we are talking about 'group rights' we need to be aware of the potential tension that the very concept of group rights causes vis-à-vis individual rights. This is especially true when the contours of the group are not clearly defined.

In such cases you always run a certain danger of encompassing people who personally don't want to be counted as belonging to that particular group. To give you one practical example again: When we talk about the number of Muslims in Europe, general statistics tend to count all people from countries with a majority Muslim population as Muslim immigrants. But some might have come to Europe exactly because they were none, or none any more in the first place. As long as we remain in the realm of numbers, this could be a somewhat theoretical problem. But it can become relevant for our issue at hand. For example, many European states – in their effort to integrate migrants into their societies – try to establish dialogue fora with the Muslim community. As the level of self-organisation tends to be very low on the Muslim side, it is usually the state inviting to such fora. In Germany a body called 'German Islam Conference' was set up by the Ministry of the Interior. It included so called 'secular Muslims'. However, the term is a contradiction in itself. It refers to people with a biographic background related to Islam, who have decided they do not want to be Muslims. I do not doubt that many of these people can make valuable contributions to

the discourse on integration – but I do hold that it is highly problematic to label this endeavour 'Islam Conference': it does justice neither to those members who are believers, nor to those who are not.

So, instead of talking of minority rights, in particular in relation to religion, it's again more helpful to talk about FORB in all its dimensions. That way, we also keep the individual dimension in the picture so as to avoid putting group rights over individual rights.

4. Fourthly, and by that I finally conclude my list of preliminary remarks, I would like to draw your attention to the fact that in some cases we deal with the problem of a multiple minority situation. With Europe's extensive history of changing borders and migration, not a few religious minorities are also, at least concerning their roots in some more or less distant past, ethnic minorities. That is certainly true for most (but not all) European Muslims, but also for many Christians. It's impossible to name them all. But to give you an idea, we could – *inter alia* – mention the host of this conference, the Serbian Orthodox Church in Croatia. We can name the Protestant settlers in Northern Ireland. We can name the Lutherans in Alsace-Moselle, or the French-Reformed in Berlin-Brandenburg. In most cases, the ethnic component has lost its relevance over the centuries, as citizenship has clearly become that of the land of settlement. But in some cases, especially where political tensions between countries keep them alive, ethnic and religious minority issues overlap and intermingle.

Such cases are, therefore, different from *purely* religious minorities. If you look at the Waldensians in Italy, for example, they might sometimes feel that there is too much of a cultural correspondence between being Italian and being Roman Catholic, but their ethnic origin in France has – to my knowledge – never been an issue of conflict. And if you look at members of dissenting churches, free churches, new

religious movements, ethnicity does not play any role whatsoever. So we should bear in mind that discrimination can be a complex issue, and merits closer inspection to fully understand what it is ‘really’ about.

The Protection of Religious Minorities in the European Legal Framework

Whenever we talk about human or fundamental rights, we need to be aware of different levels of legislation and jurisprudence: International and European Law, European Union Law, and national law. Both in EU and national law you also distinguish between different categories of law, in particular constitutional and organic. In the case of the EU you speak rather of primary and secondary law, but the effect is the same. Human rights are usually enshrined at the level of constitutional/primary law, but are often given their concrete shape in organic/secondary law.

These differences are important, because the further up you climb the ladder of legal levels, the weaker are the mechanisms to protect your human rights. Only within the national state and – so far – within the European Union does the executive bow to the jurisdiction of courts when human rights are concerned. National constitutional courts and the ECJ can demand legislation which has been found contrary to human rights to be changed or at least suspended (‘primacy in application’). Above EU level, there is no such power. Even the European Court of Human Rights, as the jurisdictional body watching over the implementation of the European Convention on Human Rights, has the power only to award financial compensation, but no means to sanction default if a state does not adapt its legislation. In Germany, for example, the Convention falls in the category of ‘organic law’ as international law becomes German law only through the legislative act transforming the ratification. Should a provision of constitutional law be found in contradiction to the Convention, there is no automatism that it would be changed. That would still be a political decision, not a legal matter. And

if you go beyond the Convention, into the further spheres of international human rights law, there is not even a court with powers comparable to those of the European Court of Human Rights (ECHR). At UN level, 'name and shame' is really almost all you can do – and even though this does have some political effect, it usually does not remedy the individual violation.

Having said that, you will better understand why I limit the scope of my presentation to the ECHR and EU Law, with only a few references to other legal levels. And what I am going to tell you will probably be somewhat of a disappointment.

Because there are indeed very few references to minority rights in either legal order, at least as far as purely religious minorities are concerned. The Convention lists religious freedom as a fundamental right, of course, and the ECHR has developed a jurisprudence enabling a religious community to appeal to the Court as bearer of that right. Minorities, however, are only mentioned once – in art. 14, on the prohibition of discrimination – but here it clearly refers to national minorities only. Religious minorities are more generally covered by the protection from discrimination on religious grounds.

Art. 2 Treaty on European Union (TEU) is somewhat more general, stating that:

the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

This should be read to include religious minorities. But when we go on to look at the EU's Charter of Fundamental Rights, again we find FORB as a fundamental right, but – analogue to the Convention – art. 21 on the prohibition of discrimination lists 'religion or belief' in an individualistic sense, and restricts explicit minority protection to 'membership of a national minority'. The following norm, art. 22,

compels the Union to respect cultural, religious and linguistic diversity, which can be interpreted as having some bearing on the issue of minority protection, but it falls short of naming religious minorities as a specific group. And, besides, the EU's Charter of Fundamental Rights is applicable only to legislation and execution of EU law, not of other national law.

So, I basically report the absence of specific legal provisions governing the treatment of religious minorities, that is, religious 'group rights' comparable to national/ethnic minorities.

Why is that so?

Let us shortly look back to the history of minorities in Europe. Until what we perceive as modernity, state and nationality had nothing to do with each other.³ 'Empire' was a political concept, nationality a cultural one. All European realms encompassed more than one nationality. Only with the fall of these realms, and the emergence of the national state, was an identity of state and nation assumed. While the long history of European wars and migratory movements had made it almost impossible to erect the national state as the community of an ethnically, culturally, religiously and linguistically homogeneous people, the idea of such a people was – pretty much against reality – put forward as a political idea. Whatever did not fit was made fitting, ethnic cleansing was the worst example, but throughout Europe majorities expected minorities to 'assimilate'.

As wars (and changing borders) did not stop in Europe, this development continued to be challenged. The post-WWI order was one that tried to deal with this issue intensively: just look at the Lausanne Treaty, the ruling idea of which was to create ethnically homogeneous

³ For the following also cf. Oeter, Stefan, *Minderheitenschutz in internationalen Abkommen*, in: Friedrich-Ebert-Stiftung (ed.), *Minderheiten- und Antidiskriminierungsschutz: Alternative zur Integration?* (Gesprächskreis Arbeit und Soziales Nr.34), Bonn 1994, [27-42], 30ff.

territories (based on religious adherence), breaking with a culture so rich and diverse on the soil that had seen many Empires come and go in history. The post- WWII order gave up on this concept of homogeneity, shifting the emphasis to individual rights, implying that individual FORB should indeed make considerations of religious minority rights superfluous. But assimilation still remained a cultural paradigm. Despite the serious drawback posed by the Yugoslav war, the post-Cold War order saw a general acceptance of the fact that ethnic minorities as distinct groups would remain and – through integration probably grow – in most European societies, often combined with a distinct religious affiliation. I quote from the (not legally binding) 1990 Copenhagen Document on the Human Dimension of the Organization for Security and Co-operation in Europe (OSCE) process:

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and

– to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right (...) to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

– to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue; to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs.

And the Document went on to demand that:

the participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

This last paragraph in particular implies a significant shift of paradigm. It means moving from the toleration of the ‘other’ to integrating the idea of diversity into national identity. In 1995, the Council of Europe’s Committee of Ministers adopted a ‘Framework Convention for the Protection of National Minorities’, which has been ratified by most member countries of the Council of Europe (COE).⁴ It gave the pure political declarations of the Copenhagen Document the dignity of a Convention under International Law.

However, it refers only to historic ‘national’ minorities, not to other ethnic groups, and not to other forms of minorities altogether, such as ‘purely’ religious ones. It can be argued that the idea of a homogeneous society is still too strong to allow for an entirely new approach: a legally binding convention on diverse minority rights.

To a certain extent this reluctance is reasonable. Covered by FORB anyway, religion would probably constitute the least challenge for a wider approach. Language, for example, would be much more difficult, as – *inter alia* – schools, public administration, public broadcasting

⁴ Not surprisingly, Turkey is one of the larger member states that has not ratified the Convention. Interestingly, France also abstained, apparently because the government’s official position is that there are no ethnic minorities in France. Considering the case of Corsica, this is even doubtful when the very strict definition of minorities is applied, covering only historic ‘national’ minorities, but not ethnic minorities such as develop through current migration processes.

could be expected to increase their ordinary accessibility for quite a number of 'new' languages. But also religion might cause tensions: If taken seriously as a *group right* (not as a primarily individual right as in FORB), it could for example mean the introduction of new public holidays for all (probably at the cost of traditional public holidays) or separate public holidays for religious minorities (interrupting the synchrony of social life).⁵

These assumptions are the best explanation I can give you for the absence of any comprehensive, binding legal agreement on the international level which could oblige states to actively support different minorities. The only real success – also in terms of religious minorities – was the Council of Europe's Framework Convention for the Protection of National Minorities, as this Convention – in line with the Copenhagen Document cited before – makes frequent reference at least to the religious identity of national minorities, such as in its art. 5 and 8:

The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

⁵ In Austria, for example, some of the 'Churches or Religious Communities Recognised by Law' (Lutherans and Reformed, Methodists, Old Catholics, Israelite Community), enjoy such privileges in labour law (cf. i.a. Feiertagsruhegesetz 1957).

So it is really only this, and on the global level art. 27 of the 1966 United Nations Covenant on Civil and Political Rights that offer any meaningful reference to religious minority rights.⁶

Especially with the latter I fail to see how this gives an added value, that is a protection that goes beyond that of FORB – as long as no real obligation to foster diversity is introduced. The Framework Convention at least encourages such an attitude, but restricts it to the religion of ethnic minorities (i.e., not all religious minorities).

So, personally, I see the most convincing and feasible way forward in strengthening an interpretation of FORB that liberates the understanding of the right from a very shallow and limited individualistic perspective to one that sees religion as necessarily embedded in a community – with all due respect to individual freedom of thought and choice.

In order to give at least some proof that this approach, using FORB as a starting point also to cover the legitimate interests of religious (minority) groups, can actually work, let me shortly outline which development the European Court of Human Rights (ECtHR) jurisdiction on article 9 of the Convention has taken:⁷

At first, the Court was rather reluctant to admit complaints by religious groups.⁸ When it did, it constructed a sort of ‘representative

⁶ ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’

⁷ Cf. Council of Europe/European Court of Human Rights (Research Division), *An Overview of the Court’s Case Law on Freedom of Religion*, Strasbourg 2011 (2013).

⁸ Indeed it was very reluctant to base any decision on FORB: Until 1993, not one case is recorded, in which the Commission (later: the Court) found a violation of art. 9 (cf. Danchin, Peter G., Forman, Lisa, *The evolving jurisprudence of the European Court of Human Rights and the Protection of Religious Minorities*).

action'- doctrine, stating that the religious group was actually taking legal action on behalf of the individuals constituting it.⁹ That is, of course, not entirely wrong, but misconceives the nature of collective legal personalities: They are more than, and distinct from the sum of their members. That's particularly true for a faith that endows the community with a spiritual dignity of its own as part of its theology – such as the 'people of God' in the Jewish or the 'body of Christ' in the Christian traditions.

Probably without going that deep into theology, the Court later found that it was – in terms of legal systematics – a much more convincing approach to combine the rights of art. 9 (FORB) and art. 11 (freedom of association) when deliberating the application of a religious group. This multiple-rights approach is based on the assumption that the right to form collectives and act collectively cannot be separated from the original right that to enjoy the collective was formed for in the first place. They are inseparable, because you cannot enjoy either without the other.

It is no coincidence that a significant number of the cases on which the court developed this doctrine, for example *Hasan & Chaus vs. Bulgaria*, *Serif vs. Greece* or *Metropolitan Church of Bessarabia and Others vs. Moldova*, were about state intervention in the installation of the leadership of religious communities due to schisms. The Court established in its adjudication that in a democratic, pluralistic society, it cannot be seen as a legitimate purpose of state action to ensure religious homogeneity or avoid sectarianism. The state has basically to abstain from intervention in the internal affairs of religious communities, unless

⁹ Cf. i.a. Bleckmann, Albert, Von der individuellen Religionsfreiheit des Art. 9 EMRK zum Selbstbestimmungsrecht der Kirchen, Köln et al. 1995; Schnabel, Patrick Roger, Artikel 'Europäische Menschenrechtskonvention', in: Hans-Michael Heinig/Hendrik Munsonius (ed.), 100 Begriffe aus dem Staatskirchenrecht, Tübingen 2012.

to impose legal limitations that 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’. The court also affirmed that by guaranteeing and upholding religious freedom the state is not ‘likely to diminish the role of a faith or a Church with which the population of a specific country has historically and culturally been associated’ (*Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*).

Moreover, it has to make sure that religious communities can attain legal personality, so as to be able to participate in legal relations, obtain property etc. (*Kimlya and others v. Russia*). By the way: In relation to this affirmation, in 2014, the Venice Commission has adopted very helpful ‘*Joint Guidelines on the Legal Personality of Religious or Belief Communities*’.

But ECtHR’s jurisdiction goes even beyond this basic requirement in upholding that, if a state offers further support or benefits, it must do so on a neutral basis, giving equal treatment to all applicants (*Savez Crkava Riječ Života and Others vs. Croatia; Religionsgemeinschaft der Zeugen Jehovas and Others vs. Austria*).

However, signatory states also retain a rather wide margin of appreciation. While it can be allowed to put a crucifix on the wall of an Italian classroom (*Lautsi et al vs. Italy*), it can be prohibited to wear ostentatious religious symbols, including for example the hijab, in a French classroom.¹⁰ Both ways have implications on the integration of religious groups into society. Personally, I would always give preference to a society that is openly pluralistic, allowing – no: even inviting – religion into the public sphere.

¹⁰ In the case *Ebrahimian vs. France* the Court had to decide about wearing the headscarf in a hospital, but is highly likely that the ban would also be upheld for schools, as it did for Universities in *Leyla Şahin v. Turkey*.

I do believe that societies need a great deal of coherence and shared values, that centripetal forces must remain stronger than centrifugal forces. But I do not believe that suppressing religious diversity serves this aim – quite the contrary. If the state wants to become, to use a phrase the German constitutional court has coined, the true ‘homestead of all its citizens’, it will not only tolerate religious diversity, but integrate it into its national identity, and will benefit from the engagement religion will show for the commonwealth.¹¹

¹¹ BVerfGE 19, 206 <41, 88>.

II

WHY IT MATTERS: THREE PERSONAL PERSPECTIVES ON EQUALITY

Human rights law can appear to be a very abstract subject, better suited for academic discourse than for ecumenical dialogue. However, in our exchanges we learned just how much personal life and belief are affected by the implementation of equality and fair treatment of different religious communities. Faith is something very close to the very identity of a person. If you have to hide this aspect, because you have to fear pejorative behavior, discrimination or even violence, your quality of life is negatively affected. In Europe, with the growing plurality within its societies, the state should be the ‘homestead of all its citizens’, regardless of their personal beliefs. The following statements show us the visions of three people – two young people from the conflict-torn Balkans, and an older person from Western Europe – exemplifying how a better implementation of this principle could contribute to improved personal life and social cohesion.

**‘FOR FAIR AND EQUAL TREATMENT’ –
A SERBIAN YOUTH FROM CROATIA
LOOKING INTO THE FUTURE**

Ms Jelena Nestorović

In order to obtain a complete and full-scaled picture of the rights and status of the various religious communities in a particular area it is necessary, apart from the perspective of the Church hierarchy and the State, and their mutual relations, to show, as well, the perspective of ordinary believers which is mostly conditioned by practical achievement of proclaimed attitudes and written laws. Arrangements and relationship between Church and State are reflected on believers, whose satisfaction, coexistence and tolerance are indicators of the success of these agreements, and, indirectly, of the civilization achievements of our society.

It is widely known that the agreements struck at high levels of government in practice do not always achieve the proclaimed effects. This particularly relates to the various recommendations and provisions whose breach is not in any way sanctioned. In Croatia, for example, one cannot hear too many objections to the legal provisions which seek to ensure fair treatment of different religious communities and believers, and the public statements of important people go in the direction of proclaiming the equal treatment of all. Likewise religious communities also do not have too many objections to the funding schemes and the

like, which is very commendable, and gives the impression that only minor usual problems exist in our society, and it is only a matter of time before even they are solved. Nevertheless, if we consider the perspective of ordinary believers, the situation, in some cases, changes drastically. In mid-2016 Milorad Pupovac, PhD, representative of the Serbian national minority in the Croatian Parliament, published a post on his Facebook profile that tells about the fear, which is still widespread among the Serbian people in Croatia. Part of this publication refers to the feelings of Orthodox believers in Croatia:

I have been thinking for a long time about the fears of Serbs in Croatia and the constant renewal of these fears by those who have the political and religious power in Croatia.

Let me give an example that I was recently told about. In one town, but not the only one with such a story, believers often beg their Orthodox priest to visit them not in a robe but in civilian clothes and to put a robe on when in their house or apartment. In the same city we hear that a student, who comes to the Orthodox Church for religious education, is revealed in her religious identity in her classroom because of, at least, teacher's tactless communication and is further subjected to very unpleasant reactions of other students; this without an adequate reaction on the side of the teacher. So fears are supported and encouraged.

Objections of believers themselves and their perception of their own religious freedom and its range allow us, therefore, to detect the existence of problems and inequality in certain situations and this is the first step towards finding a solution.

One of the crucial topics in the discussion on best practices for ensuring fair treatment of religious minorities is certainly formal and informal education. The system of formal education should be used to expand the horizons for young people and to teach them not only to respect diversity but to see it as the wealth of the whole society. A huge

role in that process is religious education, which provides an opportunity for showing the students the basic principles of different religions and what they all have in common, in other words, what brings them closer to each other. It should also be borne in mind that sometimes it is not enough just to say or claim something, it is also necessary to show it. If the students of a certain gymnasium in Croatia are being taught God's commandments such as: 'Thou shalt not kill' or 'Thou shalt love thy neighbor as thyself', and across the school stands a huge inscription on a building which says: 'Kill the Serb', the question is would it be good to react on that. Would the reaction of students and their teachers, perhaps on the initiative of a catechist, show young people the true meaning of what is taught in school and/or in Church? Also, does the absence of reaction actually demonstrates students that they should only learn to earn good grades and that the 'theory' is one thing, and that 'practice' can in fact be something completely different? This simple and true example describes the situation in the society in general. Declarations and proclamations of numerous politicians and priests are one thing; however practical action or inaction are what citizens really evaluate.

In addition to religious education, education policy can, within other school subjects and programs, emphasizing the importance of the various contributions to the progress of our civilization, help to remove the stigma from what is considered to be 'different' in a given society and to achieve integration, for mutual benefit. Formal and informal education play an important role in making people aware of their human rights and freedoms, and of ways in which these rights can be reduced and how to protect themselves from it.

Numerous surveys among young people and the general situation in the country show that the educational system of the Republic of Croatia has not achieved satisfactory results in terms of the objectives set out above, and people of different religions, ethnicities, political affiliation, and so on, still divide themselves into 'us' and 'them'.

The Republic of Croatia is a secular state and the position of religious communities is primarily governed by the law on the legal status of religious communities and the international agreements made by the government. Although there are not too many objections regarding these, one issue that should be further discussed is the rather restrictive approach of the legislator when it comes to the registration of new religious communities, as well as the government's right to conclude international treaties regulating the rights of certain religious communities at its own discretion, without clear criteria for the selection of religious communities which will be so privileged by treaty. Continuous review and improvement of legislation in cooperation with representatives of religious communities guarantee the strengthening of collective and individual rights to freedom of religion.

In a number of government offices and public places religious symbols of the predominant Catholic Church can still be seen. Knowing that Croatia opted for secularism, it is logical to conclude that these symbols may be an expression of feeling and commitment of the people who work in such places. However, it is still necessary to ask, if people of other religious beliefs would be as free to exhibit their symbols in such places or would then the argument of secularity be used in order to mark that behavior as undesirable. Also, it is necessary to ponder whether exhibiting such symbols sends a dubious message to people who address these bodies as citizens. Equal formal and informal rules for all people teach them mutual respect and equality in their basic human rights.

Inter-religious dialogue is also a good way to not only debate disputable issues and bring closer attitudes on certain topics but also develop mutual respect and understanding of the specifics and the difficulties of some of the participants in the dialogue, in a given time and space. It is important to remember many religious communities are a majority in a particular area, but elsewhere a minority. If we talk about

ensuring fair treatment of religious minorities in a particular area it is therefore crucial to recognise the impact and the responsibility of the main dominant Church. Its authority and influence should be used to protect religious and other minorities from possible unfair treatment and denial of their rights. The impetus for it may just be an international inter-religious dialogue and discussion on the rights of believers in different countries, legal and social systems.

The same themes in different geographical areas can be very different and it is something that should be taken into account. The peoples living in Croatia and neighboring countries were victims of numerous wars and bad political choices. It is difficult for fine words to break through the armour of mistrust that exists among them. Only continuous, persistent and synergic work and targeting primarily the younger population can bear good fruit in the future.

‘FOR MUTUAL UNDERSTANDING’ – A CROATIAN YOUTH FROM SERBIA LOOKING INTO THE FUTURE

Mr Mario Vrselja

Croats of Serbia are a recognised minority in Serbia. They were recognised as national minority in 2002. According to the 2011 census, there were 57,900 Croats in Serbia or 0.8% of the population. Most of them (54,785) lived in Vojvodina and Belgrade (constituting 2.4% of the population of the province Vojvodina and the fourth largest ethnic group in that region). The remaining 3,115 Croats lived in rest of the country.¹²

In the 1990s, during the war in Croatia, members of Serbian Radical Party organised and participated in the expulsion of Croats in some places in Vojvodina. According to some estimations, the number of Croats which have left Serbia under political pressure of the Milošević's regime might be between 20,000 and 40,000.¹³

The real number of declared Croats in the time when these censuses were conducted may have been smaller because the communist authorities counted those citizens who declared themselves Bunjevci and Šokci as Croats. Today, most members of the Šokci community consider

¹²Republički zavod za statistiku – Srbija, popis stanovništva 2011
<http://webzrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptId=1210>

¹³ Wikipedia, Croats of Serbia

themselves Croats, while large part of the Bunjevci population consider themselves as members of the distinct Bunjevci ethnicity, while a smaller part sees themselves as Croats.

Today that is a big problem.

The largest recorded number of Croats in a census was in 1961 when there were 196,409 Croats (including Bunjevci and Šokci) in the Socialist Republic of Serbia (around 2.57% of the total population of Serbia at the time). Since the 1961 census, the Croat population in Serbia is in constant decline. This is caused by various reasons, including economic emigration and ethnic tensions of the Yugoslav wars during the 1990s, more specifically from 1991 to 1995. During this war-time period, Croats in Serbia were under pressure from the Serbian Radical Party and some Serbs in Croatia and Bosnia and Herzegovina to move to Croatia. In that time, a transfer of population occurred between Croats from Serbia and Serbs from Croatia. Based on an investigation by the Humanitarian Law Fund from Belgrade in the course of June, July, and August 1992, more than 10,000 Croats from Vojvodina exchanged their property for the property of Serbs from Croatia, and altogether about 20,000 Croats left Serbia.¹⁴

The Croat National Council, according to its Statute, is a body of self-government of the Croat minority in Serbia.¹⁵

The Croatian language is one of the official languages of Vojvodina, but it is not popular.

The Croatian National Council of the Republic of Serbia (Croatian: Hrvatsko nacionalno vijeće Republike Srbije) is the representative body of Croats in Serbia, established for the protection of the rights, and it is the minority self-government of Croats in Serbia.

¹⁴ Mario Bara , članak, Hrvati u Vojvodini i Srbiji,
http://www.hnv.org.rs/hrvati_u_vojvodini.php

¹⁵ Croatian National Council, official page, <http://www.hnv.org.rs/onama.php>

It represents the Croatian national minority in the official use of language, education, information and culture, participates in decision-making or decides on issues and establishes institutions in these areas.

It was established under the Act on Protection of Rights and Freedoms of National Minorities.

Although the Council was officially established at its constitutive session on 23 January 2003, the aldermen which established the Council were elected at an electoral congress on 15 December 2002 in Subotica.

The Croatian National Council (CNC) has seven constant committees: for education, culture, information, official use of language, finances, budget, regulations and for representatives and complaints.

There are also committees for economy, sport, Croatian youth and for enrollment in the special electoral list of the Croatian minority.

After several years of negotiations, on 15 November 2004, the Agreement on the Protection of the Croatian minority in Serbia and Montenegro and the protection of the Serbian and Montenegrin minority in Croatia was signed in Belgrade. In 2005 it was ratified by both states. This Agreement was to greatly facilitate the legal status of the Croatian minority in Serbia and Montenegro. As a follow up to this Agreement two sessions were held by the intergovernmental joint committee, whose task is to monitor the implementation of the Agreement and propose measures to improve the status of national minorities in each state respectively. Unfortunately, this agreement stayed just on the paper.¹⁶

Even to this day, it is not popular being a Croat and Serbia and vice versa. Sometimes Serbian media do not write about ethnically motivated attacks on Croats in Serbia but they do write about Croats in negative context without any obvious reason.

In 2014, in order to improve neighborly relations, young people, members of both minorities presented a declaration on mutual

¹⁶ Središnji državni ured za Hrvate izvan RH,
<http://www.hrvatiizvanrh.hr/hr/hmiu/hrvatska-manjina-u-srbiji/14>

understanding in which they stated that they want to respect each other. This declaration presents development of good mutual relations between Croatian and Serbian youth. In the text of the declaration both sides stated that they want to cooperate, make better relations between Croatian and Serbian youth and that the main reason for wars were wrong national politics in both countries.

‘REGARDLESS OF SIZE OR PREVIOUS PRIVILEGED POSITION’ – A BAPTIST PERSPECTIVE

Rev. Anthony Peck

Introduction

I begin my contribution to this discussion by first briefly explaining where Baptists are coming from, on the question of religious freedom. Basic to our Baptist identity is first that we are believers’ church that practises the baptism of believing disciples, which is also the baptism of the missionary church. And second, we believe in the essential separation of church and state, though not a separation from a full engagement with society. In a recent paper entitled ‘Freedom of Religion or Belief from a Biblical Perspective’, Thomas Schirrmacher and Richard Howell make the following claim:

The hour of birth of religious freedom – if we may exaggerate in our formulation – is the struggle for freedom by Christian minority churches against Christian majority churches, and in many non-Christian countries it is religious minority movements over against majority religions. This also explains, in our judgement, the ambivalence of historic Christianity against democratic developments.

I would add to this that the first time the idea of the tolerance of a plurality of religions in society was first expressed in the English

language was by one of the founding fathers of the Baptist movement, the Englishman Thomas Helwys. In 1612 he famously pleaded for religious freedom for all churches, and he added to it other religions, (Jews and Turks [Muslims]) and even those termed ‘heretics’ in those days. It was therefore inclusive of all the known religious groups of the time. This conviction that the state should allow religious freedom for all, has become part of the DNA of Baptists, and it is of course also enshrined in Article 18 of the United Nations Declaration of Human Rights (UNDHR) and Article 9 the ECHR, subject to the usual safeguards.

At the same time as holding this conviction of religious freedom for all, Baptists themselves have been subject to pressure, discrimination and even persecution in their history and this would be true of the beginning of most European Baptist Unions. This has usually happened by a combination or an alliance of state/majority churches and governments acting against them. And, to be self-critical for a moment, it has to be said that sometimes Baptists have taken on the intransigence and intolerance of a beleaguered minority and have been suspicious or resistant to positive moves towards them by majority churches and governments. So in this we all have something to repent for from our history.

I think that understanding one another’s history and ecclesiology is necessary when we come to the question of examples of violations of religious freedom. The questions that arise cannot only be ones of human rights and national and international law divorced from theology. They interact and need to be looked at together. The difficulties we sometime encounter with religious freedom are often a combination of issues to do with relating to the state and to majority or state churches.

For instance, the Roman Catholic and Orthodox Churches do not fully recognise Baptist churches as fully ‘church’ according to their understanding of it. We can debate this in a good and friendly way with

one another in theological seminars, of course and try to understand one another better. In particular questions of mission, proselytism, canonical territory and nationalism, come into play here, as well as the acceptance of a legitimate diversity of expressions of church in any given state.

However, sometimes these differences become enshrined in state law under the influence or because of the status of state or majority churches. In Serbia, for instance, some years ago, Baptists were offered a legal status that fell short of that of the traditional churches, and this restricted their rights before the law. And this despite the fact that Baptists have been on Serbian soil since the mid-19th century. One Baptist group decided to accept this but the other Baptist Union passed a Resolution at its 2008 Assembly which stated that the Baptists were now:

subject to discrimination starting from re-registration, which first pre-supposes its own termination and then new founding as to create a basis for its inequality and discrimination in all other segments of society's civil life, such as, for example, the laws about property tax, VAT, the laws in education, or deprivation of access rights to public media.

A second feature of Baptists identity that can cause difficulties for the religious freedom of Baptists is their emphasis on Christian mission and evangelism. State and majority churches often find churches committed to evangelism and planting new churches threatening. And Baptists are something of a bridge between the historic Christian denominations and some of the newer groups, often funded from elsewhere in the world that sometimes enter a country and conduct themselves and their mission in a way that is insensitive to both the existing churches, and to the culture and traditions of society. In this situation state and majority churches that sometimes emphasise presence more than proclamation can be a powerful voice to influence legal restrictions on mission and evangelistic activity. This has been true for

some years in Belarus, for instance, and more recently in Russia. The recent Russian legislation may not affect the existing life of established Baptist churches so much, but it seems to place severe restrictions on mission activity, starting new churches, or inviting international guests to preach in churches. These laws, considered by many to be the country's most restrictive measures in post-Soviet history, place broad limitations on missionary work, including preaching, teaching, and engaging in any activity designed to recruit people into a religious group. To share their faith, citizens must secure a government permit through a registered religious organisation, and they cannot evangelise anywhere besides churches and other religious sites. The restrictions even apply to activity in private residences and online.

All this will affect the Baptist churches in Russia, despite the fact that in other ways and at a national level Russian Baptists are treated as a historic denomination according to Russian law.

The Baptists experience similar difficulties in the countries of central Asia, though this is not so much a result of pressure from other churches, but rather according to the diktats of a secular Islamic totalitarianism that is nervous about groups of devout committed believers of whatever religion.

A third area is the link between a majority or state church and nationalism. Baptists believe in being loyal citizens in their own country, but theologically they emphasise that their ultimate citizenship is in heaven, and practically they are also 'internationalist' with many links to Baptists in other countries, where together we form the largest protestant denomination in the world. It is probably important to say at this point that our organisation, the European Baptist Federation, emphasises the importance of indigenous church life and mission and tries to resist inappropriate models of these being imported from elsewhere.

This balance between nationalism and internationalism has been a particular issue for Baptists as they relate to the various Orthodox autocephalous communions in our region. In conversations with Orthodox leaders in recent years I have found a greater openness and understanding of Baptists than, for instance in the early 1990s, and I hope that we have tried to show a greater appreciation of the Orthodox understanding of the 'symphonia' of church and state.

But once again it is in Russia that Baptists and other minority churches find themselves in greatest difficulty, and the pressure to confirm to the alliance of church and state in pushing a nationalist agenda. In its most extreme form it has been seen in the occupied areas of the Donbas in Ukraine, with Russian-backed rebels demanding to know whether individuals and institutions are members of the Russian Orthodox Church. A negative response has sometimes meant violence and even murder, and often people have been driven from their homes. A Baptist school, the Donetsk Christian University has been closed down and occupied, and the staff forced to flee.

In Ukraine, I was present when President Poroshenko signed a decree officially committing Ukraine to mark the 500th anniversary of the Protestant Reformation in a country where Baptists are the largest grouping of the small Protestant minority. This was done on the unanimous recommendation of the Ukrainian Religious Council where all churches, majority and minority, meet equally around the same table with the addition of representatives of Judaism and Islam. They practise consensus in their decision-making, and as it happens the current Chair of the Council is the President of the Baptist Union. This illustration of a state that seeks to guarantee equal religious freedom for all, regardless of size or previous privileged position, and where majority churches support and speak up for minority churches, is one that would be close to the heart of that early Baptist prophet of the 17th century, Thomas Helwys.

So in summary, whilst the general situation for Baptists in Europe has improved greatly over the past 100 years, three aspects of their core identity - their ecclesiology, their understanding of the mission of God, and their internationalist outlook - can continue to cause some difficulties for them in their relationship with both majority churches, especially those that are also influential in the actions and legislation of the state.

But let me end with some of the positive hopeful signs that sometimes relationships between majority and minority churches in relation to state legislation can work well for the good of all. In Austria, some of the larger churches, and indeed CEC, supported Baptists and other small evangelical groups to achieve state recognition and equality before the law for the first time, just a few years ago. This was a huge step forward, and is working well.

And finally, let us say that is often by encounter and friendship that barriers are broken down. This was illustrated for me when I was a member of the CEC Church and Society Commission. In that forum I became friends with a Bishop of the Armenian Apostolic Church which historically has not had good relations with minority churches in Armenia such as Baptists, and this has also influenced their relationship with the state. I was able to introduce this Armenian Bishop to our Baptist leader and they became friends, resulting in a much better mutual understanding and respect for one another's traditions and churches, and this has since borne fruit in various ways.

It seems to me that this should be a continuing role for CEC – to bring people together as they have done for this Consultation; and for us to speak openly with one another, learn from one another, bury some of the misconceptions, and ask how we as majority and minority churches can be more united in our Christian witness to our continent today holding to the vision of religious freedom as a human right for all.

III

CASE STUDIES: CURRENT CHALLENGES AND GOOD PRACTICES

One of the insights of the Zagreb conference was, as already expressed in the Greeting by His Eminence, Metropolitan Porfirije, that many Christian denominations form a majority Church in one country, while many of their believers are a religious minority in other countries. Thus, dialogue on the situation of minorities can be as fruitful within the different church families as it is ecumenical, inter-denominational dialogue. The following case studies pursue two different aims: First to show how different legal orders in European states deal with the issue, second to show how violations of the Freedom of Religion or Belief affect minority groups. In studying the below examples you will find different lessons to be learned from concrete case studies from different parts of Europe. The example from Austria shows, for example, how a specific religious group, here Islam, can be negatively affected by growing prejudices in a society, posing the question how Churches can contribute to a public discourse in which the fight against (Islamist) terrorism is clearly separated from the rights of peaceful Muslim believers. In the 'Case of the Spanish Pastors' there is a very good example of how long it can take for international human rights standard to be implemented in national law, exemplifying in a very personal way that 'justice delayed is justice denied'.

CROATIA: DIFFERING INSTRUMENTS, BUT THE SAME RIGHTS. A MUSLIM PERSPECTIVE

Mr Bermin Meskic

Introductory Remarks

Modern Western civilisation holds tolerance, diversity and respect for personal values as one of its fundamental legacies. These values, to be brought to life, are transformed into legal documents, the legal norm. Regarding the issue of religion and its position, the reinforcement of the above-mentioned values is reflected in particular documents such as in adoption of the Austrian Concordat in 1855, then legal documents signed with the Serbian Orthodox Church, the Jewish community in 1929, the Islamic community and the Evangelical and Episcopal Church in 1930. Also, Yugoslavia and the Catholic Church have regulated their relations through bilateral agreements (See Protocol on Relations of Yugoslavia and the Vatican from 1966).

Protection of religion and religious freedom are part and parcel of the international law, championed by the United Nations, the European Union and other international bodies. Thus freedom of religion, of conscience and opinion is incorporated in fundamental international documents such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the UN

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981) and especially in the European Convention on Human Rights and Freedoms (1950).

The Republic of Croatia became a party to the International Covenant on Civil and Political Rights after of 1993 (Official Gazette 12/93) and its Article 18, which guarantees freedom of religion. The European Convention for the Protection of Human Rights and Fundamental Freedoms came into force in the Republic of Croatia in 1998 (Official Gazette 18/97, 6/99) together with Article 9, which also guarantees freedom of religion.

The 2011 census showed the following structure of the population by religion: Catholic (86.28%) Orthodox (4.44%), Muslim (1.47%), Protestant (0.34%), other Christian (0.3%), Jewish (0.01%) and so on. From the composition of the population, it is clear that the majority of the Croatia inhabitants showed an adherence to a religious belief. This shows the need of a more systematic standardization of the legal position of religious communities in Croatia.

Furthermore, the law on holidays regulates the issue of religious holidays in the status of public holidays or days off. The so-called imperious holidays of Christian churches that time calculated by the Gregorian calendar, government holidays (Easter or Easter Monday and Christmas), then commanding Catholic feasts of Corpus Christi, Assumption and All Saints and the feast of the Epiphany, which is also the day of the Orthodox Christmas Eve according to the Julian calendar, and the believers of other religious communities are entitled to a paid holiday on their greatest holidays (Christmas and Easter according to the Julian calendar, Eid al-Fitr and Eid al-Adha, Rosh Hashanah and Yom Kippur; Adventists is guaranteed the right to a non-working Saturday).

Legal Regulation of Religious Communities in Croatia

The Republic of Croatia, with accession of all the above-mentioned international legal acts, adopted these provisions into its legislation, especially into the Constitution as the highest legal document of a state, so that we can also regard them as the basic rules of behavior in a civilised country. Consequently, the Croatian Constitution in 55 articles of a total 142 guarantees fundamental rights and freedoms, seven articles regulating matters common to all human rights and fundamental freedoms, and four articles directly dealing with religious rights and freedoms.

The Constitution (Official Gazette 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, decisions of the Constitutional Court no SuP O-1/2014 of 14 January 2014) states:

Article 14

Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. All are equal before the law.

Article 40

Freedom of conscience and religion and freedom to manifest religion or other belief.

Article 41

All religious communities are equal before the law and separate from the state. Religious communities are free, in accordance with law, publicly to perform religious services, open schools, educational and other institutions, social and charitable institutions and to manage them and in their activity enjoy the protection and assistance of the state.

Based on the above constitutional provisions, the Croatian Parliament passed a special law on the legal status of religious communities, ZPPVZ (NN 83/02, 73/13), which regulates the issue of religious communities as legal persons *sui generis*, that is to say legal persons a nature and organisation, very different from each other, so that they cannot be classified by any of the types of legal personality otherwise used for corporations. That is why religious communities are governed by separate laws.

The above law consists of 32 articles. Following a public discussion on the definition of the very concept of a religious community, the law in Article 1 gives the following definition:

church or religious community of a different name (hereinafter: the religious community) in terms of this Act is a community of natural persons who exercise freedom of creed equal public performance of religious rites and other manifestations of their faith (hereinafter: the believers) entered in the register of religious communities in the Republic of Croatia (hereinafter: the records).

The law on the legal status of religious communities begins with proclamation of the principle of religious freedom, which is reflected not only to free exercise of religious rites, but also other manifestations of faith. This concept of 'other manifestations' legalises the presence and activities of all religious communities in Croatia, including the Islamic Community in Croatia, in public and social life, especially in the educational and the charitable social field. In order for a religious community to be recognised by this law, it is necessary to be registered in the register of religious communities in Croatia.

The Law on Legal Status of Religious Communities in Article 2 clearly states that:

religious communities freely and independently determine the internal organization; governing bodies, their hierarchy and responsibilities; bodies and persons who represent the religious

community and its organizational forms; the content and method of religious observance; maintaining ties with their central and other religious communities; associating with other religious communities; and other matters of its activities in accordance with the Croatian Constitution.

The above provision emphasises that religious communities regulate their internal organisation and other issues relevant to their work independently.

This freedom of activity of religious communities specifies that:

- ways of acting that are contrary to the legal order, public morality or to the detriment of the life and health or other rights and freedom of its believers and other citizens are prohibited (Article 4);
- the law guaranteed the free development of religious rituals, but are given a certain frame when these rituals go beyond the location of religious communities (Article 10);
- proclaims further freedom to establish religious schools and educational institutions (Article 11); especially to determine the framework for religious education and instruction in public educational institutions, as well as establishing that the religious education is organised in accordance with the agreements between religious communities and the Croatian Government (Article 13);
- specifically guarantees the right to pastoral care in medical and social welfare institutions (article 14), in prisons (Article 15), and the pastoral care of the armed forces and the police (Article 16);
- exercise of the rights of religious communities in those institutions, however, is possible only after a certain religious community enters into a contractual agreement with the Croatian Government concerning the particular institution and intended mode of action, as well as other issues of common interest. It is

important, however, to note that the law equally offers the possibility of such a public activity to all religious communities;

- the Act further specifies the manner of acquiring material and especially property rights of religious communities, as well as question of exemption from taxes and customs duties.

Based on the provisions of the legal status of religious communities, in particular Article 9 thereof, the Croatian Government has concluded agreements with the following religious communities in Croatia on issues of common interest, with the Serbian Orthodox Church, the Islamic Community in Croatia, the Evangelical Church in Croatia, the Reformed Christian Church in Croatia, the Evangelical Pentecostal Church in Croatia, the Christian Adventist Church, the Union of Baptist Churches in Croatia, the Bulgarian Orthodox Church, the Croatian Old Catholic Church, the Macedonian Orthodox Church, the Coordinated Jewish Communities in the Republic of Croatia and the Jewish Community Bet Israel in Croatia, thus confirming their specific identity and contribution, as well as the legal personality of religious communities.

Also, pursuant to the judgment of the European Court of Human Rights in Strasbourg (7798/08) of 9 December 2010, the Croatian Government has, as of 12 September 2014, signed a contract with additional religious communities, namely the Alliance of Churches 'Word of Life', the Full Gospel Church and the Protestant Reformed Christian Church Croatia, guaranteeing equal rights for these religious communities, as well as for the religious institutions mentioned above, putting them on the same level with those that were registered before.

The Republic of Croatia has also signed four international agreements with the Holy See concerning the role of the Catholic Church and its historical and current role in the social, cultural and educational fields (Contract on Legal Matters, the Agreement on Cooperation in the field of Education and Culture, the Treaty on

Spiritual Care of Catholics, members of the armed forces and police of the Croatian, the Agreement on Economic Issues, from 1996 to 1998). Concordats are by their nature international agreements and range, in accordance with Article 134 of the Constitution, over Croatian law:

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and have legal force above the law. Their provisions may be changed or repealed only under conditions and in the manner specified in them or in accordance with the general rules of international law.

The Holy See and the Republic of Croatia, as well as internationally recognised legal entities, have entered into agreements so that they wanted to regulate mutual relations and issues of common interest. The above mentioned three agreements were signed on 19 December 1996, with the ratification instruments exchanged between the High Contracting Parties in the Apostolic Palace in the Vatican on 9 April 1997, while the fourth, the Treaty on Economic Matters, was signed on 9 October 1998, with the ratification instruments exchanged at the Vatican on 14 December 1998.

Given that international agreements have legal precedence over the law of the Republic of Croatia, many authors suggest a privileged role of the Catholic Church over other religious communities in Republic of Croatia.

Legal Status of the Islamic Community in Croatia

Agreement between the Croatian Government and the Islamic Community in Croatia on the Issues of Common Interest. Editorial consolidated text, Official Gazette, No. 196/03 and 86/14 – correction.

Already in the preamble to the Agreement, the Croatian Government as a contracting party, points out that it wants to regulate relations in the

fields of education and culture, and pastoral care for believers in penitentiaries, prisons and correctional institutions, health care facilities and social care institutions, as well as for the faithful members in the armed forces and police, as well as for other persons permanently employed in the armed forces and the police and members of their families, to seek to ensure the material conditions for religious activity, taking into account the historical and current role of the Islamic Community in Croatia, with the intention of creating and maintaining the best possible conditions for religious activity in general, and to enter into this Agreement with the aim of mutual cooperation for the benefit of all citizens irrespective of their religious belief.

Article 2 of this agreement states that Islamic Community in Croatia had legal personality even before this Act came into force. This is a crucial stipulation since the Republic of Croatia recognises the religious community as a legal entity before it actually registers under the current law, thus guaranteeing legal continuity.

Article 3 of the Treaty stipulates that the Islamic Community in Croatia is free to regulate the internal organisation and that the establishment, modification and abolition of the Jamaat Majlis and other legal entities belongs exclusively to the Islamic community, guaranteeing the legal autonomy of the Community.

Also, Article 4 says that the Islamic Community in Croatia is responsible for all their own religious appointments and allocation of service, under the provisions of its regulations, that the appointment, transfer and removal of Mufti is in the exclusive jurisdiction of the Islamic Community in Croatia.

The Islamic Community in Croatia has the right to build mosques and increase or alter those already existing, according to the Croatian legislation. It is on the Meshihat to decide on the need to build a mosque or masjid and choose a location in agreement and in accordance with the decisions of the competent bodies of the Republic of Croatia.

State guarantees the freedom of the press, printing and dissemination of books, newspapers, magazines, and other activities related to Community functioning. The institutions set out in the Treaty, as well as in the armed forces and the police, and other state and public institutions and bodies shall respect the right of believers to choose food according to religious needs, which regulates the concept of halal food in Croatia. Also, the Islamic Community in Croatia has the right to a religious burial of its members.

One of the most important features of the Treaty which provides is that religious weddings have same effect as civil marriage under the provisions of Croatian legislation, of course if the contracting parties have no civil impediments and if the requirements foreseen in the provisions of the Croatian legislation are fulfilled.

The Islamic Community in Croatia may freely organise institutions intended to provide charitable activity and social assistance, in accordance with the law.

The contract addresses the issue of Islamic religious education in public pre-school institutions, the issue of Islamic religious education in public elementary and secondary schools, as well as the question of textbooks for Islamic subjects.

The program for Islamic religious courses held by persons whom the Meshihat issued a document of mandate (Muraselu) and who meet the necessary requirements in accordance with Croatian regulations. The Meshihat has the right to revoke its mandate to perform religious education due to lack of compatibility with the official teaching of the Islamic Community and also with regard to personal morality.

Islamic accredited schools will be eligible to receive financial incentives as provided for in the legislation of the Republic of Croatia, which is a very important provision of the Treaty.

Cultural and artistic heritage of Islam in the Republic of Croatia and many of the documents stored in the archives and libraries of the Islamic

Community constitute a valuable part of the overall Croatian cultural heritage. The Islamic community wants to continue serving the community and its cultural heritage, allowing anyone interested to learn about the wealth to study it.

The Republic of Croatia is committed to the Islamic Community in Croatia, giving it the ownership - but not possession - of all registers and archives that are now, having been confiscated during the Yugoslav communist regime, under the factual control of Croatia. Such registers and archives remain in the possession of the cultural institutions in order to ensure professional treatment, protection and use.

Pastoral care of Islamic believers in the armed forces and police, as well as other persons permanently employed in the armed forces and the police, and members of their families, as well as pastoral care in penitentiaries, prisons and correctional institutions, and health care facilities and social care institutions performed pastor. It also regulates the issue of financing of pastoral care.

In order to assist the Islamic Community in Croatia to continue in a fair way its action to promote the common good, the Republic of Croatia will give monthly donations from the annual state budget, thus guaranteeing the financial independence of the Community.

Concluding Remarks

From the foregoing it is evident that in Croatia there are several forms of legal relations between the state and religious communities.

Relations with the Catholic Church are regulated by concordat or international agreement which has a stronger legal power than the laws of the Republic of Croatia.

The Islamic Community in Croatia has signed the agreement between the Government of the Republic of Croatia and the Islamic community on matters of common interest in 2002, which guarantees certain rights. But with rights come obligations and responsibilities,

which we fulfilled, so that the Islamic community is considered to be a positive and constructive factor of Croatian society.

In general, religious freedom enjoys a high level of protection by the state. Religious communities operate freely, have authority in managing their properties, establish schools and institutions. This way, religious communities are in a position to greatly contribute in developing positive perception and importance of ecumenical and interfaith dialogue.

All this contributes to a situation in which Croatia is free of incidents of religious conflict. This is a successful model of coexistence in Croatia, we believe.

However, I believe that more than ever we need to work and to promote interreligious dialogue and understanding of humanity, as the baseline we desperately need.

Especially in the world and the time that we live in.

HUNGARY: RESTITUTION OF CHURCH PROPERTY IN HUNGARY BETWEEN 1992 AND 2012

*The Department for Ecumenical and Foreign Relation
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In Hungary, World War II ended with the Soviet occupation in 1945. In the following years Communist influence was gradually strengthened and by 1949 the political takeover was complete.

The Communist rulers explicitly sought to destroy churches or at least diminish their role in society to the greatest possible extent. One means to achieve this was the dispossession of churches, which was carried out in three successive waves. In the so-called land reform of 1945, all pieces of land over 100 acres were collectivised. For the churches this meant that they no longer had the assets to maintain schools and other institutions. The second step followed in 1948 with the nationalisation of schools. According to statistical data, the Lutheran Church lost altogether at least 14 secondary schools and 353 primary schools. Finally, in 1951 individual congregations were also forced into giving up their smaller pieces of land 'voluntarily'. Having been deprived of their main livelihood, communities and pastors were left in a desperate and helpless situation for the four decades to come.

The process of restitution started in 1989 when the Soviet system fell and the constitution of the newly formed Republic of Hungary was announced. The Constitution described the principle of religious

freedom, which was further specified in Act Nr. 4./1990 on the Freedom of Religion and Belief. These pieces of legislation granted churches the right to carry out activities related to education, culture, social care, health care, sport and child protection in areas not limited to the state alone.

This political step resulted in the revival of church life but it also brought with itself increased expectations towards churches. These demands could not be filled with the existing stock of assets; therefore, the new, democratically elected government included the settlement of church property issues in its programme and issued legislation to this effect (Act Nr. 32/1991). The aim was not to compensate for the breach of property rights but for the infringements in the constitutional right to practice one's religion.

It also has to be stated that the restitution process concerned buildings only; plots or farmland were not part of the deal.

The outcome of the restitution process can be summarised in the following figures:

- number of buildings with ownership relations settled: 493
- value of property returned or compensated for: approximately 15 billion HUF (as of 1998)

Although compensation was only partial, it still made a number of projects possible in the Evangelical Lutheran Church in Hungary. Former church-run schools could start operating again, a conference centre was built and several congregations could extend or modernise their buildings.

Originally the plan was to complete the process of restitution within 10 years. By the mid-1990s it became clear that this period needed to be extended for another decade. This called for an amendment of the original Act.

Another change concerned the option of obtaining financial compensation for lost buildings instead of in-kind compensation. In the

first phase of the restitution process, financial compensation was granted in exceptional cases only. From the year 2000 onwards these restrictions were lifted due to the difficulties they caused for both sides. As far as the state was concerned, in some cases it would have placed a disproportionate burden on the budget to vacate buildings serving state or municipal functions and transfer them into church possession and it proved to be easier and less costly to pay financial compensation.

At the same time the new arrangement turned out to be beneficial for the church as well because in the years before 2000 a number of the buildings had been returned in rather poor condition and the church could not afford maintaining or renovating them. The option of financial compensation allowed the church to deliberate whether the building in question was special or useful enough to regain possession of it or whether financial compensation made more sense.

Another reason why the option of financial compensation was important can be linked to the historical events following World War II. The expulsion of the German-speaking population from Hungary and the (forced or voluntary) population exchange between the Slovak population in Hungary and the Hungarian population in Czechoslovakia resulted in a substantial loss in the number of Lutherans in the country.¹⁷ In some areas complete congregations became desolated and could never regain their old strength again. In such places in-kind restitution of former church property would no longer have supported the life of the remaining Lutheran community but financial compensation enabled new projects fit to the size or needs of the congregation.

All in all, the process of restitution of church property is generally considered as successful in the Lutheran church despite it being incomplete. It is also important to stress that the legislation framing the

¹⁷ The Lutheran church in Hungary has traditionally been a multinational church. For historical reasons, the German- and Slovak-speaking population formed a solid basis of the Lutheran community in many areas.

process did not differentiate between churches; it affected the ‘majority’ Roman Catholic Church the same way as it did smaller churches, such as the Lutheran church. Restitution was an attempt to compensate for the injustices done by the ruling Communist Party in the late 1940s. It could not set right the short- and long-term harm caused in the post-war era but it is still viewed as positive because without it a lot of the current work of the Evangelical Lutheran Church in Hungary would not have been possible.

SPAIN: DISCRIMINATION AGAINST EVANGELICAL PASTORS IN THE STATE PENSION SCHEME

*Rev. Alfredo Abad Heras, Mr Andrés Pérez Subirana,
Dr Elizabeta Kitanovic and Rev. Dr Patrick Roger Schnabel*

Introduction

The late Rev. Francisco Manzananas Martín, of Alicante, lived a rather ordinary life – a life of faith and dedicated service to his congregation, but nothing that would make you expect him to write legal history. Yet his name became, only a few years before his demise, attached to a case that made it up to the European Court of Human Rights in Strasbourg and that caused the Spanish state to deal with a religious diversity it preferred to ignore, and still does to the present day. The case of Manzananas – and similar cases of other Protestant pastors and their wives or widows – sheds light on the mindset of the political and legal elites of a country that still discriminates against non-Catholic believers with a fervour that is rather inexplicable.

What Is the Issue?

Roman Catholicism is an integral part of the history, the culture and the social fibre of Spain. But the establishment of democracy, through the 1978 Constitution, brought about an important change in the

relations between Church and State: The Constitution recognised the secularity of the state and began to regularize the situation of non-Catholic religious communities, including the status of the religious personnel of the various confessions.

Even before that Constitution entered into force, Royal Decree 2398/1977 of 27 August 1977 was passed.¹⁸ While under the Franco regime and before religious officers were not able to register with Social Security, pay into the general Pension Scheme and, after retirement, receive a public pension accordingly, the new law introduced provisions enabling religious communities to do so for the first time in Spanish history. Roman Catholic priests and the ministers of other churches and religious confessions registered with the Ministry of Justice should now be given opportunity to sign up for the Pensions Scheme.

However, the law was, in many cases, not to be applied directly. A provision in that Decree specified that it was for immediate application only in respect to Catholic priests, which was done by executive order of the Ministry of Health and Social Security within three months, on 19 December 1977. With other religions, it took somewhat more time – and was done quite differently. This is where the long legal fight of Francisco Manzananas Martín and his fellow pastors has its roots.

Because, interestingly, the Spanish state did not opt for compulsory inclusion of all religious employees into the Social Security System. It rather chose to negotiate individual executive agreements with the other religious communities, which were then to be the base of secondary Royal Decrees setting out the conditions under which ministers of these faith groups could be included and contribute to and benefit from public pensions.

It was only in 1992 that the Spanish Federation of Evangelical Religious Bodies (FEREDE) signed a cooperation agreement with the

¹⁸ <https://www.boe.es/buscar/act.php?id=BOE-A-1977-23050&b=3&tn=1&p=19770919#asegundo>.

state providing *inter alia* for the pastors of FEREDE-affiliated churches to be covered by the social security system.¹⁹ And it was not until 1999 – 22 years after Roman Catholic priests had been effectively included – that a new Royal Decree (No. 369/1999) laid down the precise terms and conditions for the inclusion of Protestant pastors.

Royal Decree 369/1999 was, however, not only a very late birth, it was also no good practice example of equal treatment of different religions – a very basic fundamental right, enshrined in the Spanish Constitution of 1978 and in many international covenants to which Spain is a signatory. It is in the precise terms and conditions set out in that law where a difference of treatment is fixed that disadvantages many Protestant pastors, discriminating against them quite significantly by denying them the enjoyment of access to a public pension.

Rev. Fransisco Manzananas Martín found that out very soon.

What Were the Legal Proceedings?

When he reached retirement age, Rev. Manzananas applied to the national Social Security Agency (INSS) for a retirement pension. On 26 October 2004, INSS rejected his case on the grounds that ‘he had not completed the minimum period of pensionable service, that is, 15 years.’²⁰ Mr Manzananas then brought proceedings against the INSS before the Employment Tribunal to secure a retirement pension. He alleged that he was being discriminated against in so far as the legislation provided for Catholic priests to receive a retirement pension

¹⁹ Jewish rabbis were similarly covered by the cooperation agreement with the Spanish Federation of Israelite Communities (law 25/1992) and imams and other Islamic leaders by the cooperation agreement with the Spanish Islamic Commission (law 26/1992). Priests of the Russian Orthodox Church (Moscow Patriarchate) were included by Royal Decree 822/2005 and Jehovah’s Witnesses clerics by Royal Decree 1614/2007.

²⁰Ibid.

as they were part of the general Social Security Scheme. In a judgment of 12 December 2005, Barcelona Employment Tribunal no. 33 allowed the applicant's claims and ordered the INSS to pay him a retirement pension.

Analysing the changes in the legislation on the subject, the Tribunal considered that the law clearly treated Catholic priests more favourably than Protestant ministers, this being contrary to the secularity of the State enshrined in the Constitution of 1978. The court emphasised that even prior to the promulgation of the Constitution, Royal Decree 2398/1977 had already established that priests and ministers of all faiths and churches registered with the Ministry of the Interior should be treated as salaried employees and be covered by the Social Security Scheme.

The court also noted that two other Royal Decrees (no. 487/1998 of 27 March 1998 and no. 2665/1998 of 11 December 1998) provided for Catholic clergy and priests who left the priesthood or ceased their religious activities to be able to have all their years of service with the church counted towards the years of contributions necessary to qualify for a retirement pension, provided that they made the capital payments corresponding to those years.

The same should apply by analogy to Rev. Manzanás, as there was no similar provision in Royal Decree 369/1999. The court observed that by the time this decree took effect, the applicant had already ceased his pastoral activities, and according to the lack of a respective provision in said decree, his years as a minister could not be taken into account in calculating his years of contribution. The court considered that depriving the applicant of access to a retirement pension under the same conditions as those enjoyed by Catholic priests violated his right to equal treatment and freedom of worship enshrined in the Constitution.²¹

So far, so good.

²¹[http://hudoc.ECtHR.coe.int/eng#{ 'itemid': \['001-110180' \] }](http://hudoc.ECtHR.coe.int/eng#{ 'itemid': ['001-110180'] }) 1.09.2017.

However, the INSS *successfully* appealed the Tribunal's decision. The case went up all the way to the Spanish Supreme Court, but no other instance found fault with the discrimination. In the end, Rev. Manzanás decided to bring his case – which also concerned all other pastors who had ended their service before 1999 (and indeed those that went into retirement before at least fifteen years, the minimum period for social security contributions necessary to qualify for a minimum pension, had been served after said Royal Decree), and their wives or widows – to the attention of the European Court of Human Rights (ECtHR) in Strasbourg.

Given the legal difficulties surrounding the inclusion of non-Catholic clergy in the social security system before 1999, some of them had chosen to be included in the system under other categories such as holders of administrative posts or members of professions of a non-religious nature, and therefore they are eligible for state pensions. But not all had, including Rev. Manzanás.

So, at the age of 84, Rev. Manzanás filed in Strasbourg, on 26 March 2010, application number 17966/10, to be known as 'Manzanás Martín v. Spain'.

He complained to the ECtHR that the Spanish State refused 'to pay him a retirement pension'²² which 'was in breach of the principle of non-discrimination enshrined in Article 14 of the Convention in conjunction with Article 9 of the Convention and Article 1 of Protocol No. 1,'²³ according to which it was assumed that 'Spanish law treated Evangelical ministers in a different and discriminatory manner compared to Catholic priests in respect of pensions.'²⁴

Rev. Manzanás considered that the domestic legislation discriminated against Protestant ministers compared to Catholic priests,

²²Ibid.

²³Ibid.

²⁴Ibid.

who had been admitted to the general Social Security Scheme so much earlier. Also, when Protestant ministers were eventually admitted to the general Social Security scheme, unlike Catholic priests they were not given the possibility of using their previous years of service as ministers to make up for the minimum period of fifteen years of financial contributions required to qualify for a pension.²⁵

In response, the ECtHR concluded – among other arguments – that:

‘The Court accordingly considers, in view of the circumstances of the present case, that this detrimental difference in the law amounts to an unjustified difference of treatment of the applicant, based on religious faith, compared with the treatment reserved for Catholic priests, in so far as the applicant has no means of having his years of pastoral service as an Evangelical minister before such ministers were included in the Social Security scheme taken into account for the purpose of a retirement pension.

The Court finds it disproportionate that the Spanish State, having provided in 1977 for the inclusion of the ministers of Churches and religious denominations other than the Catholic Church in the general Social Security scheme (see paragraph 17 above), should not be ready, even though Evangelical ministers were included in the scheme twenty-two years later, to acknowledge the effects of that development in terms of pension entitlement under the same conditions as for Catholic priests, and in particular the possibility for the applicant of paying the missing annuities required to reach the minimum period of contributions required.

While the reasons for the delay in admitting Evangelical ministers to the general Social Security scheme fall within the

²⁵Ibid.

margin of appreciation left to the State (see paragraph 53 above), the Court considers that the Government have not explained why, once those ministers had joined the Social Security scheme, a difference of treatment between similar situations based solely on religious grounds was maintained.’

During the trial, the Government had claimed that the Decrees of 1998 concerned Catholic priests who had left the priesthood or ceased their religious work *for personal reasons* and not – as in the applicant’s case – to retire. However, the Court held:

in the light of the foregoing, that this is not a relevant difference in the present case, in so far as the difference of treatment, for the purposes of retirement pensions, between Catholic priests and Evangelical ministers, to the detriment of the latter, is not limited to the Decrees cited by the Government. In any event, neither the Barcelona Employment Tribunal, when it found in the applicant’s favour, nor the High Court of Justice when it refused the pension, made any reference to this fact to justify the difference of treatment, in similar situations, of Catholic priests and Evangelical ministers when it came to making up the minimum number of years of contribution required to qualify for a retirement pension. Those decisions by no means excluded the applicant’s situation from those provided for in abstracto by the legislation in question in terms of the possibility of making up the missed years of social security contributions.

Accordingly, on 5 March 2013, the Court found that there had been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.²⁶

So far, so good – *again*. But the case was not yet over.

²⁶Ibid.

What Consequences Were Drawn from the Judgement?

First, a long silence . . .

Judgements of the ECtHR are binding in the individual case. The Court can award financial compensation to the claimant, but it cannot direct the signatory state to change its legislation. That is, of course, whenever a lawsuit is in fact – or even potentially – relevant to comparable cases, a generally expected outcome. But it is not enforceable. In the worst case, other claimants have to go all the way up to Strasbourg again to gain satisfaction. However, this rarely happens. Usually, governments take care to implement the spirit, not only the letter of a ruling.

However, the Spanish government has abided by the ECtHR judgement in the case of Rev. Manzananas Martín, but for a long time has not done anything in any of the other, similar cases. In 2012, in support of the Spanish Evangelical Church, political parties such as Izquierda Unida²⁷ and Convergència i Unió²⁸ have raised parliamentary questions on the application of the Strasbourg judgment without obtaining a positive response.

. . . followed by a failed attempt at a new law . . .

Then, on 21 September 2015 the Spanish government adopted a new Royal Decree no. 839/2015 which provided for pastors who joined the social security scheme in 1999 to make retrospective contributions towards a state pension.²⁹ The law is intended to resolve the cases, but it fails to do so. Grotesquely, it is phrased in such a way, that it would not even have resolved the Manzananas case itself.

²⁷United Left, the main left-wing coalition party in Spain.

²⁸Convergence and Union, a Catalan nationalist coalition party, dissolved in June 2015.

²⁹<https://www.boe.es/buscar/doc.php?id=BOE-A-2015-10146>.

Royal Decree 839/2015 gave a partial interpretation of the judgment in the Manzanas case, particularly in relation to its extension to other cases. The Royal Decree establishes the arbitrary criterion of the increase in social security charges in 1999 for the pastors who could then regularize their situation with the new Royal Decree. This requirement was not extended to laicised Catholic priests who are referred to in the Decree. The Decree demands the payment of contributions from Protestant churches without the same demand being made on the Catholic Church. It does not establish when or how these social security contributions should be paid. The Royal Decree does not implement the findings of the Strasbourg judgment on the legal impossibility of recognizing the periods worked in pastoral activities as periods for which it is possible to contribute retroactively. Without that possibility, older pastors are not able to accumulate the 15 years' service needed to obtain a pension. It denies the equality established in the judgement of the Strasbourg court. Royal Decree 839/2015 must therefore be regarded as discriminatory and in violation of the rights to equality and religious freedom.

The Spanish Evangelical Church has announced that there are 20 more people (pastors and widows) affected by this institutional discrimination, FEREDE presented a report indicating that across all its affiliated evangelical churches there is a total of 122 people in similar situations.

. . . and new legal cases pending

FEREDE and the Spanish Evangelical Church have therefore brought a legal challenge against the law, whilst six individuals are, each for themselves, challenging their negative administrative decisions on pensions. Those results that have been reached by now are contradictory and do not foster much hope of a fast solution.

Legally, the more interesting case is the challenge of Royal Decree 839/2015 itself. In Spanish constitutional law, it is very difficult for a

person – also a private legal person – to challenge not only the application of a law, but the law itself as unconstitutional. This is what FEREDÉ did, in a special proceeding before the Spanish Supreme Court.

In November 2017, the Supreme Court found the new Royal Decree in fault concerning those two fundamental rights it was supposedly protecting: Equality and Freedom of Religion or Belief. The Court ordered the government to rectify this situation; however, no new legal proposal has been tabled yet. For FEREDÉ, it was particularly distressing to witness how, in the hearings, the State Attorney blatantly refused to follow the reasoning and findings of the Strasbourg Court.

In the case of the widow Anna Blanco Ferrer, one of the six individual cases pending, another chamber of the Supreme Court has recently taken a very different decision, more in line with the argumentation of the government and State Attorney. It found, in general, that a right to a pension existed, but insisted that Anna Blanco Ferrer, an 80 year-old widow, should first make a backward payment of 30,000 Euros in order to receive a monthly pension of 400 Euros. Old Mrs Anna Ferrer would therefore need to live another seven years in order to benefit from her pension for the first time. Previous instances – the individual proceedings have three instances up the Supreme Court – found that such a requirement would be disproportionate and punish her for the State's failure to provide for access to the public pensions scheme in the first place. Now, the only way open is the one to the Constitutional Court, and – if that Court follows the Supreme Court's reasoning – to Strasbourg yet once more.

So, even to this date, no just resolution of the cases has been reached – more than six years after the ECtHR decided in favour of the late pastor Manzanás.

What Have Churches Done, what Can Churches Do?

As pointed out, the Spanish Evangelical Church has engaged in legal actions on a general and on a case by case basis. In each, judges have found that the principle of non-discrimination has been violated, but the legal officers of the Spanish government are still making a strong point in denying that the remaining cases are about religious discrimination at all. FEREDE, the Spanish Evangelical Church, the Conference of European Churches (CEC) and other supporters have all asked that the Spanish authorities implement the judgement in such a general way that no-one else who is affected has to appeal to the judicature and ultimately the European Court of Human Rights. The Spanish Evangelical Church, the United Methodist and the Reformed Church have decided to maintain their demand for their right to be included in the social security scheme, with the cost of the annuities required to make up pension contributions for pastors and widows being covered by the churches.

Before 2000, the World Council of Churches' Round Table, CEC and other ecumenical aid agencies such as Diakonisches Werk in Germany, Entraide Protestante Suisse and Pro Hispania in Switzerland, and Het Evangelie in Spanje in the Netherlands have helped us financially to meet this challenge to religious freedom. Since 2000 the Spanish Evangelical Church has contributed about 1,500,000 Euros, mainly financed by contributions from the membership and, sadly, the sale of properties. The lawyer, Andrés Pérez Subirana, has so far worked pro bono to help the churches and their pastors.

The Conference of European Churches has taken up the issue on several occasions and by several means. The Thematic Reference Group on Human Rights has discussed the cases frequently, a film has been produced and the 2018 General Assembly has discussed the case, too. This publication is one more piece in CEC's efforts to support its Spanish Member Churches.

The Spanish Evangelical Church together with FEREDE continues to work at all levels: political, juridical and social so that pastoral activity is recognised under the terms of the Spanish religious freedom law and in conformity with the Strasbourg judgment of April 2012. FEREDE reported these problems to the Advisory Committee on Religious Freedom, an organ of the Ministry of Justice which regulates the application of the law on religious freedom. So far to no avail. Royal Decree 839/2015 was itself the best proof of a clear lack of willingness on the side of the Spanish government to resolve the issue. It was purportedly promulgated in response to the ECtHR judgement of 03 April 2012 specifically to resolve the violation of rights demonstrated by that judgement. The Spanish State has witnessed how the Courts, both the ECtHR and the Spanish Supreme Court, as well as other lower domestic Courts, repeatedly ruled its policies unconstitutional and unjust. In spite of this, discriminatory treatment has still not stopped.

Spanish Protestants consider that there is no true recognition of religious freedom without equality and show great pride in the tenacity with which its pastors and widows have endured this discrimination, despite years of service to society. If religious plurality is to be seen as a normal part of Spanish society, it is essential that religious minorities claim their right not to be discriminated against.

Still, six years after the Strasbourg judgement, Spain has not yet resolved the issue for these people. Rev. Manzanás died shortly after his legal victory. Most of the other pastors and widows concerned are of advanced age, too. There is an urgent need for the Spanish government to deal with these cases. The evasiveness, even outright contumaciousness of the government, obviously waiting for the claimants to die, cannot be motivated by financial concerns. The sums are negligible. It seems to be motivated by a refusal to accept religious pluralism. The unfair prolongation of this process confronts us with the fact that people of advanced years cannot now and maybe never will

enjoy fair reparation. The cynical manoeuvring of the government only goes to show the deep truth in the classic human rights insight:

Justice delayed is justice denied!

GREECE: THE LEGAL FRAMEWORK GOVERNING THE STATUS OF RELIGIOUS MINORITIES

Dr. Altana Filos

Freedom of Religion and Freedom of Peaceful Assembly and Association

European history shows that uniformity is not a solution and that regional and national specificities in the field of Church-State relationship continue to prevail.

We often think of religious freedom – one of the oldest of the fundamental and human rights - as an individual right rooted in individual conscience, but in fact, religion virtually always has a communal dimension.

European states deal in a variety of ways with religious institutions, according to their respective constitutions and in their respective Church-State laws or religious legal systems.³⁰ There are established churches (e.g. the Anglican Church in England), legally recognised

³⁰ Jochen Frowein, Religionsfreiheit und internationaler Menschenrechtsschutz, in Grote/Marauhn (ed.), Religionsfreiheit zwischen individueller Selbstbestimmung, 73-88.

churches (as in Austria) and there are countries in which religion is considered as a private activity such as in France and the Netherlands.³¹

International human rights conventions do not say that the state parties have an active and positive duty to support the religious life of citizens, to receive for example financial support to religious activities from the state (e.g., Norway).

On the other hand, protection of the rights of religious communities and autonomy in structuring their religious affairs lies at the very core of protecting religious freedom.

It is for this reason that the key international instruments dealing with religious freedom have consistently ensured that freedom of thought, conscience and religion includes 'freedom either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance'.³² Different religious communities structure their affairs in very diverse ways.

The European Convention on Human Rights (ECHR) constitutes an agreed basic standard in fundamental and human rights concerning freedom of religion throughout Europe.³³ The Convention protects, in Art. 9, the right to freedom of religion, as well as, in Art. 11, the right of association that concerns churches and religious communities as corporations in the manifestation of their religion.

³¹ Altana Filos: The Legal Personality of Religious Communities in European States, in: *Journal of Public Law*, vol. 4, 2012, (in Greek).

³² The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN in 1966, affirms this in its Art. 18.1.

³³ Council of Europe Member States are contractual parties to this Convention, 4th May 1950, plus - in the meantime - a number of additional protocols.

Article 9

- (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (2) Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and 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.

Article 11

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others (...)
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety (...)

The Convention forbids religious discrimination according to Art. 14,³⁴ in conjunction with Art. 9 ECHR. It sets the framework under which interventions of states are allowed, independently of the model for Church-State relations chosen by each country.

In general, modern legal doctrine acknowledges that fundamental rights' guarantees oblige public authorities to create an atmosphere in which these rights can be freely exercised. In order to do so, public

³⁴ 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion (...)'.

authorities have the responsibility to refrain from actions which may infringe on these rights. This applies to freedom of religion as well.

The qualifications of the legal structures and statutes of religious organizations are left to national legislation, where history and specific juridical traditions play a major role.

The Relations between the State-Church and Religious Communities in Greece

All persons living within the Greek territory enjoy, according to Art. 5.2 of the Constitution, full protection of their life, honor and freedom, irrespective of nationality, race, or language and of religious or political beliefs. The freedom of religious conscience is inviolable and guaranteed by Art. 13 of the Constitution, in particular:

- (1) Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.
- (2) All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law...
- (3) The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion...' It has been an established opinion in Greek doctrine and case law that Article 13.1 of the Constitution enshrines the civil right of religious freedom, subject only to constitutional restraints. Religious freedom consists of two basic principles: freedom of religious conscience and freedom of expression of religious beliefs and practice.

Also the right of freedom of expression is guaranteed by Article 14:

Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State (...)

For churches and religious communities as legal persons are representative bodies of collective freedom of religion, identical stipulations are valid for the sphere of collective and public practice of religion as for individuals³⁵. As it derives from general theory on individual rights, the freedom of religion includes the freedom of religious conscience, religious association and the freedom to exercise one's religious duties.

While all churches and religions may freely exist, as societies under Civil Law, some of them are granted a more elevated position and more possibilities to enjoy certain benefits in Greece. This means that, for example, the salaries and pensions of the religious ministers of those groups are chargeable to the State and that the sums necessary for this purpose are included in the annual State budget.³⁶ Several other financial advantages are granted.³⁷ The status of 'legal body of public law' has only been granted first to the Greek Orthodox Church.³⁸

The position of the Greek Orthodox Church and its relations with the State are set forth in Art. 3.1 of the present Constitution of 1975/1986/2001.³⁹ According to this article:

- a) The dogma of the Orthodox Church is the prevailing religion;

³⁵ See Peroula Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, Sakkoulas Publishers, Athens 2000, 19-28.

³⁶ Law 3596/6.3.1910; Law 536/5.9.1945.

³⁷ Law 3432/12.11.1955.

³⁸ Christos Papastathis: *Religious Self-Administration in the Hellenic Republic*, in Gerhard Robbers (ed.): *Church Autonomy*, Peter Lang, 2001, pp. 425-450. The Greek Orthodox Church is also in other European states (Germany and Belgium) a legal body of public law.

³⁹ Michalis Stathopoulos, *The relations between state and church*, Athen-Komotini, 1993, 14-19 (in Greek).

- b) The Church of Greece is inseparably united in doctrine with the Ecumenical Patriarchate of Constantinople and with all other Orthodox Churches;
- c) The Church is self-administered and autocephalous.

Arguably the legal meaning of ‘prevailing religion’ in Greece has been that Eastern Christian Orthodoxy is the religion of the vast majority, approximately 90% of Greece’s population. Theorists support the view, that this special relation, until now, between the Greek State and the Orthodox Church, can be attributed to historical causes and a long-established tradition.⁴⁰ After the fall of Constantinople (1453) Mehmet II the Conqueror conceded political power to the Church. During the period of Ottoman rule, the Orthodox Church represented the Greek nation and helped preserve the Greek language and identity. After the Independence of 1821, Georg von Maurer, a German Protestant and also one of the representatives of the Regency imposed by the Great Powers on Greece, since Prince Otto of Bavaria, who was chosen as King, was too young to undertake the government of the State, managed in less one year to achieve an important work of codification including the Charter of the Orthodox Church.⁴¹ He was influenced by the situation in the different German kingdoms where the Protestants and the Catholic Church were under state control and he supported the view that the Church should act as a service to the State. He believed also that the Greek Church should be independent from the Patriarch of Constantinople who was under the Sultan.

⁴⁰ For more information, see Ch. Papastathis: *State and Church in Greece*, in: *State and Church in the European Union*, Gerhard Robbers (ed.), Nomos Verlagsgesellschaft, Baden-Baden, 1996, p. 76-78.

⁴¹ Georg Ludwig von Maurer: *Das griechische Volk in öffentlicher kirchlicher und privatrechtlicher Beziehung vor und nach dem Freiheitskampfe bis zum 31. Juli 1834*, Bd. I, Heidelberg 1835, p. 152-159.

Religious Minorities in Greece

The protected interests of a religious group are not limited to matters of religion but also of economic, social and cultural rights.⁴²

In Greece exist:⁴³

- a) religious communities with the status of 'legal body of public law';
- b) religious communities as 'sui generis 'recognised by the law and;
- c) other recognised religious minorities but organised 'under civil law'. Only the first two groups have the right according to the law to call themselves 'religious communities'.

Religious Minorities with the Status of Public Law

The Muslim Minority

The biggest religious minority in Greece is the Muslim minority in Thrace.⁴⁴ Similar to the Greek Orthodox Church this minority also has the status of a 'legal body of public law'.

The Lausanne Treaty of 1923 (Art. 37-45), a multilateral treaty between the Allies, Greece and Turkey, guarantees freedom of religion to this minority. In the Treaty's context, there is a special reference to religious issues concerning both Greece and Turkey. According to Art.

⁴² J. D. van der Vyver: The Right to self-determination of religious communities, in: Leuven Lectures on Religious Institutions, Religious Communities and Rights, Leuven 2004, pp. 67-89.

⁴³ On general relations between religious minorities, the State and the Orthodox Church see: Nicos Aliviatis: The Constitutional Treatment of Religious Minorities in Greece, in: *Mélanges en l'Honneur de Nicolas Valticos, Droits et Justice*, Paris 1999, pp. 629-642; Altana Filos: Die rechtliche Situation der Freikirchen und Sekten in Griechenland, in: Hartmut Lehmann (ed.) *Religiöser Pluralismus im vereinten Europa*, Wallstein, 2005, pp. 97-115.

⁴⁴ See Simos Minaidis: The Freedom of Religion of the Muslim Minority in Greece, Athens-Komotini, 1990 (in Greek).

45, rights stipulated by this Treaty, are granted to the 'Moslem minority of Greece' which had predominantly settled in Thrace after an exchange of Greek and Turkish populations. About a million and a quarter Greeks had left Turkey for Greece, and about half million Turks had left Greece for Turkey. Because the Patriarchate of the Eastern Orthodox Church was located in Constantinople, the Patriarchate and Greeks who had been living in Constantinople (Istanbul) since 1918 had been excluded from the population exchange. As part of the agreement, the Turkish minority living in Western Thrace – roughly numerically equivalent – was also excluded. All Muslims living in the district east of the frontier line to Turkey, as this was determined by the Treaty of Bucharest in 1913, were considered inhabitants of Thrace.

As the Greek Constitution (Art. 25) guarantees the rights of all persons as individuals and as members of the social entity, the Muslims, being a social entity, enjoy all guarantees of the Constitution and of any and all international treaties ratified by Greece.

The religious freedom of the Muslims consists first in religious equality (Art. 38.1 Lausanne Treaty), second in freedom of religious conscience (Art. 39.3-4 and 40, 42.1) and third freedom of worship (Art. 38.2) which can be assumed as the right to worship freely, in private or in public, any religion or creed whose practice is not contrary with public order and morals.

The special educational system granted to the Muslim minority in Thrace, since the exchange of populations between Greece and Turkey in 1923, takes into consideration religious particularities prescribing the protection of the Islamic freedom of religion (Art. 38,2), the right to private minority schools (Art. 40) as well as an obligation of the State to establish public minority schools (Art. 41.1). Greek laws constitute the main legal texts that organise this special education system, on an optional basis, for the Muslim minority.⁴⁵ The teaching of the Quran is

⁴⁵ Law No. 694/1977 and Law No. 695/1977.

safeguarded. In 1969, a Special Pedagogic Academy was founded in Thessaloniki for providing education to future Muslim teachers of the minority in Thrace.⁴⁶

The spiritual Muslim leader in Thrace is the Mufti. He is also a public authority in his district and in particular a judiciary one. He has the power to pass judgment on disputes between Muslims within his district that involve questions of family law and inheritance law. Disputes are resolved on the basis of Islamic Law. The decisions of the Mufti are executed following a decision of the first Instance Court of the District. The Court examines only if the decision was issued within the remits of its jurisdiction and in accordance with the Constitution. This is a very delicate issue because State courts never interfere with matters contrary to constitutional provisions, such as for example 'the respect and protection of the value of the human being' (Art. 2.1 of the Constitution) and the 'equality of all persons' (Art. 4.1 of the Constitution). Polygamy is valid under Islamic Law (Holy Muslim Law permits every man to marry up to four women) in sharp contrast with the conception of the Greek Law and judicial order regarding moral values. The Muslim who is married to two women does not commit the crime of bigamy and he is also not punished according to Art. 356 of Greek Penal Law.⁴⁷ This is against the principle of equality of Art. 4 of the Constitution. Also, the procedure of divorce and the relationship between the spouses drive women to an inferior status relative to that of men, contrary to the principles of equality. This situation is tolerated by the Greek administration and judiciary, as long as Muslim women do not follow the procedure in Greek courts, but 'voluntarily' follow the traditions according to their Islamic law. No doubt that this system of a separate jurisdiction for Muslims in Thrace is an 'anachronistic system' also in light of modern current human rights perceptions.

⁴⁶ Royal Decree 31/1969.

⁴⁷ Penal Court of Xanthi, Decision No. 14/199/1995.

There are almost 300 mosques in the region of Thrace, many more than Christian churches in this area. Mosques are also in other cities of Greek territory. In 2000 the Parliament approved a bill allowing the construction of the first Islamic Cultural Centre and Mosque in the Athens area. However, the construction started last year. Women's scarfs are not forbidden in Greece.

The Muslim minority enjoys the freedom of expression (Art. 14 of the Constitution). There are Turkish speaking radio programs and local Turkish press in the whole area of Thrace. News in the local TV channels appear in the Turkish language as well.

In contrast to that, the Greek community in Turkey has decreased dramatically since 1923. After the population exchange, there were between 100,000 and 110,000 Greeks in Turkey, most of them in Istanbul and a smaller number on the islands of Imbros and Tenedos. Today the Greek community does not appear to number more than 2,500. According to the Constantinopolitan Society in Athens most of the people there are elderly or mentally disabled.

Greek foundations have difficulties regarding the protection of property. The training of clergy also remains a major issue for the Greek Orthodox community, due to the requirement that all priests must be Turkish nationals; this problem, already serious due to the small size of the Greek minority in Turkey, is aggravated by the fact that the Halki Seminary of Theology remains closed to this day, since it was closed by the Turkish authorities in 1971. The European Commission against Racism and Intolerance, in its reports and especially from 2011 onwards called the authorities to work more actively towards a solution to this impasse.⁴⁸ The hope remains that these efforts will soon bear fruit.

⁴⁸ ECRI (Council of Europe, CRI (2011)5, p.33

The Jewish Minority

As the third religious community in Greece, the Central Council of Jews⁴⁹ possesses, after the Greek Orthodox Church and the Muslim minority, the status of ‘legal body under public law.’⁵⁰

A majority of Jews settled in Greece in the 15th century, coming mostly from Spain and Portugal and called ‘Sephardim’. After the massacre of the Jewish population during the Second World War, there are currently around 6,000 Jews, living mostly in Athens, Thessaloniki or other big cities. Jewish communities can be established anywhere in Greece if at least five families live in the same city. They attain automatically the status of legal person of public law.

Religious Minorities with the Status of ‘Sui Generis’ Religious Communities

Even though the Greek constitution provides for freedom of religion, non-Orthodox religious groups – notably other Christian groups – used to face administrative obstacles and legal restrictions on religious practice and their members often experienced intolerant behavior and at times discrimination. The biggest churches in the world, the Catholic Church,⁵¹ and the Protestant Church,⁵² did not possess a legal personality as churches or religious communities.

⁴⁹ For more information, see V. Papagregoriou: *The Religious Liberty of Jews in Greece*, in: *The Freedom of Religion*, Eunomia, Athens 1997, p. 255f (in Greek).

⁵⁰ Law 2456/1920, Government Bulletin A’2.8.1920; Law 367/1945, Art. 5, Government Bulletin 143, 7.6.1945; Law 1657/1951, Government Bulletin 20, 15.1.1951.

⁵¹ For example, the register for other beliefs at the Ministry of Education and Religious Affairs, so far, only contained four recognised Catholic Church parishes, three in Athens and one in Syros. When a couple from Poland got married in Athens in 2010, in a Catholic parish that had existed for more than 34 years, but did not belong to those four parishes, the administration was unable to

Also, many other religious communities existed so far only as corporations of civil law, like football clubs. In the past, all those religious communities couldn't be recognised such as churches or religious communities and this situation caused a real problem, especially in fields such as property or civil liability and human rights issues. They were unable to introduce a court case, nor could they be sued. They were not entitled to own property, nor were they in a position to buy or sell. In the past, this situation caused a real problem, especially in fields such as property or civil liability and human rights issues.

The main questions in the past were: What are minimum legal standards for churches and religious communities, particularly minority ones, with respect to European and international legal standards of freedom of religion or belief? How can religious communities be recognised by the Greek state as religious entities with a legal personality and not merely as topical churches/gatherings, e.g., personalities under private law?

Among legal scholars, there was an increasing demand that religious communities must have the right to be constituted as a legal personality. This might be either under a status created specifically for communities of faith and conviction, *sui generis* or under a status of a more general nature, which is also available for other groups and organisations.

It can be assumed that the Lisbon Treaty had a great impact in the recent developments in Greece, also regarding this issue.

To a great extent, problems like these were solved by the Law 4301/7.10.2014 concerning the legal status of religious communities and

identify it in their register and declared the marriage as illegal. Given this incident, the Catholic Church in Greece was keen to have every little chapel recognised under the new Law: in total 236!

⁵² Also, the Greek Evangelical Church, member of the CEC, which now exists for more than 150 years and constitutes an important part of Greek society, until recently did not possess a legal personality as a church.

their societies in Greece.⁵³ This law which put in context the freedom of religion and the freedom of association, both guaranteed by the Greek constitution, was a real necessity for Greece. It was passed with an overwhelming parliamentary majority becoming a landmark for Greece's judicial culture, given that Greece had been the last EU member state to regulate the relationship between the state and the religious communities.

The law contains some compulsory requirements concerning the way churches and religious communities should be structured internally, with certain principles of democracy that cannot be avoided. This requirement entails the need for religious groups to organise themselves democratically to be able to function as such with a juridical personality. It makes freedom of religion and of association more concrete in Greece.

First of all, and for the first time in Greece, in its Art. 1, this law gives a definition of the notion of religious community:

A religious community is a significant number of individuals with a specific religious confession of a recognised religion, who permanently reside in a particular geographic area, with the purpose of exercising together their worship and performance of duties that are required by the common Confession of its members.

Such a religious community has the right to be constituted as a legal entity/personality under a status created specifically for communities of faith after the registration in the special public book of Religious Legal Persons, that it is maintained in the Court of First Instance of the region of the headquarters of this group. There need to be at least 300 persons, from which at least one is the servant/priest or pastor of the religious community (Art.2). The number of 300 persons that is necessary to

⁵³ Government Bulletin No. 223/7.10.2014; A. Filos: The legal personality of religious communities in European countries, in: *Journal of Administrative Law*, 4/2012, 552-572 (in Greek)

establish a religious legal person could be problematic, and the courts must decide about it. The current jurisprudence in Greece is that 20 members can establish a legal person in Civil Law. In order for a religious legal person to be registered in the Book, its founders submit an application to the responsible one-member Court of First Instance, which is tried according to the volunteer process and to which are attached the founding document (Charter), the Statement of Faith, the names of the administrative members, in which it is essential to include the religious leader of the community, a complete biographical report of the latter, from which will appear any religious studies he happens to have done, the way and the time of his appointment, election or choice for this position a list of the places of worship and its regulation, with the signatures of the members and with dates (Art.3). The court is obliged to issue an order for a hearing for the case. A copy of the application, with the order of the date in court and all the supporting documents are delivered, with the responsibility of the applicant, at least fifteen days before the date in court to the Minister of Education and Religions and to the responsible Public prosecutor of the court of First Instance.

The right of religious communities to decide upon and administer their own internal religious affairs without interference by the government institutions is one of the critical features of any regime of religious freedom. This also permits religious communities to define a specific mission and to determine the nature and extent of their institutional interaction with society at large. The new law grants this right through Art. 8. The religious person is managed according to its charter by its leader or by a group with several members in which he is obliged to participate. The body can neither meet legally nor operate if the religious leader is absent. In this case the administrative body sits and decides legally even up to the replacement of the missing member, for subjects that concern the orderly operation of the legal person. The

charter of the religious legal person can also fix as its higher body the general assembly of the members, which can decide for each issue that does not depend on the responsibility of some other body. The assembly, if the charter does not determine differently, chooses its own administrative persons, approves the finances and decides on the dissolution of the legal person.

The dissolution of the religious legal person may also be possible in cases foreseen by its charter and in the event that the members remain less than one hundred (Art. 10). Also, with the decision of the one-member Court of First Instance, the religious legal person can be dissolved if this is asked by its administration for any reason and if this is asked for by the overseeing authority of the responsible Public Prosecutor and in accordance with the reasons in Art. 9§2 and Art. 17 EHRC. For example, if it is seeking goals different from what are determined by the law, or its operation has been rendered illegal or immoral or contrary to the public order. The case is tried in the volunteer process. The overseeing authority can proceed with regular or special control, ascertaining that the operation of the legal person is legal, which controls are limited exclusively to whether or not fulfilling its reasons for dissolution.

This law also foresees the establishment of Ecclesiastical Legal Persons, unions of at least three religious legal persons of the same religion, which have an episcopal or synodical or other central structure, and function on the basis of the regulations and are administered by elected or appointed organs, individually or as a group (Art. 12). Even those religious communities that do not possess such characteristics, and are not considered legal bodies, may under this law use the term ‘Church’ in their name (Art. 12 §2).

It reserves further a privileged status for some churches, like the Roman Catholic Church in Greece, the Anglican Church in Greece, the Greek Evangelical Church and others ‘... for historical reasons, relating

to the long and continuous operation of organised religions capable of expressing part of the population (domestic and worldwide) introduced smoothly in (Greek) society and of significant religious activity ...'.⁵⁴ It emphasises a different status as well as a differentiation in the cooperation between the state and those particular churches and in their possibilities to act within it. In other words, some churches are granted at least some degree of 'establishment', i.e., not only their existence and freedom to act become legally recognised, but – beyond that – they become more closely incorporated in the operations of the state and are granted some legal entitlements in the public arena.

So, *ex lege*, and without any other formulation, or the observation of processes that are determined by the law (Articles 3 and 12), even if they do not have the minimum number of believers or religious legal persons that are foreseen by the law, the churches and religious legal persons of civil law and legal person that operate temples, houses of worship, abbeys and places of meditation that depend on them administratively and spiritually (Art. 13) as Ecclesiastical Legal Persons of Civil Law, *sui generis*, are as follows:

1. The Catholic Church in Greece, with residence in Athens. Also, some 220 Catholic religious communities that operate temples, abbeys and houses of worship in Greece. They are settled especially in the Cyclades, Naxos, Tinos, Paros, Andros, Mykonos and also in the Ionian and the Dodecanese islands.⁵⁵
2. The Anglican Church in Greece, as Religious Legal Person, with residence in Athens.
3. The Ethiopian Orthodox Church in Greece, with residence in Athens, as Religious Legal Person.

⁵⁴ Art. 13 of the law's Explanatory Report.

⁵⁵ Catholics are present in Greece since the 4th Crusade (1203-1204 AD) and the Venetian occupation.

4. The Coptic Orthodox Church of Egypt and the temples/houses of worship etc., with residence in Greece, as Ecclesiastical Legal Person.
5. The Church of Orthodox Armenians in Greece and temples/houses etc. also as Ecclesiastical Legal Person, with residence in Athens.
6. The Evangelical Church of German speaking people in Greece as Religious Legal Person, with residence in Athens.
7. The Greek Evangelical Church, with the name, 'Evangelical Church of Greece', with residence in Athens, as Ecclesiastical Legal Person with all existent houses of worship in Greece.⁵⁶
8. The Assyrian Orthodox Church, with residence in Athens, as Religious Legal Person.
9. The Armenian Evangelical Church of Greece, with residence in Piraeus, as Religious Legal Person.

The Ministry of Education and Religions has an electronic register of all religious and ecclesiastical legal persons, also those without a legal personality according to the present law, according legal person, the judicial decision which has validated the application, the founding document, the Confession of Faith and their Charter. The Registry Book of religious ministers provides vital statistics regarding registered activities as well as information regarding religious ministers and is accessible via the web site of the Ministry of Education and Religions.

⁵⁶ The evangelicals' presence in Greece has since been continuous and uninterrupted, without ever being recognised by the State as a legal religious entity. Statistics on this religious minority are virtually, non-existent. The last to specify religious allegiance was in 1951 and the number was estimated to be approximately at 30.000 Protestants. The oldest and best known of the Greek Evangelical Churches was established in Athens in 1871 by Michalis Kalopothakis (1825-1911); See also John O. Iatrides: Evangelicals, in: Richard Clogg (ed.): Minorities in Greece, Aspects of a Plural Society, Hurst and Company, London, 2002, p. 50.

A very important regulation is Art. 18 and concerns the transfer of property from existing legal persons. Associations, institutions or civil society of non-profit character, that have been recommended by religious communities and function at the time of the publication of the present law, are allowed to donate, without tax or other cost, their property to the religious legal persons that will administer these religious communities, even if their charter states differently, under the condition that a unanimous decision is made by all their members, in an assembly that shall take place specifically for this purpose.

These churches share almost the same rights as the Orthodox Church, which certainly continues to be the ‘prevailing religion in Greece’ in accordance with Article 3 of the Constitution.⁵⁷

With the above law sites of worship, ‘houses of prayer’ - now called ‘temples’ -, are put on the same ground as the ones of the Orthodox Church. Their properties belong to the religious legal persons rather than to individual ‘clubs’, as was the case until the time of the enactment of the law. They are free to have their own schools or hospitals (and also hotels, commercial activities, and so on), but within the general legislative framework arranged by the state for said matters. What is excluded is state competence over religious or worship matters.

Religious Minorities under ‘Civil Law’

Existing religious communities that do not have the characteristics of the law, even without legal personhood, may use the term ‘Church’ in their name. There are some small religious communities that have not acquired until now in any way and according to this law a legal

⁵⁷ Regarding the position of the Greek Orthodox Church and its relations with the State, see: Ch. Papastathis: State and Church in Greece, in: Gerhard Robbers (ed.): State and Church in the European Union, Nomos Verlagsgesellschaft, Baden-Baden 1997, p. 76.

personality. They continue to exist as legal persons of civil law and can nevertheless be litigants before civil and administrative courts.⁵⁸

Conclusions

All modern constitutional states regulate the organization of religious belief and further the relations between state and religious minorities, but the way of regulation varies from state to state. Greece is today a reasonably stable, democratic society, whose constitution and legal system, in principle, accord the individual protection against religious persecution at the hands of the state authorities. The quest for a system that recognises the rights of the majority church as well as minority rights and equal treatment of the other faith communities has indeed been a huge challenge.

⁵⁸ Law 4301/7.10.2014, Art. 15.

AUSTRIA: RIGHTS OF RELIGIOUS MINORITIES

Dr. Peter Krömer

The Austrian legal framework on religion has, since 1998, three categories of legal personality for churches and religious associations:

- Churches and religious associations recognised by law according to art. 15 of the basic state law on the general rights of citizens 1867, which have the status of corporations under public law, enjoying certain privileges such as the right to give religious education in public schools, mostly at the cost of the state.
- Religious Communities of Confession according to the federal law on legal personality of religious Communities of Confession, under the condition that there are at least 300 members with Austria as their country of residence.
- Associations according to the Law on Associations 2002, in particular for religious communities with less than 300 registered members in Austria.

Churches and religious associations recognised by law enjoy this status either on the grounds of historic recognition, i.e., the Roman Catholic Church, or through specific laws of recognition, as exist for the

Lutheran and Reformed Churches, all Orthodox Churches, Oriental Churches and Islam. Otherwise an association can only become recognised by law according to the Recognition Law 1874, which enables the Minister of Education responsible to recognise an association through administrative regulation. Since 1998, the condition for such a recognition is that the membership must be at least two per thousand of the entire Austrian population – at the moment around 17,000 members.

Churches recognised by law administer their internal affairs autonomously, and several laws, such as labour laws, assembly laws, building regulations and tax legislation take this into special consideration. These Churches can offer religious education at public schools, most of it financed by the state, and have the right to receive public financial support for running their own schools open for the public.

This is different for the so called religious Confessional Communities. For them it is disputed in how far regulations in the above mentioned laws, that cite only Recognised Churches, need to be applied to them on the grounds of religious freedom in general. Indeed, there is some discrimination in this field. They are not entitled to offer religious education in public schools.

The type of legal recognition as a religious Confessional Community has been introduced in 1998. Prior to that year, the legal status of churches and religious communities not recognised by law had been unclear, leading to the state recognising churches without looking too closely at their actual size in terms of membership.

In Austria, the Roman Catholic Church is the traditional majority church, but since 2000 the state does not use religious affiliation any more in its official statistics, so it is not easy to get up-to-date numbers. The RCC should currently cover some 62% of the population, all Muslim communities together around 7-8%, and all Orthodox, Protestant, Oriental and free Churches together some 12%.

It is assumed that around 18% do not hold specific religious convictions, with a much higher percentage in Vienna. However, the number is generally on the increase.

The RCC set aside, all other Churches and religious associations are minorities. Recognised by law are – apart from the RCC – the Lutheran and Reformed Churches, the Methodist Church, the Orthodox and Greek-Oriental Churches, such as the Greek Orthodox Church, the Russian Orthodox Church, the Serbian Orthodox Church, the Romanian Orthodox Church, Oriental Orthodox or Old-Oriental Churches such as the Armenian Apostolic Church, the Syrian Orthodox Church, the Coptic Orthodox Church, as well as the New Apostolic Church, Mormons, Jehovah's Witnesses, the Old Catholic Church and Free Churches in Austria as an umbrella organisation of several free churches. Furthermore, the Israelite Community and the Islamic Community of Faith in Austria and the Islamic Alevite Community in Austria as well as the Buddhist Community are Religious Associations recognised by law.

Before 1998 – i.e., before the federal law on religious Confessional Communities has been passed – there was a certain generosity in the legal recognition of smaller churches and religious communities, and it has to be noted that the constitution demands that all recognised communities be treated equally.

Because of this generosity, several Churches recognised by law do not fulfil the requirement of size that has been introduced in 1998, e.g., the Oriental Churches, the Old Catholic Church, the Methodist Church, the Reformed Church, Jehovah's Witnesses and some of the Orthodox Churches, such as the Russian Orthodox Church, the Buddhist Community, and the Israelite Community.

It has to be remarked, however, that the Protestant Churches and the Orthodox Churches are counted as a legal unity as far as recognition is concerned, this is laid down on recognition and other laws. And it has also to be remarked, that the recognition cannot be withdrawn, if the

number at some points falls below the original two per thousand of the population.

This has to be seen as a positive aspect, and it has also to be noted that the Orthodox and Oriental churches are now, in their majority, migrant churches or churches of people with a migrant background, which is also true for Islam, thus also enabling ethnic minorities the full exercise of their religion.

Since 1998 there have been two generally positive and one negative example how religious minorities could achieve the legal status of a Church or Religious Association recognised by law, thus enjoying both full rights and also specific privileges:

Before 1998, from the group of so called Oriental Churches, the Armenian-Apostolic Church and the Syrian Orthodox Church were recognised by law, and the procedure of recognition was under way for the Coptic Orthodox Church. As the latter was not likely to ever reach the two per thousand threshold, in 2003 the Oriental Churches Recognition Law was passed, so as to make it possible to recognise the Armenian Apostolic, the Syrian Orthodox and the Coptic Orthodox Church, forming one common Commission, comparable to the solution found for the Greek-Oriental or Orthodox Churches in the Orthodox Church Recognition Law 1967. With these special legal provisions – bypassing the 1874 Recognition Law – now all Oriental Churches have been given the opportunity to constitute themselves as a Church Recognised by law in Austria. Some legal doubts that were raised at the time set aside, this legal construction has been functional so far, and it must be noted appreciatively that especially in the recent major refugee movements in and through Austria, also persecuted Christians from Oriental Churches in the Syrian region came to Austria, for whom these churches made commendable efforts, so that these Recognised Churches did indeed experience an exceptional growth.

Another way could be found on the basis of the Recognition Law 1874, in which my person has been instrumental on the legal side, and the Roman Catholic Church and also the Ecumenical Council of Churches in Austria have been instrumental on the political side:

In an agreement reached in 2013, was to unite Baptists, Mennonites, Pentecostal Churches and Evangelical Congregations, which had so far been religious Confessional Communities, united in the Recognised Church named 'Free Churches in Austria', of which they became autonomous member organisations. This legal procedure, which was entirely new, was greeted politically and makes it possible that these free churches could become a Recognised Church, which would have been impossible for any one of them in their own right. This is also notable, as within the autonomous member organisations there are also congregations of foreign languages been set up, also in the context of the Syrian refugee movement.

This new legal approach has been made possible because the free churches adopted a constitution for the Recognised Church, which as a preamble states the beliefs the churches hold in common, and then continues to lay out the creedal/confessional foundations of each denomination. It has also been made possible by a new, specifically adapted membership law, allowing close relatives – children and spouses – of ordinary (baptised) church members to be counted as extraordinary members and included in the overall membership, so that churches, which mostly practise adult baptism, would be thus able to reach the 17,000 member threshold.

These are positive examples, showing how it was made possible for small religious minorities in Austria to attain the status of Churches Recognised by Law, enjoying full rights and privileges.

As a negative example, the following may be reported: Through the Austrian Islam Law 1912 Islam became in Austria-Hungary – in the form of the Hanafite Rite – a Recognised Religious Association. The restriction

of this recognition to the Hanafite Rite was, and I fully support that judgement, declared void by the Constitutional Court in 1987. In subsequent times, however, there emerged substantial discord between Sunnite, Shiite and other theological schools, which becomes more understandable if you take into account how much guest workers from Turkey and Tunisia, and later refugees from the Middle East during the Lebanon crisis, and even later refugees from Bosnia-Herzegovina during the Yugoslav wars, changed the Islamic landscape in Austria. So, after manifold constitutional controversies, it was decided in 2015 to pass a new Islam Law, recognising Islam as such – including the many and diverse confessional groups or theological schools – but submitting each of them to a separate procedure of recognition, in analogy to the regulation of the Recognition Act 1874, posing the same conditions. At the same time certain restrictions were imposed – to my mind unconstitutionally – which make it harder for Muslim communities to get recognised and, consequently, exercise their freedom of religion.

The state introduced these restrictions because of so called hate preachers and state terrorism, allowing for more state control, which is, however, questionable from the point of view of freedom of religion and belief. Several Muslim communities are therefore currently fighting these regulations in the Austrian Constitutional Court, but the cases have not yet been decided. Recognised have been the Islamic Alevite Community in Austria and the Islamic Community in Austria, which is theologically a Sunnite community of faith, with a strong Turkish character; but also the Alevites are in their majority of Turkish background.

Whereas it is in principle positive that Muslim Communities have been recognised by law in Austria, the new level of state control is – from my point of view – problematic. However, I cannot go into detail here.

Summing up, many religious minorities in Austria have attained the status of a Church or Religious Community recognised by law. This is, from my point of view, a contribution to minority protection.

Religious Confessional Communities, however, still have a lesser legal protection of their right to exercise their religion – even though this is, in practise, more a theoretical than a factual disadvantage.

IV

ANNEX

ENSURING FAIR TREATMENT AND PEACEFUL CO-EXISTENCE: COMMUNIQUE OF THE ZAGREB CONSULTATION

The Zagreb Consultation organised by Conference of European Churches, the Churches' Commission for Migrants in Europe, the Diocese of Zagreb and Ljubljana of the Serbian Orthodox Church, and the European Parliament Antiracism and Diversity Intergroup on Religious Minorities as Part of Culturally Diverse Societies adopted the following Communiqué:

The freedom of religion or belief is a fundamental human right. It includes the right to believe and not to believe, and the right to manifest one's faith in worship, teaching, practice and observance, alone and together with others. This right belongs to everyone. In order to manifest their faith, religious persons join together in religious communities and associations.

In the Gospel the Church is called 'the little flock' to whom God will give the Kingdom. According to this original self-understanding the Church is itself a minority, journeying in the world but receiving its identity from the realm of God as the ultimate destination of its journey.

Even where an entire nation has become Christian, and the Church identifies with its destinies and tragedies, the spiritual attitude remains one of the little flock, with hope anchored beyond this world with its dominions and dominations.

Minorities can often be subject to unequal treatment in European states and societies. This applies particularly to minorities of an ethnic, national, linguistic or religious character, being in a non-dominant position in society and state.

The Consultation notes with burning unease how crimes against minorities are increasing throughout Europe. Incitement to and perpetration of hate crime and aggressive bias are incompatible with the core values of Europe, cherishing unity in diversity. As was underlined in various processes of international and European Institutions, respect and understanding of different narratives, identities, cultures, and religions are constituent to European societies.

International, European and national legislation regulates the relationship between the state and religious and ethnic minorities. Nevertheless, this question is complex as states do not all share the same definition as to who should be recognised as a minority. It is important to guarantee recognition, respect, equal treatment and protection for all minorities. The essence of minority protection is to provide the space and conditions allowing all to live peacefully without fear of discrimination or pressure of assimilation and to develop with specific as well as multiple identities.

Aware of the part religion has played and still plays in situations of conflict, and conscious of our responsibility as churches towards peaceful coexistence of different communities in our societies, this consultation of the Conference of European Churches and partners asks the European Institutions and their member/participating states to assume, in accordance with their obligations under law, the responsibility for:

- preventing and punishing hate crimes and breaking the cycle of violence, also seeking cooperation with civil society, churches, and religious communities
- producing a report about the state of rights of minorities
- implementing all pertinent legislation protecting the status and rights of minorities
- ensuring conditions that enable individuals and groups to co-exist in diversity, and creating a positive climate for the expression of pluralism, tolerance, and respect as corner stones of democratic societies
- promoting ongoing dialogue between majorities and minorities, so as to form a common basis of ideals and values for convivance in our pluralistic and diverse societies.

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Ms Jelena Nestorović was born in Croatia in 1988 in a mixed Serbian-Croatian family. During the Croatian military operation Storm in 1995, her family was forced to leave Croatia (Mala Paukova) and to settle down as refugees in Serbia for six years. After returning to Croatia Jelena entered legal studies in Zagreb and founded Youth Network of Serbs in Croatia. She is currently working in Serb National Council in Zagreb on matters related to rights, status and perspectives of Serbian people in Croatia.

Mr Tony Peck is the General Secretary of the European Baptist Federation. A British Baptist minister, he speaks and writes especially about Baptist and Free Church perspectives on human rights and religious freedom.

Metropolitan of Zagreb and Ljubljana Dr Porfirije (Peric) was born on July 22, 1961 in Bečej, Serbia. He completed primary school in Čurug, and the “Jovan Jovanovic Zmaj” Gymnasium in Novi Sad. He graduated from the Faculty of Orthodox Theology in Belgrade in 1986, and he pursued graduate studies in Athens from 1986 until 1990. That year, upon the blessing of Bishop Irinej of Backa, he joined the Holy Archangels Monastery in Kovilj, near Novi Sad, where he was ordained as hieromonk and became its abbot.

The Holy Synod of Bishops of the Serbian Orthodox Church in Belgrade he was elected him on May 14, 1999 as Bishop of Jegar and

Vicar to the Bishop of Backa. In 2014, he was appointed to the Metropolitan see of Zagreb and Ljubljana.

He defended his PhD thesis, *The Possibility of Knowledge of God in St. Paul's Understanding According to the Interpretation of St. John Chrysostom*, at the Faculty of Theology of the University of Athens in 2004. He became a lecturer at the University of Belgrade, Faculty of Orthodox Theology, Department of Pastoral Psychology, succeeding the famous psychiatrist, Academician Dr Vladeta Jerotić.

As a representative of Churches and religious communities, he was elected by the National Assembly of the Republic of Serbia, to be a Council member of the Republic Broadcasting Agency, and in 2008, the RBA elected him its president.

Theological articles of Bishop Porfirije's have been published in journals and publications both in Serbia and abroad. He participated in numerous scientific conferences and symposia throughout the world. He speaks Greek, English, and Russian.

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Mr Andrés Pérez Subirana works at Despatx Casares Advocats Associates in Barcelona and he is the lawyer of the Spanish Evangelical

Church. He led the case *Manzans v. Spain* at European Court of Human Rights in Strasbourg and currently he is in charged for other church related cases in conjunction with Manzans case.

Mr Mario Vrselja was born in 1986 in Sremska Mitrovica, Serbia. He has been involved in political work since 2004 and has become the first president of the youth of the Croatian national minority in history of Serbia. He is a historian and also a political scientist. He is a recipient of numerous recognitions for human and minority rights. He is married and has one child.



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Religious Diversity in Europe and the Rights of Religious Minorities

In October 2016, the Conference of European Churches brought together in Zagreb (Croatia) dozens of experts to discuss the challenges facing minority churches, and religious minorities in general. The European landscape presents many difficulties for these communities. Some struggle with obtaining legal status, some are subject to discrimination, exclusion or even open hostility. Widespread prejudices, destruction or confiscation of property, and barriers to religious rituals and ceremonies make daily life difficult for many communities across the continent. CEC, and the participants gathered at the Zagreb conference, are convinced that minorities bring value to societies, and that deeper religious literacy, enhanced understanding, and fostering dialogue will contribute to their flourishing. This volume contains their contributions to these discussions with a hope that it will contribute to healthy, diverse societies throughout Europe.

Dr Elizabeta Kitanovic is Executive Secretary for Human Rights at CEC. She works as a senior human rights advocate vis-à-vis international organisations and does fundraising. She has served on the Advisory Panel of the EU Fundamental Rights Agency. She studied theology and political science at the University of Belgrade and graduated from the Diplomatic Academy of the Ministry of Foreign Affairs (Serbia).

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